

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DOUGLAS M. HODCZAK,)	
JAMES M. CROSSAN, THOMAS J.)	Civil Action No. 08-649
MAGDIC AND JOSEPH A.)	
LITVIK, on behalf of themselves and)	
all others similarly situated,)	
)	
Plaintiffs,)	Honorable Judge Terrence F. McVerry
)	Magistrate Judge Amy Reynolds Hay
vs.)	
)	
LATROBE SPECIALTY STEEL)	
COMPANY,)	
)	ELECTRONICALLY FILED
Defendant.)	

**PLAINTIFFS’ MOTION TO VOLUNTARILY DISMISS COUNT II OF
PLAINTIFFS’ COMPLAINT**

Representative Plaintiffs move, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, to voluntarily dismiss Count II of their Complaint, which seeks relief for violations by Defendant Latrobe Specialty Steel (“LSS”) of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 *et seq.*, stating as follows:

1. In their Complaint, Plaintiffs have alleged that LSS unlawfully terminated them and others similarly situated, on basis of age, in violation of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 *et seq.*

2. Plaintiffs have asserted claims for disparate treatment and disparate impact, in Counts I and II, respectively. These ADEA claims have been asserted by Plaintiffs on behalf of themselves and all others similarly situated in a collective action pursuant to 29 U.S.C. § 626(b), which incorporates by reference the procedures for collective claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

3. On June 4, 2008, LSS filed a Partial Motion to Dismiss in which it sought the dismissal of Plaintiffs’ Count II disparate impact claim. LSS argued that the gravamen of

Plaintiffs claims as set forth in the Complaint is the intentional age discrimination set forth in Count I of the Complaint.

4. Upon review of LSS's Motion and Supporting Brief and in the interest of narrowing the issues to be litigated, Plaintiff have concluded that they want to voluntarily dismiss Count II of their Complaint pursuant to Rule 41(a)(2), Fed.R.Civ.P.

5. LSS will not be prejudiced by the voluntary dismissal of the disparate impact claim, as the case has only recently been commenced and no discovery or litigation activity related to the disparate impact claim has occurred. Indeed, LSS has sought such dismissal in its Motion.

6. Plaintiffs, including putative class members, will not be harmed by this voluntary dismissal without prejudice.

WHEREFORE, Plaintiffs respectfully request that this Court dismiss without prejudice Count II of Plaintiffs' Complaint.

Respectfully submitted,

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

Date: June 16, 2007

s/Bruce C. Fox

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Thomas J. Magdic and Joseph A. Litvik, on behalf of themselves
and all others similarly situated*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Plaintiffs' Motion to Voluntarily Dismiss Count II of Plaintiffs' Complaint* has been served to all counsel of record via ECF Notification, this 16th day of June, 2008, addressed as follows:

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)	
Defendant.)	

ORDER

Upon consideration of Plaintiffs' Motion to Voluntarily Dismiss Count II of Plaintiffs' Complaint, and good cause appearing therefor, it is hereby,

ORDERED that Count II of Plaintiffs' Complaint is Dismissed without prejudice.

Date: _____, 2008

United State District Judge