

PENSION FUND MODEL

[Note: This document shall not be relied upon for legal advice]

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
_____ COUNTY, OHIO

)	CASE NO. _____
)	
Plaintiff,)	JUDGE: _____
)	
v.)	
)	
)	
)	QUALIFIED DOMESTIC
)	RELATIONS ORDER
)	
Defendant.)	

IT IS HEREBY ORDERED AS FOLLOWS:

1. Effect of this order as a Qualified Domestic Relations Order: This Order creates and recognizes the existence of an Alternate Payee’s right to receive a portion of the Participant’s benefits payable under the Excavating and Building Material Drivers Union Local 436 Pension Fund (the “Plan”), a multi-employer defined benefit pension plan that is qualified and maintained under applicable provisions of the Internal Revenue Code of 1986 (the “Code”) and the Employee Retirement Income Security Act of 1974 (“ERISA”), each as amended to date. It is intended that this Order constitute a Qualified Domestic Relations Order (“QDRO”) under Code Section 414(p) and ERISA Section 206(d)(3).

2. Participant Information: The name, last known address, Social Security number and date of birth of the “Participant” are:

Name:
Address:
SSN:
DOB:

The participant shall have the duty to notify the Plan administrator in writing of any changes in his mailing address subsequent to the entry of this Order. The Participant designates himself to receive all notices regarding the status of this Order and all matters related thereto.

3. Alternate Payee Information: The name, last known address, Social Security number and date of birth of the “Alternate Payee” are:

Name:
Address:
SSN:
DOB:

The Alternate Payee shall have the duty to notify the Plan administrator in writing of any changes in her mailing address subsequent to the entry of this Order. The Alternate Payee designates herself to receive all notices regarding the status of this Order and all matters related thereto.

4. Plan Name: The name of the Plan to which this Order applies is the Excavating and Building Material Drivers Union Local 436 Pension Fund, currently located at 6051 Carey Drive, Cleveland, Ohio 44125. Further, any successor plan to the Plan or any other plan(s) to which liability for provision of the Participant’s benefits described below is incurred shall also be subject to the terms of this Order. In addition, any benefits accrued by the Participant under a predecessor plan or other defined benefit plan, where liability for benefits accrued under such predecessor plan or other defined benefit plan has been transferred to the Plan, shall also be subject to the terms of this Order.

5. Pursuant to State Domestic Relations Law: This Order is entered pursuant to the authority granted in the applicable domestic relations laws of the state of _____.

6. For Provision of Marital Property Right: This Order relates to the provision of marital property rights and/or spousal support to the Alternate Payee as a result of the final order or decree of divorce or dissolution, as the case may be, terminating the marriage of the Participant and Alternate Payee.

7. Amount of Alternate Payee’s Benefit: This Order assigns to the Alternate Payee an amount equal to the actuarial equivalent of _____percent (____%) of the marital portion of the Participant’s accrued benefit under the Plan. The marital portion shall be that part of the Participant’s accrued benefit earned during the term of the marriage (i.e. for this purpose, the period from _____, 20__ through _____, 20__ inclusive, determined as of _____, 20 __), but **[shall/shall not]** include an subsequent, retroactive increases in said accrued benefit thereafter approved by the Board of Trustees of the Plan prior to the Alternate Payee’s benefit commencement date hereunder.

In addition to the above, the Alternate Payee **[shall/shall not]** receive a pro-rata share of any cost-of-living adjustments or other economic improvements made to the Participant’s benefits on or after the date of his retirement. Such pro-rata share shall be calculated in the same manner as the Alternate Payee’s share of the Participant’s retirement benefits is calculated pursuant to Section 7.

Notwithstanding the language set forth in this Section 7, in the event that the Alternate Payee becomes entitled to a qualified pre-retirement survivor annuity under Section 9 of this Order, then the Alternate Payee's right to a share of the Participant's benefits as called for under Sections 7 and 8 of this Order shall be terminated as of the date of the Participant's death, and the qualified pre-retirement survivor annuity shall be payable to the Alternate Payee in lieu of any other benefits to which she may be entitled under the terms of this Order.

Notwithstanding the foregoing, the Participant and Alternate Payee understand and agree that Code Section 415 and applicable provisions of the Plan impose maximum benefit payment limitations which may not be exceeded, and testing for such limitations requires aggregation of the Participant's benefit with those assigned to the Alternate Payee hereunder. In the event the aggregated benefits payable under the Plan to both the Participant and Alternate Payee would exceed such limitations, the Participant and Alternate Payee (i) agree to share on a pro-rata basis any benefit reduction imposed by the Plan with respect to the Participant's accrued benefit in order to comply with such limitations, and (ii) accordingly, understand that their respective benefits are subject to possible reduction, prospectively or retroactively, by the Plan in order to comply with such limitations. Any such reductions shall be determined at the time benefit payments commence to the Participant or Alternate Payee, as the case may be, and may thereafter be adjusted to reflect permitted cost-of-living adjustments or other changes required or permitted under the Code and by the Plan.

8. Commencement Date and Form of Payment to Alternate Payee: The Alternate Payee may elect to commence her benefits under the Plan as of the later of (i) the earliest retirement date on which the Participant is eligible to commence benefits (including a disability benefit) under the Plan, provided, however, that in such case the Alternate Payee shall commence receipt of her benefits no later than the Participant's own benefit commencement date, or (ii) the first day of the month following receipt of this Order by the Plan if it is thereafter approved by the Plan. The Alternate Payee may elect to receive her benefits in any one of the allowable benefit options permitted under the terms and provisions of the Plan, other than a qualified joint and survivor annuity with her current spouse as the beneficiary. The form of benefit elected by the Alternate Payee will be based on the life expectancy of the Alternate Payee, as this is a separate-interest QDRO. Any actuarial adjustment which might be necessary to convert the Alternate Payee's benefits to one based on the Alternate Payee's lifetime should be applied to the Alternate Payee's benefits. Nothing herein shall be deemed to deprive the Alternate Payee of any post-retirement death benefit that may be payable to the Alternate Payee at the time of the Participant's death under the optional form of payment selected by the Participant at his retirement.

Further, should any early commencement reduction be necessary in the event that the Alternate Payee commences her benefits prior to the Participant's normal retirement date, then such reduction shall be applied to the Alternate Payee's benefits in accordance with applicable Plan provisions, provided, however, that such actuarial reduction shall not include any early retirement subsidy available under the Plan except as provided in the following paragraph.

The Alternate Payee [**shall/shall not**] be entitled to a pro-rata share of any early retirement subsidy (including any early retirement supplements, interim payments or temporary benefits) provided to the Participant on the date of the Participant's retirement, and the amounts payable to

the Alternate Payee shall be increased in accordance with the Plan's standard practices and actuarial factors used to determine same. Such pro-rata share shall be calculated in the same manner as the Alternate Payee's share of the Participant's retirement benefits is calculated pursuant to Section 7 of this order. Should payment of the Participant's monthly benefit be suspended due to his return to work in disqualifying employment, payment of the Alternate Payee's monthly benefit amount shall not be suspended but will be revised to eliminate that proportionate share of any such early retirement subsidy during the period of such suspension and until the Participant once gain begins receiving his monthly pension benefit payments and an early retirement subsidy with respect thereto.

9. Treatment of Alternate Payee as Surviving Spouse for Purposes of Determining Eligibility for the Qualified Pre-Retirement Survivor Annuity Required Under Code Section 417: In the event that the Participant predeceases the Alternate Payee, and neither the Participant nor the Alternate Payee has commenced their benefits under the Plan, the Alternate Payee shall be designated as the surviving spouse of the Participant for purposes of establishing the Alternate Payee's entitlement to receipt of the monthly qualified pre-retirement survivor annuity. For purposes of determining the eligibility for such surviving spouse benefits, the Alternate Payee and the Participant have satisfied the one (1) year marriage requirement as set forth in Code Sections 401(a)(11) and 417(d) and as may be required under the provisions of the Plan.

This designation applies only to the marital portion of the Participant's accrued benefit, as determined in Section 7 hereof. The Alternate Payee shall be treated as a surviving spouse of the Participant for purposes of the qualified pre-retirement survivor annuity that is attributable to the marital portion of Participant's benefits and any subsequent spouse of the Participant shall not be treated as a spouse of the Participant for such purposes with respect to this marital portion.

10. Post Retirement Death Benefit: If the Participant predeceases the Alternate Payee, then the Alternate Payee shall be entitled to the following percentage of any lump sum post retirement death benefit that may be payable: _____%

11. Death of Alternate Payee: If the Alternate Payee predeceases the Participant prior to the commencement of the Alternate Payee's benefits hereunder, any benefits payable with respect to the Alternate Payee's assigned portion of the Participant's benefits shall revert back to the participant. Should the Alternate Payee's benefits have commenced, then such remaining benefits, if any, will be paid in accordance with the form of benefit and to the beneficiary elected by the Alternate Payee. If a beneficiary has not been designated by, or, if designated, does not survive the Alternate Payee, then a contingent beneficiary will be selected pursuant to the provisions of the Plan regarding same.

12. Savings Clause: This Order is not intended, and shall not be construed, in such a manner as to require the Plan:

- (a) to provide any type or form of benefit option not otherwise provided under the terms of the Plan;
- (b) to require the Plan to provide increased benefits determined on the basis of actuarial value; or

- (c) to require the payment of any benefits to the Alternate Payee that are required to be paid to another alternate payee under another order that was previously deemed to be a QDRO.

13. Certification of Necessary Information: All payments made pursuant to this Order shall be conditioned on the certification by the Alternate Payee and the Participant to the Plan administrator of such information as the Plan administrator may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.

14. Continued Qualified Status of Order: It is the intention of the parties that this Order continue to qualify as a QDRO under Code Section 414(p) and ERISA Section 206(d), as the same may be amended from time to time, and the provisions hereof shall be administered and interpreted in conformity herewith. The Plan administrator shall reserve the right to reconfirm the qualified status of the Order at the time benefits become payable hereunder.

15. Tax Treatment of Distributions Made Under This Order: For purposes of Code Sections 402(a)(1) and 72, the Alternate Payee shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of this order, and as such, will be required to pay the appropriate Federal income taxes on such distribution.

16. Constructive Receipt: In the event that the Plan inadvertently pays to the Participant any benefits that are assigned to the Alternate Payee pursuant to the terms of this order, the Participant shall immediately reimburse the Alternate Payee to the extent that he has received such benefit payments, and shall forthwith pay such amounts so received directly to the Alternate Payee within ten (10) days of receipt.

17. Continued Jurisdiction: The Court shall retain jurisdiction with respect to this Order to the extent required to maintain its qualified status and the original intent of the parties as stipulated herein. The Court shall also retain jurisdiction to enter such further orders as are necessary to enforce the assignment of benefits to the Alternate Payee as set forth herein, including the recharacterization thereof as a division of benefits under another plan, as applicable, or to make an award of alimony, if applicable, in the event that the Participant fails to comply with the provisions contained above requiring said payments to the Alternate Payee.

18. Effect of Plan Termination: In the event that the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed or subsidized by the Pension Benefit Guaranty Corporation ("PBGC"), the Alternate Payee's benefits, as stipulated herein, shall also be guaranteed or subsidized to the same extent in accordance with the Plan's termination rules and in the same ratio as the Participant's benefits are guaranteed or subsidized by the PBGC.

19. Actions By Participant: The Participant shall not take any actions, affirmative or otherwise, that can circumvent the terms and provisions of this Order, or that could diminish or extinguish the rights and entitlements of the Alternate Payee as set forth herein. Should the Participant take any action or inaction to the detriment of the Alternate Payee, he shall be required

to make sufficient payments directly to the Alternate Payee to the extent necessary to neutralize the effects of his actions or inactions and to the extent of her full entitlements hereunder.

20. Notice of Pending Retirement: The Participant shall be required to notify the Alternate Payee, in writing, within thirty (30) days prior to his actual date of retirement. Such notice shall indicate his intentions to retire and his elected benefits commencement date. The notice shall be sent via regular, first class mail. For this purpose, the Alternate Payee shall notify the Participant of any changes in her mailing address.

21. Receipt and Approval of This Order by the Plan: The Participant and/or Alternate Payee or their legal counsel shall furnish a copy of this Order to the Plan administrator and inform the Plan administrator of the parties' intent that this Order constitute a qualified domestic relations order under applicable provisions of ERISA and the Code. The Participant and Alternate Payee shall take such further action as may be necessary to ensure that a prompt determination is made by the Plan administrator or a court of competent jurisdiction that this Order constitutes a qualified domestic relations order under applicable provisions of ERISA and the Code and that the Plan distributes the assigned benefits of the Alternate Payee to her when required to do so pursuant to this Order.

SO ORDERED.

JUDGE

APPROVED:

Plaintiff

Defendant

Attorney for Plaintiff

Attorney for Defendant

Reg. No.

Reg. No.

Address

Address

Address

Address

Tel: _____

Tel: _____

Fax: _____

Fax: _____

Email: _____

Email: _____