

Sample Language* Qualified Domestic Relations Order**

This cause, coming before the Court for the purpose of entry of a Qualified Domestic Relations Order, as that term is defined in Section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and Section 414(p) of the Internal Revenue Code (“Code”); the Court on _____, 20____ having entered a Judgment approving a Marital Settlement Agreement dated _____, 20____; and the Court being fully advised in the premises; the Court hereby makes the following Findings of Fact and Conclusions of Law and enters them as an Order in this proceeding:

A. On _____, 20____, this Court entered a Judgment of Dissolution of Marriage incorporating a Marital Settlement Agreement, resolving property distribution issues pursuant to _____ [*insert appropriate citation to State Domestic Relations Law*], which Judgment relates to the marital property rights of _____ (hereinafter referred to as “Alternate Payee”), who is the former spouse of _____ (hereinafter referred to as “Participant”), and who has potential retirement benefits from the Central Pension Fund of the International Union of Operating Engineers and Participating Employers (hereinafter referred to as “Plan”).

B. The Participant’s accrued normal retirement benefit under the Plan is expressed as a monthly benefit payable for the life of the Participant, commencing at the Participant’s normal retirement age and continuing until the date of death of the Participant, with a sixty payment minimum guarantee. However, such guarantee applies only to that portion of the accrued benefit attributable to contributions for all period endings on or before July 31, 2005.

C. The amount of the benefit awarded to the Alternate Payee hereunder shall be _____ % of that portion of the Participant’s “accrued benefit,” as defined in Section 411(a)(7) of the Code, attributable to credited service under the Plan during the period _____ through and including _____ [*insert beginning and ending dates of the relevant period, including the month, day and year*], which is determined to be marital property. The Alternate Payee may begin receiving the benefits awarded to him/her hereunder on or after the Participant’s “earliest retirement age,” as that term is defined under Section 414(p)(4) of the Code, subject to the Alternate Payee’s furnishing appropriate notification to the Board of Trustees of the Plan (hereinafter referred to as “Board of Trustees”) of his/her desire to commence receiving benefits. Payments to the Alternate Payee shall be subject to any adjustments for early payment as provided in the Plan based on the age of the Alternate Payee (and the age of the Participant, if the Participant has not attained his/her normal retirement age under the Plan) on the date payments to the Alternate Payee are scheduled to commence.

* A DOMESTIC RELATIONS ORDER BASED ON THIS FORM WILL GENERALLY BE FOUND TO BE QUALIFIED BY THE CENTRAL PENSION FUND, IF USED WITHOUT SUBSTANTIAL MODIFICATION. OTHER FORMS ARE, OF COURSE, ALSO ACCEPTABLE. HOWEVER, THE REVIEW PROCESS WILL BE EXPEDITED IF CHANGES TO THE FORM ARE UNDERLINED.

** THIS FORM PROVIDES FOR SEPARATE PROPERTY INTERESTS IN THE ACCRUED BENEFIT AS DEFINED IN SECTION 411(A)(7) OF THE CODE AND REGULATIONS PROMULGATED THEREUNDER. EVENTS SUBSEQUENT TO THE DATE OF THE ORDER, SUCH AS THE DEATH OF THE PARTICIPANT OR THE ALTERNATE PAYEE, WILL NOT AFFECT BENEFITS TO THE OTHER PARTY. THIS FORM CANNOT BE USED IF BENEFITS ARE IN PAY STATUS.

D. The Alternate Payee shall receive payment of his/her interest in the Participant's accrued benefit, as set forth above, in the form of a separate single life annuity, with a sixty payment guarantee. However, such guarantee applies only with respect to that portion of the accrued benefit attributable to contributions for all period endings on or before July 31, 2005. Payments shall be made in a manner consistent with the terms and conditions of the Plan, but not in the form of a joint and survivor annuity for the lives of the Alternate Payee and the Alternate Payee's subsequent spouse. Payments to the Alternate Payee shall continue until his/her death, subject to the Plan's sixty payment minimum guarantee.

E. The Alternate Payee shall not be considered the qualified spouse of the Participant for purposes of Section 205 of ERISA and Section 401(a)(11) of the Code for the purpose of determining Alternate Payee's eligibility for a Qualified Joint and Survivor Annuity ("QJSA") and/or a Qualified Pre-Retirement Survivor Annuity ("QPSA").

F. The monthly income amount paid to the Alternate Payee is a gross amount, which is subject to federal income tax and other taxes. The Alternate Payee will be responsible for payment of all taxes due as a consequence of the payment by the Plan of any benefits to the Alternate Payee under this Order.

G. The death of the Alternate Payee shall have no effect on the Plan benefits that are payable to the Participant. The death of the Participant shall have no effect on the Plan benefits that are payable to the Alternate Payee. If the Alternate Payee dies after commencing his/her benefit, but before his/her Plan benefits, as determined under this Order, have been distributed in full, any death benefits payable under the form of benefit selected by the Alternate Payee shall be paid to the Alternate Payee's beneficiary. If the Alternate Payee has not designated a beneficiary, or if the designated beneficiary does not survive the Alternate Payee, any death benefits payable upon the Alternate Payee's death shall be paid to the Alternate Payee's deemed beneficiary as determined pursuant to Section 12.05 of the Plan of Benefits.

H. The Board of Trustees shall have full discretionary and final authority to implement and interpret this Order, including any uncertain or ambiguous terms, in order to comply with the terms of the Plan and all legal requirements.

I. General Provisions:

- (1) It is intended that this Order shall qualify as a qualified domestic relations order ("QDRO") within the meaning of Section 414(p) of the Code and Section 206(d)(3) of ERISA. The provisions of this Order shall be administered in compliance with such provisions.
- (2) A certified copy of this Order shall be served upon the Board of Trustees by counsel of record forthwith. The Board of Trustees shall, within a reasonable time after receipt of this Order, determine whether this Order is a QDRO and shall so notify the Participant and the Alternate Payee, and/or their respective counsel. During the period while the determination is being made, the Board of Trustees shall take such action as is authorized or required by Section 414(p)(7) of the Code and Section 206(d)(3)(H) of ERISA.

- (3) If the Board of Trustees determines that this Order is a QDRO, they shall so notify the parties. If the Board of Trustees determines that this Order is not a QDRO, they shall inform the parties of the reasons for the determination.
- (4) The Court shall retain jurisdiction to make changes in this Order to the extent necessary to cause the Order to qualify as a QDRO and to effect the intent of the parties. No change to this Order shall be effective until the Board of Trustees determines that the changes do not adversely affect the Order's status as a QDRO.
- (5) The Court also finds as follows:

Last known address of Participant is:

_____ Soc. Sec. No. _____
_____ Date of Birth _____

Last known address of Alternate Payee is:

_____ Soc. Sec. No. _____
_____ Date of Birth _____

IT IS FURTHER ORDERED that the parties shall execute any documents deemed necessary by either the Court or the Board of Trustees, and the Court may issue any further Order necessary to effectuate the purposes of this order.

ENTER:
