

UMWA 1974 Pension Trust Sample QDRO – Separate Interest

(You may use this sample only if the participant’s benefit payments have not started when the order is submitted to the UMWA 1974 Pension Trust for qualification.)

IN THE _____ COURT OF _____
DIVISION _____ COUNTY _____

IN RE MARRIAGE/SUPPORT OF :

PETITIONER,

Case No. _____

vs.

RESPONDENT

QUALIFIED DOMESTIC RELATIONS ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

This Order creates and recognizes the existence of an Alternate Payee’s right to receive a portion of a Participant’s benefits payable under an employer sponsored defined benefit pension plan that is qualified under Section 401 of the Internal Revenue Code (the “Code”) and the Employee Retirement Income Security Act of 1974 (“ERISA”). It is intended to constitute a Qualified Domestic Relations Order (“QDRO”) under Section 414(p) of the Code and Section 206(d)(3) of ERISA. This Order is entered pursuant to the authority granted in the applicable domestic relations laws of the [state of/commonwealth of _____]. This Order relates to the provision of marital property rights as a result of the Order of Dissolution of Marriage between the Participant and Alternate Payee. The Participant is not currently receiving benefit payments from the UMWA 1974 Pension Plan.

Section 1. Identification of the Plan

The name of the Plan to which this Order applies is the UMWA 1974 Pension Plan (hereinafter referred to as the “Plan”). Further, any successor plan to the Plan shall also be subject to the terms of this Order.

Section 2. Identification of the Participant and Alternate Payee

a. The name and last known address of the plan "Participant" are: _____
_____. His/Her date of birth is: _____ and
his/her Social Security Number is _____.

b. The name and last known address of the "Alternate Payee" are: _____
_____. His/Her date of birth is: _____ and
his/her Social Security Number is _____. The Alternate Payee shall have
the duty to notify the Plan Administrator in writing of any changes in his/her mailing
address subsequent to the entry of this Order.

Section 3. Amount of Benefit to be Paid to Alternate Payee

This Order assigns to Alternate Payee as a separate interest an amount equal to the actuarial equivalent of [**specify portion**] percent of the Marital Portion of the Participant's Accrued Benefit under the Plan as of the Participant's benefit commencement date, or the Alternate Payee's benefit commencement date, if earlier. The Marital Portion shall be determined by multiplying the Participant's Accrued Benefit by a fraction (less than or equal to, but not greater than 1), the numerator of which is the number of months of participation in the Plan earned during the marriage (**from** mm/dd/yyyy **to** mm/dd/yyyy), and the denominator of which is the total number of months of the Participant's participation in the Plan as of the earliest date of his/her cessation of benefit accruals, retirement, termination, death or the date that Alternate Payee commences his/her benefit 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 benefit on or after the date of his/her 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 this Section 3.

Notwithstanding the language set forth above in this Section 3, in the event that the Alternate Payee becomes entitled to a Qualified Pre-retirement Survivor Annuity under Section 8 of this Order, then the Alternate Payee's right to a share of the Participant's benefits as called for under Sections 3 and 4 of this Order shall be terminated as of the date of such Participant's death, and such pre-retirement death benefit shall be payable to the Alternate Payee in lieu of any other benefits to which he/she may be entitled under the terms of this Order.

Section 4. Commencement Date and Form of Payment to Alternate Payee

The Alternate Payee may elect to commence his/her benefits on or after the Participant's Earliest Retirement Age as defined by Section 414(p)(4)(B) of the Code. Payment shall not be made until the Plan qualifies this domestic relations order. The Alternate Payee may elect to receive his/her benefits in any of the allowable benefit options permitted under the terms and provisions of the Plan, other than a Joint and Survivor Annuity with his/her current spouse as beneficiary. The form of benefit paid to the Alternate Payee is to be based on the life expectancy

of such Alternate Payee. Any actuarial reduction which might be necessary to convert Alternate Payee's benefits to one based on the Alternate Payee's lifetime should be applied to the Alternate Payee's benefits.

Further, should any early commencement reduction be necessary in the event that the Alternate Payee commences his/her benefits prior to the Participant's Normal Retirement Date, such reduction shall be applied to Alternate Payee's benefits in accordance with applicable Plan provisions.

Also, the Alternate Payee shall be entitled to a pro-rata share of any employer-provided early retirement subsidy provided to the Participant on the date of his/her retirement, and the amounts payable to the Alternate Payee shall be increased in accordance with the Plan Administrator's practices and the Plan's actuarial principles. Such pro-rata share shall be calculated in the same manner as the Alternate Payee's share of the Participant's retirement benefits as calculated pursuant to Section 3 of this Order. Should Participant's benefits cease due to his/her return to employment, the Alternate Payee's monthly benefit amount will be revised to eliminate any proportionate share of such early retirement subsidy.

Section 5. Benefits Stop

The Plan shall stop payments of the Alternate Payee's separate interest in accordance with the form of benefit paid to the Alternate Payee.

Section 6. Death of Participant

The Participant's death shall not affect payments under the Alternate Payee's separate interest, except as specified under Section 8.

Section 7. Death of Alternate Payee

If the Alternate Payee dies before commencing benefits, the separate interest shall revert to the Participant. If the Alternate Payee dies after commencing benefits, see Section 5.

Section 8. Treatment of Alternate Payee as Surviving Spouse for Purposes of Determining Qualified Pre-retirement Survivor Annuity as Such Term is Defined in Section 417 of the Code

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, such Alternate Payee shall be designated as the surviving spouse of the Participant for purposes of establishing Alternate Payee's entitlement to receipt of the monthly pre-retirement benefit. For purposes of determining the eligibility for such surviving spouse benefits, the Alternate Payee and the Participant must have satisfied the one-year marriage requirements as enumerated in Sections 401(a)(11) and 417(d) of the Code and as may be required under the provisions of the Plan.

This designation applies to the assigned Marital Portion as calculated in Section 3 of this Order. This Alternate Payee shall be treated as a surviving spouse of such Participant for purposes of any pre-retirement surviving spouse benefits that are attributable to the assigned Marital Portion of the Participant's benefits, and any subsequent spouse of the Participant shall not be treated as a spouse of the Participant for such marital portion.

Section 9. Other Requirements

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;
- c. To require the payment of any benefits to the Alternate Payee which are required to be paid to another Alternate Payee under another Order which was previously deemed a QDRO; or
- d. To change the benefit form if the Participant is already receiving benefit payments.

Section 10. 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 Administration of such information as the Plan Administrator may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.

Section 11. Continued Qualified Status of the Order

It is the intention of the parties that this QDRO continues to qualify as a QDRO under Section 414(p) of the Internal Revenue Code, as it may be amended from time to time, and that the Plan Administrator shall reserve the right to reconfirm the qualified status of the Order at the time benefits become payable hereunder.

Section 12. Tax Treatment of Distribution Made Under This Order

For purposes of Sections 402 (a)(1) and 72 of the Internal Revenue Code, any Alternate Payee who is the spouse of the Participant 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 appropriate federal income taxes on such distribution.

Section 13. Constructive Receipt

In the event that the Plan Trustee inadvertently pays to the Participant any benefits which 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/she has received such benefit

payments, and shall forthwith pay such amounts so received directly to the Alternate Payee within ten (10) days of receipt.

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

Section 14. 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.

Section 15. Plan Termination

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

IT IS SO ORDERED.

Dated this _____ day of _____, _____.

BY THE COURT,

JUDGE