

BEER INDUSTRY – LOCAL UNION NO. 703 PENSION FUND

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Sample Qualified Domestic Relations Order (“QDRO”)

Notes on Use: The Beer Industry – Local Union No. 703 Pension Fund (“Pension Fund,” formerly known as the Beer Industry – Local Union No. 744 Pension Fund) does **not** require parties to follow the format of this sample QDRO. The Pension Fund will honor any Order that is found to be “qualified” under Section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). This Order is designed for the defined benefit Pension Plan maintained by the Pension Fund and is not intended for use with any other pension plan.

Before preparing and submitting a QDRO, the parties may want to review the Pension Fund’s Domestic Relations Order Procedures, a document which will be provided to any party upon request and without cost. The Procedures describe the Pension Fund’s rules and practices in processing QDROs. The Procedures also includes a general description of the benefit structure of the Pension Plan.

Please note that, while this sample QDRO is designed to equally divide the marital portion of the participant’s accrued benefit, an equal division of property is not mandated by either ERISA or the Pension Plan. Also, this form is not designed to apply to situations other than marital dissolutions.

This form provides for a division under the “separate interest approach,” which is distinguished from the “shared payment approach” in a publication of the U.S. Department of Labor, Employee Benefits Security Administration (EBSA), “QDROs: The Division of Pensions Through Qualified Domestic Relations Orders” (1997), available without charge from the EBSA at 1-800-998-7542, or on the Internet at <http://www.dol.gov/ebsa/Publications/qdros.html>. In the Pension Fund’s experience, most practitioners employ the separate interest approach. However, if the Plan participant is already receiving a pension, the shared payment approach is the only option. This Sample QDRO is inappropriate for that situation.

Where the participant is female and the Alternate Payee is male, the gender of the pronouns used in the form should be adjusted accordingly. This form calls for a partial Social Security number so that the parties’ full Social Security numbers will not appear in a public record. While the parties’ full Social Security numbers need not be in the QDRO, the Pension Fund will require that information before payment can be made. Finally, on this form Order, items in [brackets] represent instructions. The bracketed instructions should not be included in an Order that is presented to a court for approval.

DISCLAIMERS: This sample QDRO is being furnished as a convenience to legal counsel and it is not intended to be used by any person not authorized to practice law. It should be modified by legal counsel to conform to the legal requirements of the state and of the court in which the Order is to be entered. Legal counsel may also wish to review the EBSA publication described above.

While the Pension Fund will provide information about Plan benefits, the Pension Fund cannot give legal advice to any party. The Pension Fund’s attorneys represent only the Pension Fund and they cannot and will not represent either party in connection with a QDRO or any other matter.

[NAME OF COURT]

[CASE NAME]

[CASE NUMBER]

QUALIFIED DOMESTIC RELATIONS ORDER

This cause coming before the Court for the purpose of entry of a Qualified Domestic Relations Order (hereinafter, "QDRO") as defined in Section 206(d)(3)(B) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); with the Petitioner, [name], appearing in open Court by [name of attorney] and the Respondent, [name], appearing by [name of attorney], the Court being fully advised in the premises, finds as follows:

1. This Court has jurisdiction over the subject matter and the parties hereto.

2. On [date], this Court entered a Judgment dissolving the marriage of the parties. That Judgment (including any Marital Settlement Agreement incorporated therein) provides that the Alternate Payee named below is entitled to a portion of benefits otherwise payable to the Participant named below. This Order is entered to carry out the provisions of the Judgment.

3. It is the intent of the Court that the provisions of this domestic relations order operate as an effective assignment of the Participant's interest in the Plan identified below, under both State and Federal laws, for all purposes, and constitute a QDRO in compliance with Section 206(d)(3) of ERISA and Section 414(p) of the Internal Revenue Code of 1986, as amended.

4. For purposes of this Order, the following definitions shall apply:

(a) "Plan" means the Beer Industry – Local Union No. 703 Pension Plan, to which this Order applies. The Board of Trustees of the Plan is both the Plan Sponsor and Plan Administrator.

(b) "Participant" means [name], an employee or former employee who is or may become eligible to receive benefits from the Plan. The Participant's last known mailing address is _____ . His Social Security Number is xxx-xx-_____ and his date of birth is _____.

(c) "Alternate Payee" means [name], who is the spouse or former spouse of the Participant. This Order recognizes the Alternate Payee as having a right to receive all or a portion of the benefits payable under the Plan with respect to the Participant. The Alternate Payee's last known mailing address is _____. Her Social Security Number is xxx-xx-_____ and her date of birth is _____.

IT IS HEREBY ORDERED AS FOLLOWS:

A. Determination of Alternate Payee's Interest in the Plan. Alternate Payee is assigned 50% of the value of the Marital Portion of Participant's accrued benefit in the Plan, determined as of the Division Date. "Marital Portion" means that portion of the Participant's pension earned between _____, the date of the parties' marriage, and _____, the "Division Date," which is the date of the dissolution of the marriage [*OR the date the action was filed, or any other date that defines the Alternate Payee's interest*]. Alternate Payee shall have a separate interest in the Plan and her share shall be payable to her for life, and be unaffected by the death of Participant.

B. Payment of Plan Benefits to Alternate Payee. Alternate Payee may elect to begin receiving benefits as of the Participant's attainment of the earliest retirement age under the Plan, or any later date she elects. Alternate Payee may choose from the optional forms of benefit (if any) available under the Plan, except that her share shall not be paid in the form of a joint and survivor annuity with any subsequent spouse of the Alternate Payee. In no event shall the Plan be required to make payment to the Alternate Payee before the Plan has received a certified copy of this Order and has determined that this Order is a "Qualified Domestic Relations Order" as defined in ERISA, and before the Alternate Payee has applied in writing for a distribution of her benefit pursuant to this Order.

C. Death of Participant. Because the parties have been married in excess of one year, the Alternate Payee shall be treated as the Participant's surviving spouse for purposes of the Plan's Qualified Pre-Retirement Survivor Annuity. Such benefit shall be based on the Marital Portion of the Participant's pension, as determined by the formula in paragraph A, above. Alternate Payee's right to survivorship benefits under this paragraph C shall terminate as of the date she begins to receive benefits in the form of an annuity for her lifetime under paragraph A, above.

D. Taxation. Any distribution of benefits to the Alternate Payee shall be subject to applicable tax withholding requirements, whether state, local or Federal. Benefits paid to the Alternate Payee pursuant to this Order shall be includible in the Alternate Payee's gross income for the taxable year of receipt and shall not be included in the Participant's gross income for such taxable year.

E. Notices. The Alternate Payee and the Participant shall have the duty to notify the Plan in writing of any change in his or her respective mailing address that occurs subsequent to the entry of this Order.

F. Costs. Participant and Alternate Payee shall hold the Plan and its Trustees and Administrators harmless for any liabilities which arise from acting in accordance with this Order, including all reasonable attorney's fees which may be incurred in connection with any claims which are asserted because the Plan honors this Order.

G. Savings Clause. Nothing in this Order shall be construed (i) to require the Plan to provide any type or form of benefits, or any option, not permissible under Plan rules; or (ii) to require the Plan to provide increased benefits on the basis of actuarial value; or (iii) to require the Plan to pay benefits to the Alternate Payee that are required to be paid to another Alternate Payee

under a domestic relations order previously determined to be qualified. The parties intend that this Order will serve as a “Qualified Domestic Relations Order” as defined in ERISA and that this Order shall be interpreted and administered in conformity with the provisions of ERISA and the Plan. If the Plan finds that this Order is not “qualified” under applicable provisions of ERISA, then both parties agree to enter an Amended Order to comply with such requirements and to effectuate the intent of this Order with respect to distribution of the Alternate Payee’s interest.

H. Continued Jurisdiction. This Court retains jurisdiction to enter such Orders or Amended Orders as shall be necessary to comply with the requirements of ERISA and the Plan in order to effectuate the intent of this Order with respect to distribution of the Alternate Payee’s interest. This Order supersedes any Qualified Domestic Relations Order previously entered by the Court in this cause.

ENTERED: _____
DATE JUDGE