

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID CLARK, *et al.*,  
Plaintiffs,

v.

DUKE UNIVERSITY, *et al.*,  
Defendants.

Case No. 1:16-CV-01044-CCE-LPA

KATHI LUCAS, *et al.*,  
Plaintiffs,

v.

DUKE UNIVERSITY,  
Defendant.

Case No. 1:18-CV-00722-CCE-LPA

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your legal rights might be affected if you are a member of the following class:**

All persons who are or were participants or beneficiaries in the Duke University Faculty and Staff Retirement Plan (“Plan”) at any time during the Class Period, including any beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and/or Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are certain individuals identified in the Settlement Agreement.

The Class Period is defined as August 10, 2010 through the date of entry of the Preliminary Order. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) comprised of two class action lawsuits brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The first case (the “Clark case”) was filed against Duke University, the Duke University Investment Advisory Committee, and certain individual defendants. The second case (the “Lucas case”) was filed against Duke University. Although the Lucas case is separate from the Clark case, both cases are related and assert ERISA claims concerning the management, operation and administration of the Plan. The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of December 31, 2018 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of December 31, 2018 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated January 16, 2019. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com). Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any possible amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on June 18, 2019, at 10:00 a.m. before U.S. District Court Judge Catherine C. Eagles in Courtroom G-3, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 27401.
- Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs or to Class Representatives’ Compensation, must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page 5 of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

**Our records indicate that you are a Former Participant. If you believe that you meet the definition of a Current Participant, please contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan as of December 31, 2018.**

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:</b>	
<b>OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY JUNE 3, 2019 TO PARTICIPATE IN THE SETTLEMENT</b>	<p><u>Our records indicate that you are a Former Participant.</u> You must return a Former Participant Claim Form that is postmarked by June 3, 2019 to receive your share of the Net Settlement Amount. If you do not return the Former Participant Claim Form that is postmarked by June 3, 2019, you will forfeit your share of the Net Settlement Amount. A claim form is enclosed with this notice but may also be obtained by accessing <a href="http://www.duke403bsettlement.com">www.duke403bsettlement.com</a>.</p>
<b>YOU CAN OBJECT (NO LATER THAN MAY 19, 2019)</b>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the Settling Parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.</p>
<b>YOU CAN ATTEND A HEARING ON JUNE 18, 2019</b>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel of your intention to appear at the hearing by May 19, 2019.</p>

### **The Class Actions**

The litigation involves two separate, but related class actions called *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-cv-00722 (the “Class Actions”). The Court supervising the cases is the United States District Court for the Middle District of North Carolina. The individuals who brought this suit are called Class Representatives, and the individuals and entities they sued are called the defendants. The Class Representatives are current and former participants in the Plan. The Class Representatives’ claims are described below, and additional information about them is available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

### **The Settlement**

The Settlement was reached on January 16, 2019. Class Counsel filed the Clark case on August 10, 2016 and the Lucas case on August 20, 2018. Since the filing of the Clark case and for a period of almost three years, the parties engaged in substantial litigation. During the course of the litigation, over 760,000 pages of documents were produced, which required Class Counsel to devote substantial time and effort to review and analyze those documents to support their underlying claims. Class Counsel took over 15 depositions of fact and expert witnesses, and also retained experts intimately familiar with the retirement plan industry and prudent practices of fiduciaries for defined contribution plans to provide their opinions based on the record and their experience. The Settling Parties participated in mediation before a nationally recognized mediator who has extensive experience in resolving similar claims involving other retirement plans. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after months of extensive arm’s length negotiation following the mediation were the Settling Parties able to agree to the terms of the Settlement.

As part of the Settlement, a Qualified Settlement Fund or Gross Settlement Amount of \$10,650,000 will be established to resolve the Class Actions. The Net Settlement Amount is \$10,650,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys’ Fees and Costs, Class Representatives’ Compensation, and other approved expenses of the litigation. The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court.

In addition to the monetary component of the Settlement, the Settling Parties have agreed to certain additional terms: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan’s investment options and fees, and a copy of the Plan’s Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan’s fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan’s fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan’s ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

### **Statement Of Attorneys’ Fees and Costs Sought in the Class Actions**

Since mid-2016, Class Counsel have devoted thousands of hours investigating potential claims and bringing the Class Actions. Class Counsel reviewed thousands of pages of documents prior to filing of the Clark case and thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel also reviewed and analyzed in detail three-quarters of a million pages of documents, including thousands of electronic files, produced in the Clark case to support their claims in that case and those that

were later brought in the Lucas case. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing the Class Actions. Due to the highly complex nature of this litigation, Class Counsel was required to advance substantial costs to investigate and extensively develop Plaintiffs' claims. These included expenses associated with experts who were necessary and critical in supporting Plaintiffs' claims, as well as the substantial costs incurred during the discovery phase to review hundreds of thousands of pages of documents and take over 15 depositions of fact and expert witnesses at multiple locations across the country. Class Counsel has agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) monitor for three years compliance with the Settlement Agreement; (3) bring an enforcement action in court, if necessary, to insure compliance with the Settlement Agreement; and (4) do each of these without pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the Class Actions. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$3,550,000, in addition to no more than \$825,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000 each for the Class Representatives in the Clark Case, and \$30,000 for the Class Representatives that were class representatives in both the Clark and Lucas cases, who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the Class Actions to conclusion. Their activities also included assisting in the factual investigation of the cases by Class Counsel and giving overall support to the cases. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

### **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What Are The Class Actions About?**

In the Class Actions, Class Representatives claim that, during the Class Period, the defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. 1001, *et seq.*, with respect to their management, operation and administration of the Plan.

The defendants have denied and continue to deny the allegations, claims and contentions of the Class Representatives, deny that they are liable at all to the Settlement Class, and deny that the Settlement Class or the Plan have suffered any harm or damage for which the Duke Defendants could or should be held responsible, as the defendants deny all allegations of wrongdoing and deny that the Plan suffered harm or damage from those claims.

### **3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and the Duke Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defense Counsel during an all-day session with a private mediator, and several months of additional arm's-length negotiations. The Settling Parties have taken into account the uncertainty and risks of

litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

#### **4. What Does The Settlement Provide?**

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

In addition to the monetary component of the Settlement, as discussed above, the Settlement also provides certain additional terms that provide substantial value to Class Members and materially add to the total value of the Settlement above the already significant monetary component. These additional terms include: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan's investment options and fees, and a copy of the Plan's Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan's fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan's fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan's ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

All Class Members and anyone claiming through them will fully release the Plan as well as the Duke Defendants and the "Released Parties" from "Released Claims." The Released Parties include: (a) Duke University, the Duke University Investment Advisory Committee, Duke University Health System, Inc. d/b/a Duke University Hospital, the Private Diagnostic Clinic, PLLC, and certain individual defendants identified in the Settlement Agreement; (b) their insurers, co-insurers, and reinsurers, (c) their past, present, and future parent corporation(s), (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, (e) their past, present and future members of their respective boards of trustees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them, and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include claims that were asserted in the Class Actions or that relate to any of the allegations, facts or occurrences asserted in the Class Actions or would be barred by the principles of res judicata or collateral estoppel had the claims asserted been fully litigated and resulted in final judgment; and all claims relating to the implementation of the Settlement. This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at

[www.duke403bsettlement.com](http://www.duke403bsettlement.com). Generally, the release means that Class Members will not have the right to sue the Duke Defendants, the Plan, or the Released Parties for conduct during the Class Period arising out of or relating to the allegations in the Class Actions.

This is only a summary of the Settlement. The entire Settlement Agreement is at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

## 5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon the Plan records, or, if on December 31, 2018, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) “Current Participant” as defined on page 1 or (2) an “Authorized Former Participant” (a “Former Participant” as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

1. The quarterly balances for the Class Period of Current and Authorized Former Participants are identified for each quarter;
2. All quarterly balances identified in step 1 will be summed together for each Participant;
3. An average quarterly balance for each Current Participant and each Authorized Former Participant will be calculated for the Class Period;
4. For each Current Participant and each Authorized Former Participant, the average quarterly balance of step 3 will be divided by the average quarterly balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

No amount shall be distributed to a Class Member that is five dollars (\$5.00) or less, because such an amount is de minimis and would cost more in processing than its value. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

There are approximately 58,110 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive a check if and to the extent you are entitled to receive a portion of a Current Participant’s or Authorized Former Participant’s allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

## 6. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to our records, you are a Former Participant. Therefore, you need to return your claim form to receive your share of the Settlement.**

## 7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur no earlier than late 2019.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

**8. Can I Get Out Of The Settlement?**

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Actions for all claims that were asserted in the Class Actions or are otherwise included as Released Claims under the Settlement.

**9. Do I Have A Lawyer In The Case?**

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Actions. If you want to be represented by your own lawyer, you may hire one at your own expense.

**10. How Will The Lawyers Be Paid?**

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$3,550,000 in fees and \$825,000 in costs. The Court will determine what fees and costs will be approved.

**11. How Do I Tell The Court If I Don't Like The Settlement?**

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than May 19, 2019. The Court's address is Clerk of the Court, United States District Courthouse, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 27401. Your written objection also must be mailed to the lawyers listed below, **no later than May 19, 2019**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten calendar days of the request being served on the objector.

<b>CLASS COUNSEL</b>	<b>DUKE DEFENDANTS' COUNSEL</b>
SCHLICHTER, BOGARD & DENTON Attn: Duke 403(b) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 duke403bsettlement@uselaws.com Tel: (314) 621-6115 Fax: (314) 621-5934	MORGAN, LEWIS & BOCKIUS LLP Attn: Abbey M. Glenn 1111 Pennsylvania Ave NW Washington, DC 20004

**12. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing at 10:00 a.m. on June 18, 2019, in Courtroom G-3 at the United States District Courthouse for the Middle District of North Carolina, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 27401.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final

approval to the Settlement. The Court also will consider the petition for Class Counsel’s Attorneys’ Fees and Costs and any Class Representatives’ Compensation.

### **13. Do I Have To Attend The Fairness Hearing?**

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

### **14. May I Speak At The Fairness Hearing?**

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a “Notice of Intention to Appear at Fairness Hearing in *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722.” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 11, **no later than May 19, 2019.**

### **15. What Happens If I Do Nothing At All?**

**If you are a “Current Participant” as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.**

If you are a “Former Participant” as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Actions as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

### **16. How Do I Get More Information?**

If you have general questions regarding the Settlement, you can visit this website: [www.duke403bsettlement.com](http://www.duke403bsettlement.com), call 1-888-245-4655, or write to the Settlement Administrator at Duke 403(b) Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.

## **SPECIAL TAX NOTICE FROM THE SETTLEMENT ADMINISTRATOR**

### **YOUR ROLLOVER OPTIONS**

You are receiving this notice because all or a portion of a payment you are receiving as a result of the Settlement may be eligible to be rolled over to an individual retirement account (“IRA”) or an employer-sponsored retirement plan. This notice is intended to help you decide whether to do such a rollover.

This notice describes the rollover rules that apply to payments from the Settlement that are not from a designated Roth account (a type of account with special tax rules in some employer plans).

Rules that apply to most payments are described in the “General Information About Rollovers” section below. Special rules that only apply in certain circumstances are described in the “Special Rules and Options” section below.

*This Notice does not constitute legal or tax advice, and you should consult with a professional tax advisor if you have specific questions about your specific tax situation.*

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### **GENERAL INFORMATION ABOUT ROLLOVERS**

#### **How can a rollover affect my taxes?**

You will be taxed on a payment from the Settlement if you do not roll it over. If you are under age 59½ and do not do a rollover, you will also have to pay a 10% additional income tax on early distributions (unless an exception applies). However, if you do a rollover, you will not have to pay tax until you receive payments later and the 10% additional income tax will not apply if those payments are made after you are age 59½ (or if an exception applies).

#### **Where may I roll over the payment?**

You may roll over the payment to either an IRA (an individual retirement account or individual retirement annuity) or an employer plan (a tax-qualified plan, section 403(b) plan, or governmental section 457(b) plan) that will accept the rollover. The rules of the IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the IRA or employer plan (for example, no spousal consent rules apply to IRAs and IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the IRA or employer plan.

#### **How do I do a rollover?**

There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

If you do a direct rollover, the Settlement Administrator will make the payment directly to your IRA or an employer plan. You should contact the IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

If you do not do a direct rollover, you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. You will have 60 days after you receive the payment from the Settlement Administrator to deposit it into the IRA or eligible employer plan. If you do not do a direct rollover, the Settlement Administrator is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld. If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59½ (unless an exception applies).

### **How much may I roll over?**

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover.

### **If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?**

If you are under age 59½, you will have to pay the 10% additional income tax on early distributions for any payment from the Settlement (including amounts withheld for income tax) that you do not roll over, unless one of the exceptions listed below applies. This tax is in addition to the regular income tax on the payment not rolled over.

### **Will I owe state income taxes?**

This notice does not describe any state or local income tax rules (including withholding rules).

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## **SPECIAL RULES AND OPTIONS**

### **If you miss the 60-day rollover deadline**

Generally, the 60-day rollover deadline cannot be extended. However, the IRS has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline. To apply for a waiver, you must file a private letter ruling request with the IRS. Private letter ruling requests require the payment of a nonrefundable user fee. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

### **If you were born on or before January 1, 1936**

If you were born on or before January 1, 1936, and receive a lump sum distribution that you do not roll over, special rules for calculating the amount of the tax on the payment might apply to you. For more information, see IRS Publication 575, Pension and Annuity Income.

### **If you roll over your payment to a Roth IRA**

If you roll over the payment to a Roth IRA, later payments from the Roth IRA that are qualified distributions will not be taxed (including earnings after the rollover). A qualified distribution from a Roth IRA is a payment made after you are age 59½ (or after your death or disability, or as a qualified first-time homebuyer distribution of up to \$10,000) and after you have had a Roth IRA for at least 5 years. In applying this 5-year rule, you count from January 1 of the year for which your first contribution was made to a Roth IRA. Payments from the Roth IRA that are not qualified distributions will be taxed to the extent of earnings after the rollover, including the 10% additional income tax on early distributions (unless an exception applies). You do not have to take required minimum distributions from a Roth IRA during your lifetime. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

You cannot roll over a payment to a designated Roth account in an employer plan.

### **If you are not a Plan participant**

Payments after death of the Plan participant. If you receive a distribution after the Plan participant's death that you do not roll over, the distribution will generally be taxed in the same manner described elsewhere in this notice. However, the 10% additional income tax on early distributions does not apply, and the special rule described under the section "If you were born on or before January 1, 1936" applies only if the participant was born on or before January 1, 1936.

### **If you are a surviving spouse**

If you receive a payment from the Settlement as the surviving spouse of a deceased Plan participant, you have the same rollover options that the Plan participant would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to an IRA, you may treat the IRA as your own or as an inherited IRA.

An IRA you treat as your own is treated like any other IRA of yours, so that payments made to you before you are age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies) and required minimum distributions from your IRA do not have to start until after you are age 70½.

If you treat the IRA as an inherited IRA, payments from the IRA will not be subject to the 10% additional income tax on early distributions. However, if the Plan participant had started taking required minimum distributions, you will have to receive required minimum distributions from the inherited IRA. If the Plan participant had not started taking required minimum distributions from the Plan, you will not have to start receiving required minimum distributions from the inherited IRA until the year the Plan participant would have been age 70½.

### **If you are a surviving beneficiary other than a spouse**

If you receive a payment from the Settlement because of the Plan participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited IRA. Payments from the inherited IRA will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited IRA.

### **Payments under a qualified domestic relations order**

If you are the spouse or former spouse of the Plan participant who receives a payment from the Settlement under a QDRO, you generally have the same options the participant would have (for example, you may rollover the payment to your own IRA or an eligible employer plan that will accept it). Payments under the QDRO will not be subject to the 10% additional income tax on early distributions.

### **If you are a nonresident alien**

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Settlement is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

### **Other special rules**

If your payments for the year are less than \$200 (not including payments from a designated Roth account in the Plan), the Settlement is not required to allow you to do a direct rollover and is not required to withhold for federal income taxes. However, you may do a 60-day rollover.

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information, see IRS Publication 3, Armed Forces' Tax Guide.

### **FOR MORE INFORMATION**

You may wish to consult with the Settlement Administrator, or a professional tax advisor before taking a payment from the Settlement. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, Pension and Annuity Income; IRS Publication 590, Individual Retirement Arrangements (IRAs); and IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans). These publications are available from a local IRS office, on the web at [www.irs.gov](http://www.irs.gov), or by calling 1-800-TAX-FORM.