UNITED STATES DISTRICT COURT DISTRICT
SOUTHERN DISTRICT OF ILLINOIS

Pat Beesley, Nelda Kistler, Freddie Kingery, Greg Martin, Ron Miller, Willie Mitchell, Anthony Reed, David Miller, John Tonelle, Paul Glenney, and Gary Griscott as representatives of a class of similarly situated persons, and on behalf of the International Paper Company Salaried and Hourly Savings Plans, Plaintiffs; v. International Paper Company, The International Paper 401(k) Committee, Robert Florio, Thomas A. Kliman, Mark Lehman, Ethel A. Scully, John Balbon, Bob Hunkeler, Jerome N. Carter, Defendant International Paper Company Manager – Salaried Compensation, Defendant International Paper Company Director – Corporate Finance, Defendant International Paper Company Senior Manager - Communications; Defendants.	)	Cause No: 06-703-DRH **JURY TRIAL DEMANDED ON ALL COUNTS AND ISSUES SO TRIABLE**

COMPLAINT FOR BREACH OF FIDUCIARY DUTY

INTRODUCTION

1. Personal savings accounts, such as 401(k)s, are quickly becoming employees' primary method of financially planning for retirement. An increasing number of companies,

including some of the largest employers in the United States, recently have announced the termination of traditional defined benefit pension plans and their replacement by defined contribution 401(k) plans. For many employees in the United States today, an employer-provided defined benefit pension awaiting their retirement is a quaint, historical notion.

2. In 401(k) plans, employers provide an opportunity for employees to save their own pre-tax dollars in individual 401(k) accounts. The accounts provide a number of investment alternatives into which employees place a portion of their current income with the hope of earning, over time, a return sufficient to support themselves and their families in retirement.

3. Accordingly, in 401(k) plans, the return on employees' investments is critical. Even seemingly small reductions in a participant's return in one year may substantially impair his or her accumulated savings at retirement.

4. While such reductions in 401(k) accounts' returns may result from market fluctuations, a consistent -- albeit rarely discussed -- force reducing 401(k) accounts' earnings is the administrative fees and expenses assessed against account balances.

5. The most certain means of increasing the return on employees' 401(k) savings to reduce the fees and expenses employees pay from their 401(k) accounts.

6. Unlike generalized market fluctuations, employers can control these fees and expenses. Federal law requires them to do so.

7. Under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq*. ("ERISA"), an employer who provides a 401(k) plan for its employees is a "Plan Sponsor." The employer or its agent may also serve as "Plan Administrator," or the employer may appoint a third party to serve as such. Both the Plan Sponsor and the Plan Administrator are fiduciaries of the 401(k) plan. The Plan Administrator performs or contracts for administrative,

record-keeping, investment management, and other services from entities in the financial and retirement industry. ERISA requires that the fees for these services must be reasonable, incurred solely for the benefit of Plan participants, and fully disclosed.

8. For providing various services, third-party plan administrators, record-keepers, consultants, investment managers, and other vendors in the 401(k) industry have developed a variety of pricing and fee structures.

9. At best, these fee structures are complicated and confusing when disclosed to Plan participants. At worst, they are excessive, undisclosed, and illegal.

10. In this action, pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), Plaintiffs and Class Representatives, on behalf of the International Paper Hourly Savings Plan (the "Hourly Plan") and the International Company Salaried Savings Plan (the "Salaried Plan") (collectively the "Plans") and similarly situated participants and beneficiaries in the Plans, seek to recover the losses suffered by the Plans and to obtain injunctive and other equitable relief for the Plan from International Paper Company (the "Company" or "IPC"), the Plans' Sponsor; the International Paper 401(k) Committee, the Plan's Administrator (the "Committee"); and other defendants identified below based upon breaches of their fiduciary duties (collectively "Defendants").

11. As set forth in detail below, the fees and expenses paid by the Plans, and thus borne by the Plans' participants, were and are unreasonable and excessive; not incurred solely for the benefit of the Plans and their participants; and undisclosed to participants. By subjecting the Plans and their participants to these excessive fees and expenses, and by other conduct set forth below, Defendants violated their fiduciary obligations under ERISA.

PARTIES, JURISIDCTION AND VENUE

Plaintiffs:

12. Plaintiff and Class Representative Pat Beesley is a resident of Beecher City, Illinois, and of this District.

13. Plaintiff and Class Representative Nelda Kistler is a resident of Vandalia, Illinois, and of this District.

14. Plaintiff and Class Representative Freddie Kingery is a resident of Mattoon, Illinois.

15. Plaintiff and Class Representative Greg Martin is a resident of White Hall, Arkansas.

16. Plaintiff and Class Representative Ron Miller is a resident of Shelbyville, Illinois.

17. Plaintiff and Class Representative Willie Mitchell is a resident of Pine Bluff, Arkansas.

18. Plaintiff and Class Representative Anthony Reed is a resident of Little Rock, Arkansas.

19. Plaintiff and Class Representative David Miller is a resident of Shelbyville, Illinois.

20. Plaintiff and Class Representative John Tonelle is a resident of Taylorville, Illinois.

21. Plaintiff and Class Representative Paul Glenney is a resident of Mattoon, Illinois.

22. Plaintiff and Class Representative Gary Griscott is a resident of Peoria, Illinois.

23. Each Plaintiff and Class Representative is a participant in the Hourly or Salaried Plan.

Defendants:

24. Defendant International Paper Company is a New York corporation with its global headquarters in Stamford, Connecticut; its operations center in Memphis, Tennessee; global offices in China, Brazil and Belgium; and operations in forty countries.

25. IPC describes itself as having "significant global businesses in paper and paper distribution, packaging and forest products, including building materials. The company has operations in nearly 40 countries, employs approximately 83,000 people worldwide and exports its products to more than 120 nations."

26. IPC had sales in 2004 of $26 billion, which were derived primarily from businesses located in the United States, Europe, Latin America, Asia/Pacific and Canada.

27. IPC and is ranked No. 71 among Fortune 500 companies.

28. As of December 31, 2003, worldwide IPC operated 36 pulp, paper and packaging mills, 132 converting and packaging plants, 35 wood products facilities, 13 specialty chemicals plants, and 2 specialty panels and laminated products plants.

29. IPC distributes printing, packaging, graphic arts, maintenance and industrial products principally through over 270 distribution branches located primarily in the United States.

30. According to IPC's website, "International Paper has roughly 100,000 employees worldwide and is the world's largest private landowner. We have many jobs in many locations. All in all, there are hundreds of different career possibilities at International Paper. You could find yourself in Cincinnati, Ohio or in Vicksburg, Mississippi. In one of numerous exciting urban centers, or in picturesque rural America. In fact, many of our best opportunities are in small towns where International Paper is the largest employer and has a major local economic impact."

31. IPC is the Sponsor of the Plans pursuant to ERISA § 3(16)(B).

32. Defendant Thomas A. Kliman is an officer or employee of IPC and the individual designated by IPC to sign documents on behalf of IPC as Plans' Sponsor.

33. Defendant International Paper 401(k) Committee (the "Committee") is the named fiduciary and Administrator of the Plans.

34. In Article 14 of both the International Paper Salaried Savings Plan, Amended and Restated as of January 1, 2006 (the "Salaried Plan Document") and the International Paper Hourly Savings Plan, Amended and Restated as of January 1, 2006 (the "Hourly Plan Document"), IPC appoints the Committee and specifies its members by their title/position in the Company.

35. Under Article 14 of both Plan Documents, the Committee is comprised of five IPC officers and directors: (1) Manager—Salaried Compensation; (2) Director—Corporate Finance; (3) Vice President—Corporate Marketing; (4) Senior Manager—Communications; and (5) Vice President & CTO—Information Technology.

36. Defendant Ethel A. Scully is IPC's Vice President—Corporate Marketing and a member of the Committee.

37. Defendant John N. Balboni is IPC's Vice President & CTO—Information Technology and a member of the Committee.

38. Defendant is IPC's Manager—Salaried Compensation and a member of the Committee. Plaintiffs have not, despite investigation, determined the names of the individual holding this position. Plaintiffs will amend and supplement this complaint when they obtain this information.

39. Defendant is IPC's Director—Corporate Finance and a member of the Committee. Plaintiffs have not, despite investigation, determined the names of the individual holding this position. Plaintiffs will amend and supplement this complaint when they obtain this information.

40. Defendant is IPC's Senior Manager—Communications and a member of the Committee. Plaintiffs have not, despite investigation, determined the names of the individual holding this position. Plaintiffs will amend and supplement this complaint when they obtain this information.

41. Defendant Mark Lehman is an officer and/or employee of IPC and is the individual designated by IPC to sign documents as Plan Administrator for both the Hourly and Salaried Plans.

42. Defendant Bob Hunkeler is IPC's Vice President—Investments and is the Investment Officer of both the Salaried and Hourly Plan.

43. Defendant Jerome N. Carter is IPC's Senior Vice President–Human Resources and, according to the Plans' Summary Plan Descriptions, is the Administrator of the Plan and a named fiduciary of the Plan.

Jurisdiction and Venue:

44. Plaintiffs bring this action pursuant to ERISA §§ 502(a)(2) & (3), 29 U.S.C. § 1132(a)(2) & (3), which provides that participants may pursue civil actions on behalf of the Plans to remedy breaches of fiduciary duty as set forth in ERISA § 409, 29 U.S.C. § 1109, and/or to obtain other appropriate equitable relief. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1)(2).

45. All Defendants are subject to service of process issued from this Court pursuant to 29 U.S.C. § 1132(e)(1)(2).

46. Venue is proper in this Court pursuant to 29 U.S.C. § 1132 (e)(2) because: (A) the breaches of fiduciary duty giving rise to this action occurred in this district in that Plaintiffs/Class Representatives Pat Beesley and Nelda Kistler reside in this district, participated in the Hourly Plan from this district, received statements, Plan summaries, financial statement summaries, year-in-review booklets, and other information from the Defendants in this district, and suffered damages in this district; and/or (B) the Defendants may be found in this district and has employees in this district.

Rule 23 Requires Class Certification:

47. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and all similarly situated Plan participants and beneficiaries. They seek to represent the following (the "Class"):

> All persons, *excluding the Defendants, and/or other individuals who are or may be liable for the conduct described in this Complaint,* who are or were participants or beneficiaries of the Plans and who are, were, or may have been affected by the conduct set forth in this Complaint, as well as those who will become participants or beneficiaries of the Plans in the future.

48. Certification of this Class is proper under Rule 23(a) in that:

A. **Numerosity.** The members of the Class are so numerous that joinder of all members is impracticable. Although the Plaintiffs do not know the exact number of Class members as of the date of filing, the Plans' public documents state that, at the end of the 2004 Plan year, there were 60,854 participants with account balances in the Plans.

B. **Commonality.** Common issues of fact and law predominate over any issues unique to individual Class members. Issues that are common to all Class Members include, but are not limited to, whether the Defendants:

i. Charged fees and expenses to the Plans that were, or are, unreasonable and/or not incurred solely for the benefit of the Plans' participants;

ii. Caused the Plans to enter into agreements with third-parties which caused and/or allowed the Plans to pay fees and expenses that were, or are, unreasonable and/or not incurred solely for the benefit of the Plans' participants;

iii. Failed to monitor the fees and expenses paid by the Plans and, by such failure, caused or allowed the Plans to pay fees and expenses that were, or are, unreasonable and/or not incurred solely for the benefit of the Plans' participants;

iv. Failed to inform themselves of, and understand, the various methods by which vendors in the 401(k), financial and retirement industry collect payments and other revenues from 401(k) plans;

v. Failed to establish, implement, and follow procedures to properly and prudently determine whether the fees and expenses paid by the Plans were reasonable and incurred solely for the benefit of the Plans' participants;

vi. Failed properly to inform, and/or disclose to, the Plans' participants the fees and expenses that are, or have been, paid by the Plans;

vii. Failed to inform, and/or disclose to, the Plans' participants in proper detail and clarity the transaction fees and expenses which affect participants' accounts balances in connection with the purchase or sale of interests in investment alternatives;

viii. Breached their fiduciary duties by failing to disclose that hidden and excessive fees were and are being assessed against the Plans assets and by failing to stop such hidden excessive fees;

ix. In charging, causing to be charged or paid, and failing to monitor the fees and expenses of the Plans, failed to exercise the care, skill, prudence, and diligence that a prudent person would when acting in like capacity and familiar with such matters;

x. Caused and/or allowed fees and expenses to be paid by the Plans for purposes other than those allowed by ERISA;

xi. By the conduct above and/or by other conduct set forth in this Complaint, revealed in discovery and/or proven at trial, breached their fiduciary and other ERISA-imposed obligations to the Plans, the Plans' participants, and members of the Class;

xii. Are liable to the Plans and the Class for losses suffered as a result of the breaches of their breached their fiduciary and other ERISA-imposed obligations; and

xiii. Are responsible to account for the assets and transactions of the Plans and should be surcharged for any transactions and payments for which they cannot account.

C. **Typicality.** The claims brought by the Plaintiffs are typical of those of the absent Class members, in that:

i. The Defendants owed the exact same fiduciary and other ERISA-based obligations to each of the Plans' participants and beneficiaries, and each member of the Class;

ii. The Defendants' breach of those obligations constitutes a breach to each of the Plans' participant and beneficiary, and each member of the Class;

iii. To the extent that there are any differences in Class members' damages, such differences would be a product of simple mathematics based upon account balances in the Plans. Such minimal and formulaic differences are no impediment to class certification.

D. **Adequacy of Representation.** The Plaintiffs are adequate representatives of the absent Class members and will protect such absent Class members' interests in this litigation. The Plaintiffs do not have any interests antagonistic to the other class members nor do they have any unique claims or defenses that might undermine the efficient resolution of the Class' claims. Plaintiffs have retained competent counsel, versed in ERISA, class actions, and complex litigation.

49. Class certification is also appropriate under Rule 23(b) and each subpart in that:

A. Pursuant to Rule 23(b)(1)(A), in the absence of certification, there is a risk of inconsistent adjudications with respect to individual class members;

B. Pursuant to Rule 23(b)(2), as set forth above, the Defendants have acted on grounds generally applicable to the Class as a whole; and

C. Pursuant to Rule 23(b)(3), as set forth above, common issues of law and fact predominate over any purely individual issues and thus a class action is superior to any other method for adjudicating these claims.

FACTS APPLICABLE TO ALL COUNTS

The Plans

50. As part of their compensation and benefits, IPC offers certain of its employees the opportunity to participate in the Plans. Both Plans are "defined contribution plan[s]," as defined in ERISA § 3(34), 29 U.S.C. § 1002(34), and contain or are part of "eligible individual account plan[s]" under ERISA § 407(d)(3)(A), 29 U.S.C. §1107(d)(3)(A). They are tax-qualified plans of the type popularly known as a "401(k) plan."

51. IPC benefits by providing the Plans to eligible employees in that the opportunity to participate enhances IPC's ability to recruit and retain qualified personnel, fosters employee loyalty and goodwill, and entitles IPC to tax advantages under the Internal Revenue Code.

52. The Plans are essentially identical but for minor technical differences not relevant to the facts and issues set forth in this Complaint.

53. According to the Plans' financial statements filed with the Department of Labor (which are virtually identical):

> **General** – The Plan is a defined contribution plan providing retirement benefits to the salaried domestic employees and certain hourly domestic employees of

International Paper Company and its subsidiaries (the "Company") who work in the United States or who are United States citizens or residents working outside the United States. The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

The assets of the Plan are held by State Street Bank and Trust Company (the "Trustee") in the International Paper Company Defined Contribution Plans Master Trust (the "Master Trust"), a master trust established by the Company and administered by the Trustee.

J.P. Morgan Retirement Plan Services, previously J.P. Morgan/American Century (the "Recordkeeper") is the recordkeeper for the Plan

54. According to the Plans' financial statements filed with the Department of Labor:

Eligibility to Participate – An employee is generally eligible to participate in the Plan upon date of hire if the employee is a salaried employee, or a non-bargained hourly employee at a designated location, and is employed on a non-temporary basis. Participation in the Plan is voluntary. New employees are automatically enrolled in the Plan 45 days from the date they become eligible to participate, unless they otherwise decline participation or make alternative contribution and/or investment elections.

55. According to the Plan's financial statements filed with the Department of Labor:

Participant Contributions – Participant contributions may be made on either a before-tax or after-tax basis, or in any combination and are subject to certain Internal Revenue Code (the "Code") limitations. The maximum rate of participant contributions is 85% of annual compensation as defined by the Plan.

56. According to the **Salaried Plan's** financial statements filed with the Department of Labor:

Company Matching Contributions – The Company matches all participant contributions at 70% of the first 4% of participant contributions and 50% of the next 4% of participant contributions.

57. According to the **Hourly Plan's** financial statements filed with the Department of Labor:

Company Matching Contributions – As specified in an appendix to the Plan document, the Company matches 50% of participants' contributions up to either 4% or 6% of a participant's annual compensation, subject to certain limitations.

58. According to the Plan's financial statements filed with the Department of Labor:

Investments – Participants direct the investment of their contributions into various investment options offered by the Plan. The Plan currently offers several diversified portfolios and pooled funds, a fixed income option referred to as the Stable Value Fund, an open brokerage window and the Company's common stock as investment options for participants.

50% of the Company matching contributions must be invested in the Company Stock Fund ("Company Match Restricted") and the remaining 50% may be invested, as directed by the participant, into the various investment options offered by the Plan. Beginning in the year a participant reaches age 55, or upon termination of employment, the participant may transfer all or part of his Company Match Restricted balance to other investment options.

59. According to the Plan's financial statements filed with the Department of Labor:

ESOP Portion of the Plan – The Company Stock Fund, excluding contributions made in the current plan year, is designated as an employee stock ownership plan ("ESOP"). With respect to dividends paid on shares of Company stock held in the ESOP portion of the Plan, participants are permitted to elect to receive cash payouts of the dividends or to leave the dividends in the Plan to be reinvested in shares of Company stock.

60. According to the Plan's financial statements filed with the Department of Labor:

Participants Accounts – Individual accounts are maintained for each Plan participant. Each participant's account is credited with the participant's contributions, the Company's matching contributions and an allocation of Plan earnings, and is charged with benefit distributions, if applicable, and allocations of Plan losses and administrative expenses. The benefit to which a participant is entitled is the benefit that can be provided from the participant's vested account.

61. According to the Plan's financial statements filed with the Department of Labor:

Vesting - Participants are immediately vested in their participant contributions and rollover contributions, plus earnings thereon. Participants become 100% vested in Company matching contributions, plus earnings thereon, after three years of completed service.

> Participants also are fully vested in their Company matching contributions, plus earnings thereon, upon attainment of age 65, termination of employment due to death or disability, or termination of employment due to permanent closure of an employee's work facility or department. The vesting schedule of a merged plan shall be substituted for the Plan schedule if it is more favorable to an employee who was participating in such plan on the merger date. Forfeited balances of terminated participants are used to reduce future Company contributions.

The Master Trust

62. The Plans operate, are administered as part of, and share investment alternatives through, a master trust.

63. A "master trust" is a separate trust entity established by an employer or group of related employers to provide investment and administrative services to a 401(k) plan or plans. Plan sponsors and administrators generally utilize master trusts to administer multiple 401(k) plans for an employer or related-employer group (*e.g.* a company/related companies that maintain salaried and an hourly employee plans; plans formerly sponsored or administered by a company which the employer has acquired and/or with whom the employer has merged; plans which include only employees of a bargaining unit and/or represented by a labor organization, etc.).

64. Through a master trust structure, several 401(k) plans may invest in common investment options or funds offered in the master trust and may share the services of master trust record-keepers, investment managers, consultants, and other service providers. The fees incurred for such services are allocated among participating plans based upon each plan's proportionate share of the assets in the master trust.

65. IPC has designed the Plans to be administered through a September 26 2003 Amended and Restated Defined Contribution Plans Master Trust Agreement Between International Paper Company and State Street Bank and Trust Company (the "Master Trust").

66. According to the Plans' financial statements filed with the Department of Labor:

Master Trust – The Plan's investment assets are held in a trust account by the Trustee and consist of an undivided interest in an investment account of the Master Trust. Use of the Master Trust permits the commingling of trust assets with the assets of other plans sponsored by the Company for investment and administrative purposes. Although assets of the plans are commingled in the Master Trust, the Recordkeeper maintains supporting records for the purpose of allocating the net gain or loss of the investment account to the participating plans. The net investment income or loss of the investment assets and administrative expenses are allocated by the Recordkeeper to each participating plan based on the relationship of the interest of each plan to the total of the interests of the participating plans.

67. According to the Plans' financial statements filed with the Department of Labor:

Administrative Expenses – All administrative fees and expenses are charged to the Plan. The Recordkeeper nets the Master Trust administrative expenses of each plan with the investment income or loss of the Master Trust. Plan level expenses are included in administrative expenses on the accompanying statements of changes in net assets available for benefits.

68. According to the Plans' financial statements filed with the Department of Labor:

Investment Valuation and Income Recognition – The Plan's interest in the Master Trust is stated at fair value except for its benefit-responsive investment contracts, which are valued at contract value [as further qualified in Note 3 of the financial statement]. If available, quoted market prices are used to value investments. Pooled accounts are valued at the net asset value of units held by the Plan at year-end. Shares of the open brokerage window and the Company's common stock are valued at quoted market prices, which represent the net asset value of shares held by the Plan at year-end. Participant loans are valued at the outstanding loan balances.

Purchases and sales of securities are recorded on a trade-date basis. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

Management fees and operating expenses charged to the Master Trust for investments in master trust investment accounts and the open brokerage window are deducted from income earned on a daily basis and are not separately reflected. Consequently, management fees and operating expenses are reflected as an adjustment to net appreciation (depreciation) in fair market value of investments for such investments.

The Master Trust utilizes various investment instruments. Investment securities, in general, are exposed to various risks, such as interest rate, credit, and overall market volatility. Due to the level of risk associated with certain investment securities, it is reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect the amounts reported in the financial statements.

69. According to the Plans' financial statements filed with the Department of Labor:

Derivatives – The Master Trust's investments include various instruments that meet the definition of a derivative, including swap and futures contracts hedging foreign currency, interest rates, etc. The Master Trust uses derivatives for investment appreciation and hedging of certain risks, and the contracts are settled in cash on a daily basis. Such derivatives are recorded in the accompanying statements of net assets available for benefits at their fair market value, and changes in fair value are recorded in Plan.

70. According to the Plans' financial statements filed with the Department of Labor,

Investment Contracts – The Plan has entered into various benefit-responsive investment contracts with insurance companies, which maintain the contributions in a general account. The accounts are credited with earnings on the underlying investments and charged for participant distributions and administrative expenses. The investment contract portfolio is managed by Deutsche Asset Management. The contracts are included in the financial statements at contract value as reported to the Plan by the issuers. Contract value represents contributions made under the contract, plus earnings, less participant distributions and administrative expenses. Participants may ordinarily direct the distribution or transfer of all or a portion of their investment at contract value as reported to the Plan by the issuers.

The investment contracts are classified as either guaranteed investment contracts ("GIC") or synthetic investment contracts ("SIC"). A SIC differs from a GIC in that the Plan owns the assets underlying the investments of a SIC. The bank or insurance company issues a contract, referred to as a "wrapper," that guarantees the value of the underlying investment for the duration of the SIC. The wrapper contracts are valued as the difference between the contract value of the SIC and the fair value of the underlying assets. The investment contract portfolio is valued based on the contract value of the contracts held in aggregate by the portfolio.

71. According to the Plans' financial statements filed with the Department of Labor, upon enrollment in one of the Plans, participants may direct their contributions in one or more of the following investment fund options in the Master Trust:

- The IP Company Stock Fund;
- In the RIC Master Trust Investment Account:
    - The Conservative Smartmix Fund,
    - The Moderate Smartmix Fund,
    - The Aggressive Smartmix Fund, and
    - Cash;
- In the Commingled Investment Group Trust / Master Trust Investment Accounts:
    - The U.S. Fixed Income Bond Pool,
    - The Emerging Market Equity Fixed Income Pool,
    - The Emerging Market Equity Pool,
    - The High Yield Bond Pool,
    - The Non-U.S. Developed Equity Pool,
    - The U.S. Small Cap Pool,
    - The U.S. Mid Cap Pool,
    - The U.S. Large Cap Pool; and
- An Open Brokerage Window.

72. According to the Plan Documents for the Plans, the Trustee and Investment Managers of the Master Trust are named fiduciaries of the Plans' assets:

> **ESTABLISHMENT OF TRUST FUND**
>
> Participant Contributions and Company Contributions made pursuant to Articles 4 and 5 shall be held in the Trust Fund. The Company shall enter into a trust

agreement with one or more trustees (each a Trustee) providing for the operation of the Trust Fund.

CONTROL AND MANAGEMENT OF ASSETS

The Trustee shall have the exclusive authority and discretion to control and manage the assets of the Plan held in trust by it, and shall be the named fiduciary with respect to such control and management except to the extent the Plan Financial Officer exercises his authority to direct investment of the Plan's assets, or to the extent that the authority to manage such assets is allocated by the Plan Financial Officer to one or more investment managers. Each investment manager appointed by the Plan Financial Officer shall have the authority to manage, including the power to acquire and dispose of, such assets of the Plan as are assigned to it.

Defendants' Fiduciary Duties To The Plan Under ERISA

73. ERISA §403(c)(1), 29 U.S.C. §1103(c)(1), unambiguously mandates that:

> [T]he assets of a plan shall never inure to the benefit of any employer and shall be held for the **exclusive purposes of providing benefits** to participants in the plan and their beneficiaries **and defraying reasonable expenses of administering the plan.** (Emphasis added).

74. ERISA §§ 404(a)(1)(A)&(B), 29 U.S.C. § 1104(a)(1)(A) & (B), require that Plan fiduciaries, including Defendants, "shall discharge [their] duties with respect to a plan solely in the interest of the participants and beneficiaries" and:

> [F]or the exclusive purpose of:
>
> i. providing benefits to participants and their beneficiaries and
>
> ii. defraying reasonable expenses of administering the plan.
>
> B. [W]ith the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with

> such matters would use in the conduct of an enterprise of a like character and with like aims.

75. ERISA § 406, 29 U.S.C. § 1106, prohibits certain transactions between the Plans and "parties in interest." Unless subject to an exemption set forth in ERISA § 408, 29 U.S.C. § 1108, a fiduciary

> shall not cause the plan to engage in a transaction, if he knows or should know that such a transaction constitutes a direct or indirect – sale or exchange, or leasing, of any property between the plan and a party in interest …furnishing of goods, services or facilities between the plan and a party in interest; transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

See 29 U.S.C. § 1106(a)(1).

76. For purposes of section 406, a "party in interest" is any plan fiduciary, including the plan administrator, trustee, officer or custodian, any plan services provider, the employer, a relative of any of the above, and certain persons with ownership or leadership roles in any of the above. ERISA § 3(14), 29 U.S.C. § 1002(14).

77. Similarly, a fiduciary (1) shall not "deal with the assets of the plan in his own interest or for his own account"; (2) shall not "act in any transaction involving the –plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan" or its participants and beneficiaries; and (3) shall not "receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan." 29 U.S.C. § 1106(b).

78. ERISA §104(b)(1), 29 U.S.C. § 1024(b)(1), requires that the Plan Administrator periodically provide to Plan participants and beneficiaries a summary plan description ("SPD").

79. ERISA §104(b)(3), 29 U.S.C. § 1024(b)(3), requires that the Plan Administrator at least annually provide to Plan participants and beneficiaries copies of statements and schedules from the Plan's annual report for the previous year, and such additional information "as is necessary to fairly summarize the latest annual report."

80. The schedules and statements that the Plan Administrator annually must provide to Plan participants and beneficiaries specifically include:

> A. [A] statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan; and
>
> B. [A] statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications.

See ERISA §103(b)(3), 29 U.S.C. §1023(b)(3).

81. ERISA §104(b)(4), 29 U.S.C. § 1024(b)(4), entitles Plan participants and beneficiaries to receive more detailed information from the Plan Administrator on request:

> The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated.

82. ERISA §103(b)(2)&(3), 29 U.S.C. §1023(b)(2)&(3) mandates that, among other extensive disclosures, Plan fiduciaries must include in the Plan's "Annual Report":

> a statement of [the Plan's] assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application.

83. ERISA § 404(c) provides to Plan fiduciaries a "safe harbor" from liability for losses that a participant suffers in his or her 401(k) account to the extent that the participant exercises control over the assets in his or her 401(K) accounts. To be eligible for the protection of this "safe harbor," Plan fiduciaries must, among other things, provide:

A. "an opportunity for a participant or beneficiary to exercise control over assets in his individual account," and

B. "a participant or beneficiary with an opportunity to choose, from a broad range of investment alternatives, the manner in which some or all of the assets in his account are invested."

29 C.F.R. §2550.404c-1(b)(1).

84. For a participant or beneficiary to have "an opportunity to exercise control over assets in his individual account" – Plan fiduciaries must provide him or her with "the opportunity to obtain sufficient information to make informed decisions with regard to investment alternatives available under the Plan." 29 C.F.R. §2550.404c-1(b)(2)(i)(B).

85. The "sufficient investment information" Plan fiduciaries must provide includes:

A. "A description of any transaction fees and expenses which affect the participant's or beneficiary's account balance in connection with purchases or sales of interests in investment alternatives (e.g., commissions, sales load, deferred sales charges, redemption or exchange fees)." 29 C.F.R. §2550.404c-1(b)(2)(i)(B)(*1*)(*v*); and

B. At least upon request, "[a] description of the annual operating expenses of each designated investment alternative (e.g., investment management fees, administrative fees, transaction costs) which reduce the rate of return to

> participants and beneficiaries, and the aggregate amount of such expenses expressed as a percentage of average net assets of the designated investment alternative." 29 C.F.R. §2550.404c-1(b)(2)(i)(B)(*2*)(*i*).

86. ERISA's Safe Harbor Regulations state that the imposition of *reasonable* charges for *reasonable* Plan expenses does not interfere with a participant's opportunity to exercise control over his or her individual account so long as *Plan fiduciaries inform the participant* of such actual expenses:

> A plan may charge participants' and beneficiaries' accounts for the reasonable expenses of carrying out investment instructions, *provided that procedures are established under the plan to periodically inform such participants and beneficiaries of actual expenses incurred with respect to their respective individual accounts.*

29 C.F.R. §2550.404c-1(b)(2)(ii)(A) (emphasis added).

The Fees and Expenses Assessed Against The Plan

87. Either directly and/or through the Master Trust, Defendants have caused the Plans to purchase trustee, record-keeping, administration, investment advisory, investment management, brokerage, insurance, consulting, accounting, legal, printing, mailing, and other services from various institutions and entities.

88. Either directly or through the Master Trust, Defendants have caused the amounts that the Plans pays for these services to be assessed against participants' accounts.

89. Either directly or through the Master Trust, Defendants have caused or allowed these services providers to receive payment in at least one of two ways:

A. By direct disbursement from the Plans to the entity providing the service; and/or

B. By receiving, or having the opportunity to receive, "Revenue Sharing" payments comprised of the Plans assets distributed between and/or among various service providers.

"Hard Dollar" Payments to Plan Service Providers

90. Payments in the form of direct disbursements from the Plans to individuals or entities providing services to the Plan are characterized as "Hard Dollar" payments.

91. The Plans discloses to government regulators and Plan participants, in one form or another, Hard Dollar payments made from the Plans to service providers. For example, the Salaried Plan disclosed in filings with government regulators that in 2004 it paid: (A) $780,230 to Towers Perrin and JP Morgan, the Salaried Plan's recordkeepers; and (B) $394,873 to PriceWaterhouseCoopers and Deloitte & Touche LLP, the Salaried Plan's auditors. Defendants provided no further detail regarding payments to Salaried Plan service providers in their disclosures to government regulators and Plan participants.

92. Based upon these disclosures, understanding the Salaried Plan's service provider expenses for 2004 *appears* straightforward: The Salaried Plan sent checks totaling $1,175,103 to its recordkeepers and auditors and, in exchange, the Salaried Plan received the required recordkeeping and auditing services for 2004.

'Hard Dollar' Expenses and Master Trusts

93. When plans, such as IPC's Salaried and Hourly Plans, are administered through a master trust, the disclosure of Hard Dollar payments for services provided to a 401(k) plan may become incomplete, unclear, inaccurate and/or misleading.

94. These shortcomings arise when the Hard Dollar payments to *plan* service providers are made *from the master trust* and reported to government regulators *only in connection with the master trust.*

95. In such circumstances, the *plan's* disclosures to government regulators and plan participants do not include detail or explanations of the Hard Dollar payments made to plan service providers *from the master trust*. Those payments to plan service providers – because they are disbursed *from the master trust* – are reported in the master trust's disclosures to government regulators. Details of such payments from the master trust are not routinely disclosed to plan participants.

96. As a result, it may appear to plan participants and government regulators that: (A) Hard Dollar payments made by the plan to service providers in a given year were very small; (B) the plan did not incur such expenses at all; and/or (C) "administrative expenses" (set forth in a separate schedule in the plan's disclosures) were incurred, but no detail or explanation of those expenses is included.

97. But, in actuality, millions of dollars in *plan* Hard Dollar payments *to plan service providers* may have been disbursed *from the master trust*.

98. Making matters worse in this case, IPC has designed the Plans to be administered not only through a Master Trust, but through eleven (11) separate master trusts, one for each investment option in the Plans.

99. For example, IPC's separate master trust for the Stable Value Fund (*one* of the eleven separate mater trusts) paid a total of $3,611,545 to trustees, investment managers, and IPC itself in 2004.

100. Even though such Hard Dollar payments are disbursed from one of the eleven separate master trusts, the Plans still pay them: The master trust assesses the amount of these Hard Dollar payments against the Plans' assets held in the master trust. Thus IPC understated in its disclosure to Plan participants the actual expenses they were charged. According to the Plans' financial statements filed with government regulators:

> **Administrative Expenses** – All administrative fees and expenses are charged to the Plan. The Recordkeeper nets the Master Trust administrative expenses of each plan with the investment income or loss of the Master Trust. Plan level expenses are included in administrative expenses on the accompanying statements of changes in net assets available for benefits.

101. When Hard Dollar payments for plan services are disbursed from a master trust – *much less eleven separate master trusts* -- in this or a similar manner, it becomes difficult, and sometimes impossible, for plan participants to discern the amount of Hard Dollar payments the plan is making to plan service providers; to whom those payments are made; and the services provided in exchange for those payments.

Revenue Sharing Payments to Plan Service Providers

102. Revenue Sharing is a common practice in the financial, securities, and investment industry that provides services to 401(k) plans.

103. Industry commentators and analysts consider Revenue Sharing as the "big secret of the retirement industry."

104. Industry commentators and analysts generally define Revenue Sharing as the transfer of asset-based compensation from brokers or investment management providers (such as mutual funds, common collective trusts, insurance companies offering general insurance contracts, and similar pooled investment vehicles) to administrative service providers (record-

keepers, administrators, trustees) in connection with 401(k) and other types of defined contribution plans.

105. For example, a plan or its agent (a third-party administrator, consultant, or similar fiduciary) seeking to invest plan assets in an investment vehicle (a mutual fund, common and collective trust, guaranteed investment contract, etc. (collectively a "Fund")) will negotiate an agreement that sets the costs assessed against each dollar invested in the Fund by specifying the Fund's expense ratio and available revenue sharing.

106. In Revenue Sharing arrangements, the plan and the Fund agree upon an asset-based fee that is not the true price for which the Fund will provide its service.

107. Instead, the Fund's agreed asset-based fee includes ***both*** the actual price for which the Fund will provide its service ***and*** additional amounts that the Fund does not need to cover the cost of its services and to make a profit.

108. The additional portion of the agreed-upon asset-based charge is "shared" with plan service providers or others who do business with the plan or the Fund.

109. As a result of Revenue Sharing arrangements, plan service providers or others who do business with the plan or the Fund receive *both* a Hard Dollar payment from the plan *and* additional revenue that the Fund "shares" with them.

110. The total asset-based fees a Fund charges to a plan can vary widely based upon a number of factors, including without limitation: the amount that the plan invests in the Fund; the level of sophistication of the plan fiduciary negotiating the fee agreement; the plan fiduciary's awareness of Revenue Sharing and inclination to expend effort monitoring revenue sharing transfers; the diligence with which the plan fiduciary conducts such negotiations; and the separate financial interests and/or agendas of the plan fiduciary and the Fund as they negotiate.

111. Revenue sharing is not confined to mutual funds. Common collective trusts, providers of guaranteed insurance contracts, and private investment pools may enter into Revenue Sharing arrangements in connection with the services they provide to 401(k) plans.

112. Revenue Sharing also occurs between and among brokerage firms, investment managers, Fund families and other service providers.

113. When 401(k) plan service providers receive compensation in the form of both Hard Dollar fees *and* Revenue Sharing payments, determining the total amount of fees and expenses that the plan incurs for any category of services (*i.e.* recordkeeping and administration, investment management, trustee, auditing, accounting, etc.) requires that *both* the Hard Dollar fees *and* Revenue Sharing payments be taken into account.

114. Ascertaining whether the Plan Administrator has fulfilled its fiduciary obligation to ensure that the fees and expenses assessed against the 401(k) plan are reasonable and incurred solely in the interest of plan participants requires consideration of the *total of both* the Hard Dollar *and* Revenue Sharing payments paid for any category of services.

115. Although Revenue Sharing monies arise only as a result of, and in connection with, transactions involving the plan, plan assets and plan service providers, Revenue Sharing is not always captured and used for the benefit of the plan and the participants.

116. When Revenue Sharing is foregone, the plan will *not only pay* additional hard dollar fees to the plan service providers (since no Revenue Sharing payments are available to offset those Hard Dollar costs), but the Plan *will also pay* additional money to the Fund, beyond what the Fund would normally keep (because the Fund's expense ratio includes *both* the actual price of the Fund's services *and* Revenue Sharing amounts).

117. Consequently, in determining whether a plan administrator or other fiduciary has fulfilled its obligation to ensure that the fees and expenses assessed against the plan are reasonable and incurred solely in the interest of plan participants, foregone revenue sharing must be taken into account.

118. Such is the case in IPC's Salaried and Hourly Plans. The investment managers of the Plans' investment options, including mutual funds and some of the collective trusts, charge and have charged fees (as part of the investment options' expense ratio) to the Plans that include money with which to make Revenue Sharing payments. However, the available Revenue Sharing was not captured and used solely in the interest of the Plans and their participants and beneficiaries.

119. As a result, when the foregone Revenue Sharing – consisting of millions of dollars – is taken into account, the participants and beneficiaries of the Plans paid unreasonably high fees for the administrative and/or investment management services they received.

Revenue Sharing Arrangements Are Not Disclosed to Plan Participants

120. Revenue Sharing is not disclosed to plan participants and government regulators, even though it may account for a greater portion of certain categories of service provider payments than do Hard Dollar disbursements to those same providers.

121. Accordingly, industry commentators and experts have dubbed Revenue Sharing payments to be "hidden fees" that are assessed against 401(k) plans and thus reduce plan participants' retirement savings.

122. By entering into, allowing, and/or failing to monitor, discover, prevent or recover these undisclosed Revenue Sharing arrangements, Defendants have deprived and continue to deprive the Plans' participants of true and accurate information regarding:

A. How much they are paying in fees and expenses for the Plans;

B. Who is receiving the Plans' assets through Revenue Sharing;

C. How much service providers are paid in addition to their disclosed, Hard Dollar fees; and

D. Whether the total amount paid to services providers (*i.e.* disclosed, Hard Dollar fees *combined with* Revenue Sharing payments) is reasonable and incurred solely for participants' benefit.

Excessive Fees and Hidden Revenue Sharing
In IPC's Hourly and Salaried Plans

123. As set forth above, Defendants operate and administer the Plans through a Master Trust, purportedly "for investment and administrative purposes," *that is comprised of eleven separate master trusts*. Each separate master trust is purportedly necessary and useful in providing the eleven investment options for the Plans.

124. The Plans' investment options, and the corresponding separate master trust, are as follows:

INVESTMENT OPTION	SEPARATE MASTER TRUST
The IP Company Stock Fund	The International Paper Company Combined Defined Contribution Trust Fund – Company Stock Fund
"Smartmix Funds" (Conservative, Moderate, Aggressive, Cash)	The International Paper Company Combined Defined Contribution Trust Fund – RICS
U.S. Fixed Income Bond Pool	International Paper Company Retirement Account – Bond Pool
Emerging Market Equity Fixed Income Pool	International Paper Company Retirement Account – Emerging Markets Fixed Income
Emerging Market Equity Pool	International Paper Company Retirement Account – Emerging Markets Equity
High Yield Bond Pool	International Paper Company Retirement Account – Bond Pool

Non-U.S. Developed Equity Pool	International Paper Company Retirement Account – Non U.S. Developed Equity
U.S. Small Cap Pool	International Paper Company Retirement Account – Small Cap Pool
U.S. Mid Cap Pool	International Paper Company Retirement Account – Mid Cap Pool
U.S. Large Cap Pool	International Paper Company Retirement Account – Large Cap Pool

125. Defendants' operation and administration of the Plans in this manner encourages, and facilitates, the charging of excessive and unreasonable fees to the Plans.

126. For example, the Defendants place Plan participants' investments in the Plans' Large Cap Stock Fund in the "IPC Retirement Account – Large Cap Pool Master Trust" (the "Large Cap Master Trust"). The Large Cap Master Trust, in turn, holds various stocks and bonds directly, and holds nearly $1 billion in mutual funds, common collective trusts and other pooled investments.

127. These mutual funds and common collective trusts each charge investment management and administrative fees to Plan participants who have invested in the Large Cap Master Trust.

128. As a result, each of the Plans' participants in the Large Cap Master Trust pays: (A) Hard Dollar fees from his or her account to his or her respective Plan (for administration, auditing and recordkeeping); (B) a second layer of Hard Dollar fees from his or her account to the Large Cap Master Trust (for administration, investment management and trustee services); *and* (C) a third layer of administrative and investment management fees charged by each mutual fund or common collective trust (as part of its expense ratio) contained within the Large Cap Master Trust.

129. To make matters worse, the expense ratio of these mutual funds and common collective trusts include fees *in excess of the actual price of their services* so as to enable them to make Revenue Sharing available to other Plan service providers.

130. The Defendants operate and administer each of the Plans' investment options through separate master trusts in this manner, so that regardless of Plan participants' investment choices, they are forced to pay: (A) Plan-level Hard Dollar fees; (B) Master Trust-level Hard Dollar fees assessed against each participant's account by each separate master trust; (C) investment management and administrative fees charged by the various mutual funds, common collective trusts and/or similar investment vehicles included in each separate master trust; *and* (D) Revenue Sharing fees hidden within the expense ratio of each such mutual fund, common collective trust and/or other pooled investment vehicle.

131. As a result, participants of the Plans are forced to pay, from their retirement savings, excessive and unreasonable fees and expenses that are not incurred solely for their benefit.

Investment Management and Administrative Charges in 401(k) Investment Alternatives

132. In order to help participants diversify their savings, ERISA requires that 401(k) plans offer participants at least three investment options into which participants may direct their contributions. The options can consist of any type of investment – stocks or bonds in U.S. based companies, international companies, large or small companies, government securities, or combinations of them.

133. Most 401(k) plans offer participants the opportunity to invest in "pooled" investment vehicles -- mutual funds, common collective trusts, guaranteed investment contracts,

variable annuity contracts (hereinafter collectively "Funds") – each of which invests in a portfolio of stocks, bonds and/or other securities.

134. These investment options, to allow diversification, should carry varying degrees of risk and anticipated return. A stable value Fund, for example, seeks to offer a steady, but relatively low rate of return in exchange for a low risk of loss. An "emerging markets" Fund, investing in companies from the developing world, is considered significantly riskier, but also offers the potential of a higher rate of return.

135. Funds charge fees to 401(k) plans. Funds, for example, charge for investment management, administration, record-keeping, accounting, and legal fees. These fees are subtracted from investors' account balances in the Fund.

136. As a result, when a Fund reports its investment performance to investors, it does so "net" of fees and expenses: In any reporting period (a month, quarter, or year), an investor's balance will be based upon: the amount of principal invested plus (or minus) investment gains (losses) and minus the fees charged against the account.

Benchmarks, Indices, Fees and Performance

137. Investment managers are finance industry professionals who manage the assets in a Fund. They select the securities and other investments that the Fund buys and sells to fulfill its objectives.

138. The Plans pay investment management fees to investment managers for these services. Typically, investment management fees are disclosed to participants as part of the Fund's expense ratio and subtracted from participants' accounts before the returns for any particular period are reported. The Fund's performance is reported "net" of these fees.

139. To measure the performance of the investment manager, a Fund will compare its returns to the performance of a "benchmark." A benchmark is, or at least should be, an established and publicly available index that objectively reports the performance of a selected mix of securities.

140. An index is essentially "an imaginary portfolio of securities representing a particular market or a portion of it." The "S&P 500" is probably the best-known index. It consists of 500 stocks believed to represent the U.S. large company market. A Fund holding shares of stock in the largest U.S. companies would use the S&P 500 index as its benchmark, or the standard against which it measures its performance.

141. Obviously, selecting an appropriate benchmark is crucial in measuring the performance of an investment manager or Fund.

142. To be an honest and accurate measure of a Fund's performance, a benchmark must conform to the same investment style or objective (*i.e.* embrace similar level of risk and with the anticipation of a similar return) as the Fund.

143. Thus, the S&P 500 Index may be an appropriate benchmark for a large cap stock fund (which embraces a similar level of risk in anticipation of a similar return to that of S&P 500 stocks), but would be wholly inappropriate as a benchmark for a small cap fund (which invests in smaller companies without the track records of S&P 500 corporations, seeking higher returns and embracing more risk).

144. Similarly, in making benchmark comparisons of a Fund's fees assessed against investors' accounts, it is pivotal that the benchmark be within the same class of investments. Most funds offer several classes of shares. Individual, "off-the-street" investors typically purchase "retail" or "A" Fund shares. Retail shares charge the highest fees. 401(k) plans that

invest millions, or even billions, of dollars, qualify for "institutional" or "I" shares which charge substantially lower fees and which offer Revenue Sharing.

145. Simply stated, in presenting a benchmark against which to measure a Fund's performance or fees, 401(k) plan fiduciaries must compare apples to apples.

146. This is especially true in the complex arena of 401(k) plan investing: While the 401(k) plan participants easily would discern the obvious differences between an apple benchmarked against an orange, they would be markedly less likely to appreciate a plan fiduciary inclusion of an inappropriate stock in a large cap fund that, while increasing the Fund's return, subjects it to an incompatible level of risk.

Defendants' Misleading Use of Benchmarks

147. The Defendants selection and presentation of benchmarks against which they measure the Plans' fees and performance is, and has been, inaccurate and misleading.

148. For example, each year the Defendants prepare and provide to participants of the Plans an "IP Savings Plan, *The Savings Plan of Choice*, A Year in Review" (hereinafter an "Annual Review").

149. In the 2004 Annual Review, in responding to Plan participants' "Top Question, Why aren't Fund fees lower?," the Defendants represented to participants that the Plans' fees were "30 to 70% lower than comparable *retail* mutual fund fees" (emphasis added). Defendants used as a benchmark Morningstar's average fee data for *retail* mutual funds, and further suggested that the Plans' funds were higher quality than such retail mutual funds.

150. In making these representations, the Defendants failed to disclose that:

A. the Plans had combined assets of more than $4 billion in 2004, and would thus be *institutional investors* qualifying for the *lowest-fee "I" class shares*, such that the fees charged on *retail* shares were entirely irrelevant and misleading;

B. the Plants' investments – by the Defendants' design – are held in private pool investment vehicles that should have fees *even lower than institutional mutual fund shares*;

C. mutual funds offer millions of dollars in revenue sharing to large institutional investors (like the IP Plans) and ERISA requires that Defendants use such Revenue Sharing to reduce fees and expenses assessed against Plan participants' accounts; and

D. especially in light of the high level fees assessed against Plan participants' accounts, the performance and quality of the Plan's investment options is, and has been, quite poor.

151. Similarly, in the Annual Reviews, Defendants changed the benchmark against which the performance of two of the Plan's investment options is measured *even though* neither the investment style nor objective of either option changed:

A. in 2004, Defendants changed the benchmark for the International Stock Fund from the "MSCA EAFE (half hedged)" to a "custom blend" index-- which Defendants apparently devised -- of "80% MSCA EAFE and 20% S&P/Citigroup EMI EPAC (half hedged)"; and

B. in 2005, Defendants changed the benchmark for the High Yield Bond Fund from the Citigroup High Yield Market Index to the Citigroup High Yield Market *Capped* Index.

152. In the 2005 Annual Review, the Defendants' use of the S&P 500 index as a benchmark for the performance of the Plans' Large Cap Stock Fund was inappropriate and misleading. While representing that the Large Cap Stock Fund outperformed the S&P 500 over a ten-year time frame, the Defendants failed to disclose that the Large Cap Fund had invested in securities with risk levels incompatible with large cap investing.

153. Apparently seeking to further obscure this fact, the Defendants presented a "5-Year Risk Return (As of December 31, 2005)" graph for the Large Cap Stock Fund on which 1% of return (on the vertical axis) is almost three times larger than 1% of risk (on the horizontal axis). Through this manipulation, the Defendants represented to participants of the Plan – falsely – that the Large Cap Fund outperformed its benchmark without embracing additional risk.

154. Throughout their Annual Reviews, Defendants present "Return over Time" tables that compare the performance of the Plans' investment options to benchmarks over ten years, even though the investment option funds have not existed for ten years. For the periods before each investment option's existence, the Defendants present hypothetical historical returns that are "explained" in disclosures on the inside back cover of the Annual Review. By presenting such hypothetical histories, the Defendants suggest that the investment options have longer and more stable tenures than any factual disclosure could support.

155. While making use of such inappropriate and misleading benchmarks to suggest that the Plans' fees are low and performance high, the Defendants' Annual Reviews read more like marketing or sales brochures promoting investments rather than an ERISA fiduciary's candid discussion of the annual performance of IPC's retirement savings Plans.

156. For example, the Annual Reviews start with a promotional letter from Defendant Bob Hunkeler, "Vice President—Investments." In these letters, "Mr. Hunkeler":

A. Proudly extols that various investment options "outperformed their respective *market* benchmarks" (emphasis added), but fails to mention that the Defendants custom-designed such benchmarks (they are not recognized "market" benchmarks at all) and/or changed benchmarks without explanation, *see e.g.*, the 2004 Annual Review;

B. States that the Plans' "three drivers" are "*Great Funds, Great Service and Great Fees*" (emphasis in original) and pledges to make "an already great savings program even better," *see e.g.*, the 2004 Annual Review; and

C. Commends the Defendants' efforts in creating the expensive multi-layered master trust structure discussed above, *see e.g.*, the 2005 Annual Review (Emphasis original):

> After many years of transformation, I'm proud to say that IP has indeed created the *Savings Plan of Choice* -- an intelligently designed plan with *Great Funds, Great Service and Great Fees*. And we intend to keep it that way. We'll continue to look for new ways to enhance the Plan, to meet your needs and make it much more than meets the eye.

Investment Management and Other Fees Assessed Against Employer Stock Funds

157. Employer stock funds or company stock funds ("Employer Stock Funds") are an investment option in many 401(k) plans, especially those of large employers, like IPC, with stock that is publicly traded.

158. As the name suggests, an Employer Stock Fund provides 401(k) plan participants with the opportunity to use a portion of their 401(k) retirement savings to purchase stock in the company for which they work.

159. Beyond providing an *opportunity* for participants to invest in their employer's stock, some companies design their 401(k) plans so that the employer's matching contribution is made in only the employer's stock and/or larger matching contributions are provided for 401(k) participants' investment in the employer's stock rather than in other 401(k) investment alternatives.

160. Once invested in an Employer Stock Fund, some 401(k) plans restrict when or how a participant may transfer his or her 401(k) savings out of the Employer Stock Fund to other investment alternatives and/or liquidate the employer stock.

161. By their nature, Employer Stock Funds are undiversified and risky, especially when they represent a disproportionately high percentage of a 401(k) plan participant's retirement savings.

162. Employer Stock Funds benefit employers by providing a steady market for the employer's stock and millions – or often billions – of dollars in working capital from their employees' salaries. In 2004, participants in the Plans had invested more than $789 million in the IP Company Stock Fund.

163. While benefiting employers, Employer Stock Funds cause 401(k) participants to embrace the risks inherent in undiversified investing.

164. For the typical 401(k) participant, the risk that an undiversified Employer Stock Fund imposes is greater than that of other undiversified investments.

165. The typical 401(k) participant – before placing any retirement savings in an Employer Stock Fund – relies on the stability and financial viability of his or her employer as the basis of his or her standard of living: the participant's present salary, healthcare and other

benefits, as well as his or her pension (if any) and retirement health insurance depend upon the employer's continued solvency and viability.

166. Thus, the same risk that could impair the participant's investment in the Employer Stock Fund – the failure or insolvency of the employer – would also cause the loss of current income and benefits and future non-401(k) retirement benefits. The risks are correlated and, if realized, would financially devastate most employee/401(k) plan participants.

167. Recent, high-profile corporate scandals highlight the risks inherent in 401(k) participants' investment in Employer Stock Funds.

168. Purportedly countering these concerns, Plan Sponsors and Administrators who establish and administer Employer Stock Funds suggest that employees' ownership of employer stock increases the employees' concern for the financial well-being of the employer, fosters a feeling of ownership of and identification with the employer, and enhances productivity.

169. Regardless of the risks and benefits inherent in Employer Stock Funds, from a fee and expense standpoint, they *should be* a low cost 401(k) plan investment alternative.

170. Employer Stock Funds do not need to pay for investment management, which constitutes the largest portion of most Funds' fees and expenses and thus the largest portion of Funds' expense ratio. By their very nature, Employer Stock Funds forgo such investment management and hold an undiversified portfolio containing employer stock. Therefore, Employer Stock Funds should not charge investment management fees.

171. Nonetheless the IP Company Stock Fund charges the Plans' participants for investment management and other services. In the "Disclosures" on the inside, back cover of the Annual Reviews, the Defendants state that the fees charged are "presented as the projected

annual cost of providing *investment management services*, recordkeeping, bank custody and other administrative services to each Fund." (emphasis added).

172. The Defendants filings with government regulators indicate that the IP Company Stock Fund has made service provider payments to investment managers, trustees, and IPC itself.

173. The Plans' IP Company Stock Fund has been an abysmal failure for participants of the Plans in terms of both performance and fees. Over one, three, five and ten years, the IP Company Stock Fund has consistently and substantially underperformed the benchmarks IPC chose to use for comparison (the S&P Paper and Forest Products Index and the S&P 500 Materials Index) while charging participants of the Plans excessive and unnecessary fees.

174. ERISA requires that the fees and expenses assessed against Plan participants' accounts in the IPC Company Stock Fund be reasonable, incurred for the sole benefit of participants and beneficiaries, and fully disclosed to participants and beneficiaries.

175. The Defendants violated their fiduciary obligations under ERISA by charging, causing to be charged, and/or allowing excessive fees and expenses to be assessed against participants' accounts in the IP Company Stock Fund.

Defendants' Non-Compliance with §404(c)'s Safe Harbor Requirements and Concealment of Fiduciary Breaches

176. As set forth above, the Defendants did not disclose, and to this day have not disclosed, the fact that Plan service providers were and/or are engaging in Revenue Sharing; nor that Revenue Sharing was available for the benefit of the Plans and their participants, nor the amount of Revenue Sharing payments made by or to Plan service providers.

177. Plan participants did not have, and do not have, complete and actual knowledge of the fees and expenses being charged to the Plans that reduced their account balances.

178. Plan fiduciaries, including the Defendants, have not told Plan participants, and Plan participants do not know:

a. the "annual operating expenses" of the investment options in the Plans, as required by 29 C.F.R. §2550.404c-1(b)(2)(i)(B)(*2*)(*i*); and

b. the actual expenses incurred with respect to their respective individual accounts, as required by 29 C.F.R. §2550.404c-1(b)(2)(ii)(A).

179. As a result of the Defendants' failure and refusal to provide such information, and the general failure on the part of the Plans' fiduciaries to disclose the Plans' actual expenses, including available revenue sharing, the participants have not been provided with "the opportunity to obtain sufficient information to make informed decisions with regard to investment alternatives available under the plan." 29 C.F.R. §2550.404c-1(b)(2)(i)(B).

180. Because the Defendants failed and refused to provide them with this information, and concealed this information from them, the participants have lacked the information necessary to understand and protect their interests in the Plans and/or to have knowledge of the Defendants' breaches of fiduciary duty.

181. In fact, in their fiduciary roles, Defendants are the parties with the information necessary to know and understand whether the participants' rights and protections under ERISA are being, or have been, violated.

182. ERISA fiduciaries, such as Defendants here, have an affirmative obligation to provide full and accurate information to the Plans' participants regarding the administration of the Plan.

183. A fiduciary's silence and/or non-disclosure in the face of such a duty to disclose is equivalent to an affirmative misrepresentation.

184. Here, despite the Defendants' duty to disclose full and accurate information regarding the fees and expenses assessed against participants' accounts, on an ongoing basis Defendants failed and refused to disclose to, and to inform the participants of:

a. the total amount of fees and expenses reasonable and necessary to operate the Plans;

b. the total amount of fees and expenses the Plans actually paid to service providers in the form of Hard Dollar payments and Revenue Sharing;

c. the availability of Revenue Sharing;

d. the true and accurate details regarding the revenues and expenses of the Plans;

e. the true and accurate operating expenses which reduce participants' returns, including both Hard Dollar payments and Revenue Sharing, for each of the Plans' investment alternatives;

f. the true and accurate transaction fees and expenses which affect the participants' accounts in connection with the purchase or sale of investment alternatives;

g. the amount, when both Hard Dollar Payments and Revenue Sharing are considered, by which the Plans' expenses exceeded those which were reasonable and incurred solely in participants' interests; and

h. other revenue and expense information necessary for the participants to understand and protect their interests in the Plans.

185. Based upon the foregoing, Defendants are not entitled to the safe harbor protections of ERISA § 404 (c).

186. Based upon the foregoing, the statute of limitations was tolled on the breaches set forth in this Complaint and did not begin to run until such time as plaintiffs actually discovered them.

COUNT I:
[Breach of Fiduciary Duty – ERISA §502(a)(2)]

187. Plaintiffs restate and incorporate the allegations contained in ¶¶ 1 through 186 as though fully set forth here.

188. As set forth in detail above, Defendants owe to the Plans, their participants and beneficiaries, and the Class extensive fiduciary duties including, without limitation:

A. To conduct itself as Plan Sponsor and Administrator with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent ERISA professional fiduciary would in operating and administering a 401(k) plan the size and character of the Plans;

B. To perform its duties as Plan Sponsor and Administrator with the utmost loyalty and fidelity to the Plans and its participants and beneficiaries, avoiding at all times conflicts of interest, self-interest, and duplicity;

C. To ensure, at all times, that Plans' assets "shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the Plan and their beneficiaries and defraying reasonable expenses of administering the Plan;"

D. To track and account for all transactions involving the Plans and Plan assets so as to ensure that Plan assets are retained, managed, and disbursed in compliance with the Plan Document and ERISA;

E. To track and account for all transactions involving the Plans and Plan assets so as to ensure that Plan assets "never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the Plan and their beneficiaries and defraying reasonable expenses of administering the Plan;"

F. To ensure that the fees and expenses incurred by the Plans are reasonable and incurred for the sole and exclusive benefit of the Plans' participants and beneficiaries;

G. In entering into agreements with service providers to the Plans, to ensure that the payments from the Plans – whether they are direct or indirect – are reasonable for the services provided and made for the sole and exclusive benefit of Plan participants and beneficiaries;

H. In operating and administering the Plans, to establish, implement, and follow procedures to properly and prudently determine whether the fees and expenses paid by the Plans were reasonable and incurred solely for the benefit of Plan participants;

I. In operating and administering the Plans, on an ongoing basis to monitor the payments made by the Plans to service providers – whether they are direct or indirect – are and remain reasonable for the services provided and made for the sole and exclusive benefit of the Plans' participants and beneficiaries;

J. To inform themselves of, and understand, the various methods by which vendors in the 401(k) industry collect payments and other revenues from 401(k) plans;

K. To inform themselves of trends, developments, practices, and policies in the retirement, financial investment and securities industry which affect the Plans; and to remain aware and knowledgeable of such trends, practices and policies on an ongoing basis;

L. To communicate with Plan participants and beneficiaries regarding the Plans honestly, clearly and accurately;

M. To affirmatively and without request provide the Plans' participants and beneficiaries with honest, accurate and complete information they need to understand their investments in the Plans; the management, risk, potential returns of such investments, and the fees and expenses incurred in connection with those investments;

N. Upon request, to provide further information to the Plans' participants and beneficiaries regarding the operation and administration of the Plans and the expenses incurred in doing so; and

O. To provide honest, accurate and complete information to the Plans' participants and beneficiaries regarding the costs associated with their various investment choices and directions.

189. As set forth in detail above, Defendants breached their fiduciary obligations to the Plans, the Plans' participants and beneficiaries and the Class by, among other conduct to be proven at trial:

A. Causing the Plans to enter into agreements with service providers under which the Plans pay/paid – directly or indirectly -- fees and expenses that were,

or are, unreasonable and/or not incurred solely for the benefit of Plan participants and beneficiaries;

B. Allowing the Plans to pay – directly on indirectly -- fees and expenses that were, or are, unreasonable and/or not incurred solely for the benefit of Plan participants and beneficiaries;

C. Failing to monitor the fees and expenses paid by the Plans and, by such failure, causing and/or allowing the Plans to pay fees and expenses that were, or are, unreasonable and/or not incurred solely for the benefit of Plan participants and beneficiaries;

D. Failing to inform themselves of trends, developments, practices, and policies in the retirement, financial investment and securities industry which affect the Plans; and failing to remain aware and knowledgeable of such trends, practices and policies on an ongoing basis;

E. Failing to inform themselves of, and understand, the various methods by which vendors in the 401(k) industry collect payments and other revenues from 401(k) plans;

F. Failing to establish, implement, and follow procedures to properly and prudently determine whether the fees and expenses paid by the Plans were reasonable and incurred solely for the benefit of Plan participants;

G. Failing to communicate with Plan participants and beneficiaries regarding the Plans honestly, clearly and accurately;

H. Failing properly to inform and/or disclose to Plan participants the fees and expenses that are, or have been, paid by the Plans;

I. Failing to inform and/or disclose to Plan participants in proper detail and clarity the transactions, fees and expenses which affect participants' account balances in connection with the purchase or sale of interests in investment alternatives;

J. Failing to discover, disclose and stop the charging of hidden and excessive fees to the Plans;

K. By the foregoing conduct, failing to exercise the care, skill, prudence and diligence that a prudent person would when acting in like capacity and familiar with such matters.

190. As set forth in detail above, as a result of these breaches, Plaintiffs, the Class, the Plans, and the Plans' participants and beneficiaries have suffered financial losses and damages.

191. Further, as set forth in detail above, Defendants failed to provide participants and beneficiaries with sufficient investment information to qualify for the Safe Harbor immunity of ERISA § 404(c), 29 U.S.C. 1104(c). Accordingly, Defendants are liable for participants and beneficiaries' investment losses in the Plans.

192. Pursuant to ERISA § 409, 29 U.S.C. § 1109, and ERISA § 502(a), Defendants are liable to restore to the Plan the losses it experienced as a direct result of Defendants' breaches of fiduciary duty and are liable for any other available and appropriate equitable relief, including prospective injunctive relief and declaratory relief, and attorney's fees.

COUNT II:
[Other Remedies for Breach of Fiduciary Duty – ERISA §502(a)(3)]

193. Plaintiffs restate and incorporate the allegations contained in ¶¶ 1 through 192 as though fully set forth here.

194. In addition to, and as an alternative to, the causes of action stated in Count I, Plaintiffs seek further relief pursuant to ERISA § 502(a)(3), 29 U.S.C., § 1132(a)(3).

195. Under ERISA §502(a)(3), a participant may enjoin any act which violates ERISA or may obtain other appropriate equitable relief to redress such violations or enforce the terms of ERISA.

196. Defendants are the primary fiduciaries of the Plans and occupy a position of trust and confidence in connection with the Plans, the Plans' assets, and the Plans' participants and beneficiaries.

197. Defendants have exclusive discretion and control over the Plans' assets and are strictly obligated to exercise that control "for the exclusive purposes of providing benefits to participants in the Plan[s] and their beneficiaries and defraying reasonable expenses of administering the Plan[s]."

198. Although *only* participants and beneficiaries of the Plans are entitled to the Plans' assets and to the benefit of the Plans' assets, in the absence of full and candid disclosure from Defendants, Plan participants and beneficiaries do not know, and have no means of knowing, how their assets have been managed and disbursed.

199. Accordingly, Defendants occupy the position of a common law trustee in connection with the Plans, their assets, and their participants and beneficiaries.

200. As set forth in detail above, Defendants have caused and/or allowed the Plans to pay – directly or indirectly – excess fees and expenses to the Plans' service providers.

201. Defendants, and not the Plaintiffs, are the entities which have and/or should have specific and detailed information regarding how the Plans' assets have been treated and disbursed in this regard.

202. Accordingly, the Court should order that Defendants render an accounting of all transactions, disbursements and dispositions occurring in, in connection with, and/or in respect of, the Plans and their assets.

203. Plaintiffs respectfully request that the Court order that such an accounting include, without limitation, detailed and specific information regarding all fees and expenses incurred by the Plans and/or paid to third parties, whether paid directly by the Plans and/or the Master Trust or indirectly transferred among the Plans' service providers or other third parties.

204. Plaintiffs respectfully request that the Court surcharge against the Defendants and in favor of the Plans all amounts involved in transactions which such accounting reveals were or are improper, excessive and/or in violation of ERISA.

205. Plaintiffs further seek injunctive and other appropriate equitable relief to redress the wrongs described above and to cause them to cease in order for the Plans' participants and beneficiaries to receive the full benefit of their retirement savings in the future.

WHEREFORE Plaintiffs, on behalf of the Plans and all similarly situated participants and beneficiaries of the Plans, respectfully request that the Court:

- find and declare that the Defendants have breached their fiduciary duties as described above;
- order the Defendants to make good to the Plans all losses that the Plans incurred as a result of the conduct described above and to restore the Plans to the position they would have been in but for the breaches of fiduciary duty;
- impose a constructive trust on any monies by which the Defendants were unjustly enriched as a result of their breaches of fiduciary duty and/or cause the Defendants to disgorge such monies and return them to the Plans;

- remove the fiduciaries who have breached their fiduciary duties and/or enjoin them from future breaches of ERISA;
- award actual damages to the Plans in the amount of their monetary losses;
- require Defendants to render an accounting as set forth above;
- surcharge against Defendants and in favor of the Plans all amounts involved in transactions which such accounting reveals were or are improper, excessive and/or in violation of ERISA;
- permanently enjoin Defendants from breaching their fiduciary duties in each respect set forth in this Complaint;
- award to the Plaintiffs and the Class their attorneys fees and costs pursuant to ERISA § 502(g);
- order costs and attorneys fees pursuant to ERISA § 502(g) and the common fund doctrine;
- order equitable restitution or other available equitable relief against the Defendants;
- order the payment of interest to the extent it is allowed by law; and
- grant any other and further relief the Court deems appropriate.

Respectfully Submitted,

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