IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

David Kinder, Tracy Scott, Elbert Peay, and Cherry Crawford, individually and as representatives of a class of similarly situated persons, and on behalf of the Georgia-Pacific LLC Hourly 401(k) Plan, the Georgia-Pacific LLC 401(k) Retirement Savings Plan, and the Koch Industries Inc. Employees' Savings Plan, Plaintiffs, v. Koch Industries, Inc., Koch Business Solutions, LP, the Koch Benefits Administrative Committee, and John Does 1-30, Defendants.	Case No. 1:20-cv-02973-MHC **THIRD AMENDED COMPLAINT** **CLASS ACTION**

<u>NATURE OF THE ACTION</u>

1. Plaintiffs David Kinder, Tracy Scott, Elbert Peay, and Cherry Crawford, individually and as representatives of the Class described herein, bring this action under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA"), against Defendants Koch Industries, Inc. ("Koch Industries"), Koch Business Solutions, LP ("Koch Business Solutions"), the Koch Benefits Administrative Committee ("Committee"), and John Does 1-30 (collectively, "Defendants"). As described herein, Defendants have

breached their fiduciary duties with respect certain Koch-affiliated defined contribution plans (“Plans”)[1] in violation of ERISA, to the detriment of the Plans and their participants and beneficiaries. Plaintiffs bring this action to remedy this unlawful conduct and obtain appropriate monetary and equitable relief as provided by ERISA.

PRELIMINARY STATEMENT

2. As of June 2020, Americans had approximately $7.9 trillion in assets invested in defined contribution plans, such as 401(k) and 403(b) plans.[2] Defined contribution plans have largely replaced defined benefit plans—or pension plans—that were predominant in previous generations.[3] Only around 8% of non-union U.S. workers in the private sector participate in a defined benefit plan.[4] By contrast, approximately 47% of non-union U.S. workers in the private sector participate in a

[1] The Koch-affiliated Plans at issue are the Georgia-Pacific LLC Hourly 401(k) Plan (“Georgia-Pacific Hourly Plan”), the Georgia-Pacific LLC 401(k) Retirement Savings Plan (“Georgia-Pacific Savings Plan”), and the Koch Industries Inc. Employees’ Savings Plan (“Koch Plan”).

[2] *See* Investment Company Institute, *Retirement Assets Total $28.7 Trillion in First Quarter 2020* (June 17, 2020), *available at* https://ici.org/research/stats/retirement/ret_20_q1.

[3] *See* Bankrate, *Pensions Decline as 401(k) Plans Multiply* (July 24, 2014), *available at* http://www.bankrate.com/finance/retirement/pensions-decline-as-401-k-plans-multiply-1.aspx.

[4] *See* Congressional Research Service, *Worker Participation in Employer-Sponsored Pensions: A Fact Sheet*, at 4 (Apr. 30, 2019) *available at* https://fas.org/sgp/crs/misc/R43439.pdf.

defined contribution plan.[5]

3. The potential for disloyalty and imprudence is much greater in defined contribution plans than in defined benefit plans. In a defined benefit plan, the participant is entitled to a fixed monthly pension payment, while the employer is responsible for making sure the plan is sufficiently capitalized, and thus the employer bears all risks related to excessive fees. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439 (1999). Therefore, in a defined benefit plan, the employer and the plan's fiduciaries have every incentive to keep costs low and to remove imprudent investments. But in a defined contribution plan, participants' benefits "are limited to the value of their own investment accounts, which is determined by the market performance of employee and employer contributions, less expenses." *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1826 (2015). Thus, the employer has no incentive to keep costs low because all risks related to high fees are typically borne by the participating employees.

4. To safeguard retirement plan participants, ERISA imposes strict fiduciary duties of loyalty and prudence upon employers and other plan fiduciaries. 29 U.S.C. § 1104(a)(1). These twin fiduciary duties are the "highest known to law." *Pledger v. Reliance Tr. Co.*, 240 F. Supp. 3d 1314, 1321 (N.D. Ga. 2017) (quoting *ITPE Pension Fund v. Hall*, 334 F.3d 1011, 1013 (11th Cir. 2003)). Fiduciaries

[5] *See id.*

must act "solely in the interest of the participants and beneficiaries," 29 U.S.C. § 1104(a)(1)(A), and exercise appropriate "care, skill, prudence, and diligence." 29 U.S.C. § 1104(a)(1)(B). This includes an obligation to ensure that the expenses of administering the plan are reasonable. *See* 29 U.S.C. § 1104(a)(1)(A)(ii).

5. Contrary to these fiduciary duties, Defendants failed to prudently and loyally monitor and control the Plans' recordkeeping expenses, and instead allowed the Plans to pay up to ***six times*** more than what similarly-sized plans would have paid for such services. Defendants' ERISA violations have resulted in millions of dollars in excessive fees to the Plans and their participants since the beginning of the statutory period.

6. Based on the conduct described herein, Plaintiffs assert claims against Defendants under ERISA for breaches of the fiduciary duties of loyalty and prudence (Count One), and against Koch Industries for failure to monitor fiduciaries (Count Two). In connection with these claims, Plaintiffs seek to recover all losses to the Plans resulting from Defendants' fiduciary breaches and other appropriate relief.

JURISDICTION AND VENUE

7. Plaintiffs bring this action pursuant to 29 U.S.C. § 1132(a)(2) and (3), which provide that participants in an employee retirement plan may pursue a civil action on behalf of the plan to remedy breaches of fiduciary duties and other

prohibited conduct, and to obtain monetary and appropriate equitable relief as set forth in 29 U.S.C. § 1109.

8. This case presents a federal question under ERISA, and therefore this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

9. Venue is proper pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b) because this is the district where the Georgia-Pacific Hourly Plan and Georgia-Pacific Savings Plan are administered, where Defendant Koch Business Solutions resides (according to the 5500s for these two plans), and where a substantial part of the events or omissions giving rise to the claims occurred.

THE PARTIES

PLAINTIFFS

10. Plaintiff David Kinder resides in Arkadelphia, Arkansas. Plaintiff Kinder has participated in the Georgia-Pacific Hourly Plan since 1996, and is a current participant in that plan. As a plan participant, his account has been

recordkept by Alight Financial Solutions, LLC ("Alight")[6] during the class period.[7] Plaintiff Kinder has been financially injured by Defendants' unlawful conduct, and his account would be worth more today if Defendants had not violated ERISA as described herein.

11. Plaintiff Tracy Scott resides in Arkadelphia, Arkansas, and was a participant in the Georgia-Pacific Hourly Plan from approximately 2007 until 2016. As a plan participant, his account was recordkept by Alight during the class period. Plaintiff Scott has been financially injured by Defendants' unlawful conduct, and his account would have been worth more at the time it was distributed if Defendants had not violated ERISA as described herein.

12. Plaintiff Elbert Peay resides in Pickerington, Ohio, and was a participant in the Georgia-Pacific Savings Plan from approximately 1991 until 2019. As a plan participant, his account was recordkept by Alight during the class period. Plaintiff Peay has been financially injured by Defendants' unlawful conduct,

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[6] Alight is the legacy provider of certain human resources outsourcing services, including 401(k) administrative services, originally developed by Hewitt Associates. Hewitt was acquired by Aon in 2010, and Aon spun off recordkeeping and other Hewitt service lines into Alight in 2017. After the spinoff, Alight is a private company no longer affiliated with Aon. As used herein, "Alight" refers to both the current company and its predecessors.

[7] The class period is limited to the period on or after July 16, 2014, *see infra* at ¶ 55, pursuant to ERISA's six-year statute of limitations, *see* 29 U.S.C. § 1113(1).

and his account would have been worth more at the time it was distributed if Defendants had not violated ERISA as described herein.

13. Plaintiff Cherry Crawford resides in Wichita, Kansas. Plaintiff Crawford has participated in the Koch Plan since 2015, and is a current participant in that plan. As a plan participant, her account was recordkept by Alight during the class period. Plaintiff Crawford has been financially injured by Defendants' unlawful conduct, and her account would be worth more today if Defendants had not violated ERISA as described herein.

THE PLANS IN THE MASTER TRUST

14. The Koch Companies Defined Contribution Master Trust ("Master Trust") is the single master trust governing several retirement plans for employees of Koch affiliated companies, including the Georgia-Pacific Hourly Plan,[8] the Georgia-Pacific Savings Plan,[9] and the Koch Plan.[10]

15. The Plans are "employee pension benefit plan[s]" within the meaning of 29 U.S.C. § 1002(2)(A) and "defined contribution plan[s]" within the meaning

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[8] The Georgia-Pacific Hourly Plan covers eligible hourly paid employees or former employees of Georgia-Pacific LLC ("Georgia-Pacific") or its affiliates. Georgia-Pacific is a wholly-owned subsidiary of Koch Industries.

[9] The Georgia-Pacific Savings Plan covers eligible employees and former employees of Georgia-Pacific or its affiliates. As noted above, Georgia-Pacific is a wholly-owned subsidiary of Koch Industries.

[10] The Koch Plan covers eligible employees or former employees of Koch Industries or other companies affiliated with Koch Industries.

of 29 U.S.C. § 1002(34). The Plans are qualified plans under 26 U.S.C. § 401, commonly referred to as "401(k) plan[s]."

16. "[A] master trust is a trust for which a regulated financial institution serves as trustee or custodian (regardless of whether such institution exercises discretionary authority or control respecting the management of assets held in the trust) and in which assets of more than one plan sponsored by a single employer or by a group of employers under common control are held." 29 C.F.R. § 2520.103-1(e).

17. "The use of master trusts by large employers is commonplace.... The single administrative device simplifies the conduct of multiple plans, prevents duplication of effort and expense, and creates economies of scale."[11]

18. The Plans have all participated in the Master Trust since at least 2009.

19. With the exception of assets held in certain self-directed brokerage accounts and common collective trust funds, the Plans hold all of their investment assets in the Master Trust.

20. The Plans participating in the Master Trust are managed together. The

[11] United States Securities and Exchange Commission ("SEC") Docket Volume 51, No. 18 at 1499 (July 28, 1992), *available at* https://books.google.com/books?id=1aiCkO3RGBUC&pg=PA1499&lpg=PA1499&dq=master+trust+economies+of+scale.&source=bl&ots=Pt2PXa5srK&sig=ACfU3U0eEHXbZDhSc3O8Z5j4qgfvMP58FA&hl=en&sa=X&ved=2ahUKEwiw_cnPkqrqAhXNB80KHfN9AiMQ6AEwEnoECAgQAQ#v=onepage&q=master%20trust%20economies%20of%20scale.&f=false.

Master Trust gives common access to the same investment options and services for all the Plans. The Plans' participants may direct their accounts to one or more of the investment vehicles selected by Defendants within the Master Trust's investment menu.

21. From the beginning of 2014 until the end of 2018, the Plans have had between approximately 52,000 and 60,000 participants, and the Master Trust has had between $6.5 billion and $8.1 billion in assets.

DEFENDANTS

Koch Industries, Inc.

22. Koch Industries is a private company headquartered in Wichita, Kansas.

23. Koch Industries is identified as the plan sponsor and plan administrator in the Master Trust's Form 5500s filed with the DOL. Koch Industries has ultimate decision-making authority with respect to the Master Trust and the management and administration of the Master Trust and the Master Trust's investments. Further, since all of the Plans are managed together and have the same investment options through the Master Trust, Koch Industries has decision-making authority with respect to the Plans, the management and administration of the Plans, and the Plans' investments. Because Koch Industries exercises discretionary authority or discretionary control with respect to management and administration of the Master

Trust and Plans, and with respect to disposition of the assets of the Master Trust and Plans, it is a functional fiduciary under 29 U.S.C. § 1002(21)(A).

24. To the extent that Koch Industries has delegated any of its fiduciary functions to others, such as the Committee or Koch Business Solutions, it maintained fiduciary responsibilities with respect to the Plans and the Master Trust. It is well-accepted that the authority to appoint, retain, and remove other fiduciaries constitutes discretionary authority or control over the management or administration of a plan or trust, and thus confers fiduciary status under 29 U.S.C. § 1002(21)(A). *See* 29 C.F.R. § 2509.75-8 (D-4); *Coyne & Delany Co. v. Selman*, 98 F.3d 1457, 1465 (4th Cir. 1996) ("[T]he power … to appoint, retain and remove plan fiduciaries constitutes 'discretionary authority' over the management or administration of a plan within the meaning of § 1002(21)(A)."). Further, the responsibility for appointing and removing other fiduciaries carries with it an accompanying duty to monitor the appointed fiduciaries, and to ensure that they are complying with ERISA's fiduciary standards. *See* 29 C.F.R. § 2509.75-8 (FR-17); *Coyne*, 98 F.3d at 1465 (The power to appoint and remove plan fiduciaries "carries with it a duty to monitor appropriately those subject to removal.") (quotation omitted).

25. Koch Industries possessed the ability to delegate its fiduciary responsibilities to any other person, persons, or entity. Any individuals or entities

not named in this Complaint to whom Koch Industries delegated fiduciary functions or responsibilities are also fiduciaries of the Plans under 29 U.S.C. §§ 1002(21)(A) and 1105(c)(2). Because any such individuals or entities that have been delegated fiduciary responsibilities are not currently known to Plaintiffs, they are collectively named in this Complaint as John Does 1-10.

Koch Business Solutions, LP

26. Koch Business Solutions is an information technology services company located in Atlanta, Georgia. Koch Business Solutions offers finance, human resources, facilities, real estate, and other technology support to various businesses including Koch Industries and Georgia-Pacific (collectively, the "Companies").

27. The Plans' Form 5500 filings direct plan sponsor and plan administrator communications to Koch Business Solutions.

28. The Companies have delegated the Plans' fiduciary administrative functions to Koch Business Solutions. Because Koch Business Solutions exercises discretionary authority or discretionary control with respect to management and administration of the Plans, it is a functional fiduciary under 29 U.S.C. § 1002(21)(A).

Koch Benefits Administrative Committee

29. The Koch Benefits Administrative Committee is a committee

designated to assist Koch Industries with administration of the Plans. The Committee has the duty to select, monitor, evaluate, and modify the Plans' investments, subject to the ultimate oversight and discretion of Koch Industries. In performance of its duties, the Committee exercises "authority or control respecting management or disposition" of the Plans' assets and has "discretionary authority or discretionary responsibility in the administration" of the Plans, and is therefore a fiduciary under 29 U.S.C. § 1002(21)(A).

30. Each of the Committee members are also fiduciaries under 29 U.S.C. § 1002(21)(A). Because the names of the individual members of the Committee during the class period are currently unknown to Plaintiffs, they are collectively named in this Complaint as John Does 11-30.

31. Each Defendant identified above as a fiduciary of the Plans is also subject to co-fiduciary liability under 29 U.S.C. § 1105(a)(1)–(3) because it participated in the other fiduciaries' breaches, enabled other fiduciaries to breach their fiduciary duties, and/or failed to remedy other fiduciaries' breaches of their duties, despite having knowledge of the breaches. *See Woods v. S. Co.*, 396 F. Supp. 2d 1351, 1378-79 (N.D. Ga. 2005) ("ERISA § 405(a) provides that a fiduciary can be liable for another fiduciary's breach in circumstances where (1) he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (2) by his failure to comply

with § 404(a) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (3) he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.") (quotations omitted).

ERISA FIDUCIARY DUTIES

32. ERISA imposes strict fiduciary duties of loyalty and prudence upon fiduciaries of retirement plans. 29 U.S.C. § 1104(a)(1) states, in relevant part:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
>
> (A) for the exclusive purpose of
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan;
>
> (B) with 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 like character and with like aims . . . .

33. These ERISA fiduciary duties are "the highest known to law." *Pledger*, 240 F. Supp. 3d at 1321 (quoting *ITPE Pension Fund*, 334 F.3d at 1013). A fiduciary's conduct "must bear the marks of loyalty, skill, and diligence expected of an expert in the field. It is not enough to avoid misconduct, kickback schemes,

and bad-faith dealings. The law expects more than good intentions. A pure heart and an empty head are not enough." *Sweda v. Univ. of Pennsylvania*, 923 F.3d 320, 329 (3d Cir. 2019) (quotation omitted).

DUTY OF LOYALTY

34. The duty of loyalty requires fiduciaries to act with "an eye single" to the interests of plan participants. *Pegram v. Herdrich*, 530 U.S. 211, 235 (2000). "Perhaps the most fundamental duty of a [fiduciary] is that he [or she] must display . . . complete loyalty to the interests of the beneficiary and must exclude all selfish interest and all consideration of the interests of third persons." *Id.* at 224 (quoting G Bogert et al., *Law of Trusts and Trustees* § 543 (rev. 2d ed. 1980)). "There is no balancing of interests; ERISA commands undivided loyalty to the plan participants." *Karpik v. Huntington Bancshares Inc.*, 2019 WL 7482134, at *4 (S.D. Ohio Sept. 26, 2019) (quoting *Bedrick by & Through Humrickhouse v. Travelers Ins. Co.*, 93 F.3d 149, 154 (4th Cir. 1996)).

DUTY OF PRUDENCE

35. ERISA also "imposes a 'prudent person' standard by which to measure fiduciaries' investment decisions and disposition of assets." *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459, 2467 (2014) (quotation omitted). "[A] fiduciary's conduct at all times must be reasonably supported in concept and must be implemented with proper care, skill, and caution." *Sweda*, 923 F.3d at 333

(quotation omitted). "[I]f there is indeed a 'hallmark' of fiduciary activity identified in the statute, it is prudence." *Id.*

DUTY TO MINIMIZE COSTS

36. At retirement, employees' benefits "are limited to the value of their own individual investment accounts, which is determined by the market performance of employee and employer contributions, less expenses." *Tibble*, 135 S. Ct. at 1826. "Expenses, such as management or administrative fees, can sometimes significantly reduce the value of an account in a defined-contribution plan, by decreasing its immediate value, and by depriving the participant of the prospective value of funds that would have continued to grow if not taken out in fees." *Sweda*, 923 F.3d at 328 (quotation omitted).[12]

37. Administrative services such as recordkeeping, trustee, and custodial services are necessary for the operation of any defined contribution plan and are one of the plan's largest expenses. To protect retirement plan participants, ERISA requires the fiduciaries of such plans to monitor administrative expenses and ensure

[12] The DOL and SEC have warned that although the fees and costs associated with investment products and services may seem small, over time they can have a significant impact on an investor's portfolio. *See* DOL, *A Look at 401(k) Plan Fees*, at 1-2 (2013), *available at* https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/a-look-at-401k-plan-fees.pdf (cautioning that 1% difference annually can reduce the investor's account balance at retirement by 28%); SEC Investor Bulletin, *How Fees and Expenses Affect Your Investment Portfolio*, at 1, 3 (2014), *available at* https://www.sec.gov/investor/alerts/ib_fees_expenses.pdf.

that they are reasonable. *See* 29 U.S.C. § 1104(a)(1)(A)(ii) ("[A] fiduciary shall discharge his duties … solely in the interest of participants … for the exclusive purpose of[] providing benefits … and defraying reasonable expenses of administering the plan[.]"); *Sweda*, 923 F.3d 3at 328 ("Fiduciaries must … understand and monitor plan expenses."); *accord* Restatement (Third) of Trusts § 88, cmt. a (2007) ("Implicit in a trustee's fiduciary duties is a duty to be cost conscious.").[13]

38. Given the significant variation in total plan costs attributable to plan size, the reasonableness of administrative expenses, including recordkeeping fees, should be determined by comparisons to other similarly-sized plans. *See* 29 U.S.C. § 1104(a)(1)(B) (requiring ERISA fiduciaries to discharge their duties in the manner "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"); *Tussey v. ABB, Inc.*, 2007 WL 4289694, at *6, n.5 (W.D. Mo. Dec. 3, 2007) (Plaintiffs sufficiently alleged that administrative expenses were unreasonable through comparisons to similar plans because "[a]t most, reasonable compensation should mean compensation commensurate with that paid by similar plans for similar services

[13] The legal construction of an ERISA fiduciary's duties is "derived from the common law of trusts." *Tibble*, 135 S. Ct. at 1828 (citation and internal quotation marks omitted). Therefore "[i]n determining the contours of an ERISA fiduciary's duty, courts often must look to the law of trusts." *Id.*

to unaffiliated third parties.") (quoting Nell Hennessy, *Follow the Money: ERISA Plan Investments in Mutual Funds and Insurance*, 38 J. Marshall L. Rev. 867, 877 (2005)).

39. A fiduciary may breach its fiduciary duty by authorizing higher-than-market recordkeeping fees or by maintaining a recordkeeping deal for its own benefit or that of a related party. *See Tussey v. ABB, Inc.*, 746 F.3d 327, 336 (8th Cir. 2014) (affirming judgment against plan sponsor based on "overpaying" recordkeeper and benefiting from the overpayment); *George v. Kraft Foods Glob., Inc.*, 641 F.3d 786, 799 (7th Cir. 2011) (failure to solicit bids, and higher-than-market recordkeeping fees, supported triable fiduciary breach claim); *see also Pledger*, 240 F. Supp. 3d at 1330 ("If a fiduciary charges record keeping fees …, it can be a breach of its fiduciary duty to fail to monitor fees and rein in excessive compensation."); *Henderson v. Emory Univ.*, 252 F. Supp. 3d 1344, 1353 (N.D. Ga. 2017) ("The defendants can be held accountable for failing to monitor and making sure that the recordkeepers charged appropriate fees and did not receive overpayments for their services.").

DEFENDANTS' VIOLATIONS OF ERISA

I. DEFENDANTS FAILED TO PROPERLY MONITOR OR CONTROL THE PLANS' RECORDKEEPING EXPENSES.

40. Defendants, through the Master Trust, caused the Plans' participants to pay excessive recordkeeping expenses during the class period.

41. Among larger plans, the market for recordkeeping services is highly competitive, with many recordkeepers equally capable of providing a high-level service. Accordingly, recordkeepers vigorously compete for business by offering the best price. As a result of such competition, recordkeeping fees have declined in defined contribution plans over time. Between 2006 and 2016, recordkeeping costs in the marketplace dropped by approximately 50% on a per-participant basis.[14]

42. Typically, recordkeepers charge for recordkeeping services either on a per-participant fee basis (a fee based on the number of participants in the plan) or as an asset-based fee (a fee based on a percentage of the total assets in the plan).[15] Regardless of how these fees are charged, the cost of these services is typically borne by the plan participants. Accordingly, it is important for plan fiduciaries to closely monitor these expenses to ensure that participants are not being overcharged. *See* DOL Advisory Op. 2013-03A, 2013 WL 3546834, at 4 (July 3, 2013) (noting that fiduciaries must obtain information regarding "all fees or compensation received by" a recordkeeper—"including any revenue sharing"—and

[14] *See* Greg Iacurci, *Adjusting to the Squeeze of Fee Compression*, Investment News (Nov. 9, 2019) *available at* https://www.investmentnews.com/adjusting-to-the-squeeze-of-fee-compression-170635 ("Median fees for record-keeping, trust and custody services for DC plans fell by about half in the decade through 2017, according to most recent figures published by consulting firm NEPC.").

[15] Asset-based fee arrangements are more common for smaller defined contribution plans, which have less leverage to negotiate how services are charged.

assess whether that amount is reasonable for the services provided).

43. The cost of providing recordkeeping services depends on the number of participants in a plan. Plans with large numbers of participants can take advantage of economies of scale by negotiating lower per-participant recordkeeping fees. Similarly, plans with smaller numbers of participants can take advantage of economies of scale (and negotiate lower per-participant recordkeeping fees) through collective participation in a master trust.

44. As noted above, the Plans have had between 52,000 and 60,000 participants, and the Master Trust has had between $6.5 billion and $8.1 billion in assets during the class period. Accordingly, the Plans, through the Master Trust, have significant leverage to negotiate recordkeeping expenses.

45. Defendants, through the Master Trust, have caused the Plans to purchase recordkeeping services from Alight. Alight has been the recordkeeper for the Plans since 2009. The fees incurred for recordkeeping services are allocated between the Plans based upon each plan’s proportionate share of the assets in the Master Trust.

46. Koch Industries has a close relationship with Alight. In addition to acting as the recordkeeper for the Plans, Alight has also administered the Koch

Industries Employees' Pension Plan since 2009[16] and administers Koch Industries' online benefits portal through which all employee benefits are managed, among other things.[17] Unlike the defined contribution Plans at issue, where recordkeeping expenses are paid out of participants' assets, the costs of providing these pension plan and benefits services are the responsibility of Koch Industries.

47. Based on the Plans' filings with the DOL, the recordkeeping fees for the Plans were at least $58-146 per participant in 2014; $72-79 per participant in 2015; $64-70 per participant in 2016; $59-81 per participant in 2017; and $53-75 per participant in 2018.[18] Based on Plaintiffs' investigation, a prudent and loyal fiduciary of a similarly-sized plan could have obtained comparable recordkeeping services of like quality for as low as $14 per participant during that same time period. *See Moitoso v. FMR LLC*, 2020 WL 1495938, at *15 (D. Mass. Mar. 27,

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[16] Similarly, Alight administers the Georgia-Pacific LLC Hourly Pension Plan and the Georgia-Pacific LLC Salaried Pension Plan.

[17] Koch Industries Online MyLifeChoices Benefits Portal, *available at* https://leplb0600.portal.hewitt.com/web/koch/#/routing (last visited July 14, 2020).

[18] This is based on the information currently available to Plaintiffs. These calculations are likely conservative as they only account for the direct compensation paid to Alight, and do not account for indirect compensation such as revenue sharing. Form 5500s filed by the Plans with the DOL provide that, "Certain fees incurred by the Plan are included in net investment gain (loss) from Plan's interest in the Companies Defined Contribution Master Trust, ***as they are paid through revenue sharing, rather than direct payment***." (emphasis added). Discovery will show how much additional revenue participants paid for recordkeeping through revenue sharing.

2020).

48. A prudent fiduciary would have closely monitored the Plans' recordkeeping expenses and engaged in a rigorous benchmarking analysis, either on its own or by working with an independent consultant, and would have discovered that the Plans were paying far too much for recordkeeping. Alternatively, the Plans could have performed a request for proposal ("RFP") and discovered that other recordkeepers would have provided the same services at lower cost. These savings could have been realized through a lower per-participant monthly charge.

49. The Plans' excessive recordkeeping expenses demonstrate that Defendants either failed to engage in prudent monitoring of the Plans' recordkeeping expenses and engage in prudent practices to keep recordkeeping expenses at competitive levels, or that Defendants allowed participants to be charged excessive recordkeeping fees in exchange for discounts on the other services Alight was providing that Koch Industries itself should have been paying for. Either way, the process by which Defendants managed the Plans' recordkeeping services "would have been tainted by failure of effort, competence, or loyalty," each of which constitutes a "breach of fiduciary duty." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 596 (8th Cir. 2009); *see also Henderson*, 252 F. Supp. 3d at 1353 (holding that plaintiffs' allegations that defendants caused the plan to pay more than

a reasonable fee for recordkeeping services and failed to engage in a competitive bidding process supported a breach of fiduciary duty claim). Defendants' failure to monitor or control the Plans' recordkeeping expenses cost the Plans' participants millions of dollars during the class period.

II. PLAINTIFFS LACKED KNOWLEDGE OF DEFENDANTS' CONDUCT AND OTHER MATERIAL FACTS.

50. Plaintiffs did not have knowledge of all material facts (including, among other things, the cost of the Plans' recordkeeping services compared to similarly-sized plans and the Plans' leverage to negotiate lower recordkeeping expenses) necessary to understand that Defendants breached their fiduciary duties and engaged in other unlawful conduct in violation of ERISA, until shortly before this suit was filed. Further, Plaintiffs did not have actual knowledge of the specifics of Defendants' decision-making processes with respect to the Plans (including Defendants' process for selecting and monitoring the Plans' recordkeeper and monitoring the Plans' expenses) because this information is solely within the possession of Defendants prior to discovery. For purposes of this Complaint, Plaintiffs have drawn reasonable inferences regarding these processes based upon (among other things) the facts set forth above.

III. PLAINTIFFS ARE NOT REQUIRED TO SEEK OR EXHAUST ADMINISTRATIVE REMEDIES PRIOR TO FILING SUIT.

51. Plaintiffs are not required to seek, much less exhaust, administrative remedies, prior to filing this action. To the contrary, the summary plan description provides that, "If it should happen that Plan fiduciaries misuse the Plan's money, or you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court." Exhibit A, Koch Industries Employees' Savings Plan Summary Plan Description at 35.[19]

52. Even if Plaintiffs were required to exhaust administrative remedies prior to filing suit, the Eleventh Circuit recognizes an "exception to exhaustion when the plaintiff's failure to exhaust administrative remedies resulted from certain language in the plan's summary description that the plaintiff 'reasonably interpreted as meaning that she could go straight to court with her claim.'" *McCay v. Drummond Co.*, 509 F. App'x 944, 946 (11th Cir. 2013) (quoting *Watts v. BellSouth Telecommunications, Inc.*, 316 F.3d 1203, 1204 (11th Cir. 2003)).[20] Plaintiffs reasonably interpreted the language of the summary plan description as meaning they could file suit in a federal court without exhausting administrative remedies, and have proceeded accordingly as a result of their objectively reasonable

[19] This exact language also appears in the summary plan descriptions for the Georgia-Pacific Hourly Plan and Georgia-Pacific Savings Plan.

[20] "Where a valid exception applies, the district court has wide discretion to excuse the exhaustion requirement." *McCay*, 509 F. App'x at 947.

interpretation. *See* Exhibit A at 35 ("If it should happen that Plan fiduciaries misuse the Plan's money, … you may file suit in a federal court.").

53. Moreover, any attempt by Plaintiffs to exhaust administrative remedies would be futile or would result in an inadequate remedy. *See DeKalb Med. Ctr., Inc. v. Specialities & Paper Prod. Union No. 527 Health & Welfare Fund*, 2014 WL 12656295 (N.D. Ga. Sept. 29, 2014) ("The district court may … exercise its discretion not to require exhaustion when resort to administrative remedies would be futile or the remedy inadequate or where a claimant is denied meaningful access to the administrative scheme in place."). The Plans do not provide a review procedure for a claim such as this that is directed at the conduct of the Plans' fiduciaries and is brought on behalf of a class. Nor have Defendants shown any indication, after this lawsuit was filed, of honoring Plaintiffs' claim and providing the requested relief.

CLASS ACTION ALLEGATIONS

54. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the Plans to bring an action individually on behalf of the Plans to obtain for the Plans the remedies provided by 29 U.S.C. § 1109(a). Plaintiffs seek certification of this action as a class action pursuant to this statutory provision and Fed. R. Civ. P. 23.

55. Plaintiffs assert their claims on behalf of a class of participants and

beneficiaries of the Plans defined as follows:[21]

> All participants and beneficiaries of the Georgia-Pacific LLC Hourly 401(k) Plan, the Georgia-Pacific LLC 401(k) Retirement Savings Plan, and the Koch Industries Inc. Employees' Savings Plan at any time on or after [July 16, 2014], excluding any persons with responsibility for the Plans' administrative functions or expenses.

56. Numerosity: The Class is so numerous that joinder of all Class members is impracticable. The Plans had approximately 52,000 to 60,000 participants at all relevant times during the applicable period.

57. Typicality: Plaintiffs' claims are typical of the Class members' claims. Like other Class members, Plaintiffs are participants of the Plans and have suffered injuries as a result of Defendants' mismanagement of the Plans. Defendants treated Plaintiffs consistently with other Class members with respect to the Plans. Defendants' unlawful actions, omissions, and decisions affected all of the Plans' participants similarly.

58. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' interests are aligned with the Class that they seek to represent, and Plaintiffs have retained counsel experienced in complex class action litigation, including ERISA litigation. Plaintiffs do not have any conflicts of interest with any Class members that would impair or impede their ability to represent such Class

[21] Plaintiffs reserve the right to propose other or additional classes or subclasses in their motion for class certification or subsequent pleadings in this action.

members.

59. Commonality: Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members, including but not limited to:

a. Whether Defendants are fiduciaries with respect to the Plans;

b. Whether Defendants breached their fiduciary duties by engaging in the conduct described herein;

c. The proper form of equitable and injunctive relief; and

d. The proper measure of monetary relief.

60. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) because prosecuting separate actions against Defendants would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants.

61. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(1)(B) because adjudications with respect to individual Class members, as a practical matter, would be dispositive of the interests of the other persons not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Any award of prospective equitable relief by the Court would be dispositive of non-party participants' interests. The restoration of the property of the Plans that would be required under 29 U.S.C. §§ 1109 and 1132 would be similarly dispositive of the interests of other participants of the Plans.

62. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Class predominate over any questions affecting only individual Class members, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' conduct as described in this Complaint applied uniformly to all members of the Class. Class members do not have an interest in pursuing separate actions against Defendants, as the amount of each Class member's individual claims is relatively small compared to the expense and burden of individual prosecution, and Plaintiffs are unaware of any similar claims brought against Defendants by any Class members on an individual basis. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendants' practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Class members' claims in a single proceeding in a single forum.

COUNT I
Breach of Duties of Loyalty and Prudence
29 U.S.C. § 1104(a)(1)(A)–(B) (against all Defendants)

63. As alleged above, Defendants are fiduciaries with respect to the Plans and are subject to ERISA's fiduciary duties.

64. 29 U.S.C. § 1104 imposes fiduciary duties of loyalty and prudence

upon Defendants in connection with their administration of the Plans and the selection and monitoring of the Plans' recordkeeper. The scope of these fiduciary duties and responsibilities includes managing the assets of the Plans for the sole and exclusive benefit of the Plans' participants and beneficiaries, defraying reasonable expenses of administering the Plans, and acting with appropriate care, skill, diligence, and prudence. *See* 29 U.S.C. § 1104; *Pledger*, 240 F. Supp. 3d at 1321.

65. Defendants breached these fiduciary duties by engaging in the conduct described herein. Among other things, Defendants imprudently caused the Plans to pay excessive recordkeeping fees and failed to properly monitor and control recordkeeping expenses. Each of the actions and omissions described above and elsewhere in this Complaint demonstrate that Defendants failed to discharge their duties with respect to the Plans solely in the interest of the participants and beneficiaries of the Plans, and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plans, in violation of their fiduciary duty of loyalty under 29 U.S.C. § 1104(a)(1)(A).

66. Further, each of the actions and omissions described in paragraph 65 above and elsewhere in this Complaint demonstrate that Defendants failed to discharge their duties with respect to the Plans with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a

like capacity and familiar with such matters would have used in the conduct of an enterprise of like character and with like aims, in violation of 29 U.S.C. § 1104(a)(1)(B).

67. As a consequence of Defendants' fiduciary breaches, the Plans and the participants in the Plans suffered millions of dollars in excess fees.

68. Defendants are liable, under 29 U.S.C. §§ 1109 and 1132, to make good to the Plans all losses resulting from Defendants' fiduciary breaches. In addition, Defendants are liable for additional equitable relief and other relief as provided by ERISA and applicable law.

COUNT II
Failure to Monitor Fiduciaries (against Koch Industries)

69. As alleged throughout the Complaint, Koch Industries is a fiduciary of the Plans pursuant to 29 U.S.C. § 1002(21).

70. Koch Industries is responsible for appointing and removing the Committee members.

71. Given that Koch Industries had overall oversight responsibility for the Plans, and the fiduciary duty to appoint and remove members of the Committee, Koch Industries had a fiduciary responsibility to monitor the performance of the Committee.

72. A monitoring fiduciary must ensure that the monitored fiduciaries are adequately performing their fiduciary obligations, including those with respect to

the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when the monitored fiduciaries are not meeting their fiduciary obligations.

73. Koch Industries breached its fiduciary monitoring duties by, among other things:

a. Failing to monitor and evaluate the performance of its appointees or have a system in place for doing so, standing idly by as the Plans suffered significant losses as a result of its appointees' imprudent actions and omissions with respect to the Plans;

b. Failing to monitor its appointees' fiduciary processes, which would have alerted a prudent fiduciary to the breaches of fiduciary duties described herein; and

c. Failing to remove appointees whose performance was inadequate in that it continued to allow the Plans to pay excessive costs for recordkeeping services, to the detriment of the Plans and the retirement savings of the Plans' participants.

74. As a consequence of the foregoing breaches of the duty to monitor, the Plans suffered millions of dollars of losses due to excessive fees.

75. Pursuant to 29 U.S.C. §§ 11l09(a), 1132(a)(2), and 1132(a)(3), Koch Industries is liable to restore to the Plans all losses suffered as a result of its failure

to properly monitor the Plans' fiduciaries, and subsequent failure to take prompt and effective action to rectify the fiduciary breaches described herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs David Kinder, Tracy Scott, Elbert Peay, and Cherry Crawford, as representatives of the Class defined herein and on behalf of the Plans, pray for relief as follows:

A. A determination that this action may proceed as a class action under Rule 23(b)(1), or in the alternative, Rule 23(b)(3) of the Federal Rules of Civil Procedure;

B. Designation of Plaintiffs as Class Representatives and designation of Plaintiffs' counsel as Class Counsel;

C. A declaration that Defendants have breached their fiduciary duties in the manner described in the Complaint;

D. An order compelling Defendants to make good to the Plans all losses that the Plans incurred as a result of the breaches of fiduciary duties described herein, and to restore the Plans to the position they would have been in but for this unlawful conduct;

E. An order granting appropriate equitable monetary relief, including but not limited to restitution or a surcharge against Defendants;

F. An order enjoining Defendants from any further violations of ERISA;

G. Other equitable relief to redress Defendants' illegal practices and to enforce the provisions of ERISA as may be appropriate, including appointment of an independent fiduciary or fiduciaries to review or manage the Plans recordkeeping services and expenses, and removal or replacement of the Plans' fiduciaries deemed to have breached their fiduciary duties;

H. An award of pre-judgment interest;

I. An award of attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g) and/or the common fund doctrine; and

J. An award of such other and further relief as the Court deems equitable and just.

Dated: October 16, 2020

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font and point requirements of L.R. 5.1(C) of the United States District Court for the Northern District of Georgia, using 14-point Times New Roman font, as approved by the Court.

Dated: October 16, 2020 s/Kai Richter
Kai Richter

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2020, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: October 16, 2020 s/Kai Richter
Kai Richter

Exhibit A

Koch Industries Employees' Savings Plan Summary Plan Description

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Introduction

The Koch Industries Employees' Savings Plan (the "Plan") is maintained by Koch Industries, Inc. (the "Company") to provide eligible employees of the Company and certain of its affiliates that have adopted the Plan with a way to save for retirement. Under the Plan, your account can grow with both your own and Company contributions. The Plan also lets you choose how your accounts are invested among a broad range of investment funds.

This summary plan description (SPD) describes the Plan in effect on January 1, 2019, and replaces all earlier SPDs. Please read this SPD carefully so you can understand the important features of the Plan.

While every effort has been made to accurately reflect Plan terms, this is only a summary, and many details of the Plan are not included. If there is anything that is not clear or there is a conflict between the Plan document and this summary, the official Plan document will control and is binding on all parties. You may review the Plan document by requesting a copy from the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

The Plan's terms cannot be changed by written or oral statements made to you by the Plan Administrator or other personnel.

Eligibility

You are eligible to participate in this Plan if you are:

- An employee of a U.S. Employer paid through a payroll check issued by the Employer; and
- Either a U.S. citizen or a legal resident of the U.S.

If you are covered by a collective bargaining agreement, the agreement must specifically call for participation in this Plan or the Company must agree with the Employer's inclusion of employees covered by the agreement.

You are **not** eligible to participate if you are:

- An intern or co-op hired on or after January 1, 2016;
- A leased employee;
- Classified by the Employer as an independent contractor; or;
- In one of the following groups:
  - Temporary Field Service Employees;
  - OPD Field Service Employees;
  - Engineering Field Boilermakers;
  - FHR Union employees; or
  - Employees of any company that has not adopted the Plan, including Molex and Georgia-Pacific.

The Company will determine the employment status of an individual. If a court later declares you to be an employee of the Employer for a period that the Company has deemed you a leased employee, contract worker or other non-employee designation, the Company's designation will stand for purposes of this Plan.

The list of excluded groups may change. Actual exclusions will be governed by the Plan, as amended periodically.

If You Transfer

If your employment status has changed and you are no longer eligible to participate in:

- The plan sponsored by an affiliate of the Company, you may participate in, and transfer your account balance into, this Plan once you become an eligible employee*; or
- This Plan and you become eligible for a plan sponsored by an affiliate of the Company, you may participate in, and (depending on your location), transfer your account balance to that plan**.

* *Certain populations, such as certain FHR Union employees, are not eligible for plan-to-plan transfers. Contact the Koch Benefits Solution Center online at myLifeChoices.com or by phone at (877) 344-5772 to determine if you are eligible.*

** *Additional vesting rules may apply that impact your ability to transfer your account balance. Contact the Koch Benefits Solution Center online at myLifeChoices.com or by phone at (877) 344-5772 to determine if you are eligible.*

If you are eligible, you will receive a voluntary transfer kit from the Koch Benefits Solution Center soon after they are notified of your change in employment status. You may transfer your account at any time. The actual transfer of your account will occur as soon as administratively possible after the Koch Benefits Solution Center receives your paperwork. Contact the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772 if you have any questions.

When Participation Ends/Inactive Status

Your participation in the Plan normally ends when you no longer have a vested account balance in the Plan. However, your participation may end sooner if the Plan is terminated.

If you leave the Company, you will become an "inactive" participant until your vested benefits are paid to you. Once your vested benefits are paid to you, you are no longer a participant. If you are rehired after your vested benefits have been paid, you may become a participant again (see the "Re-employment" section).

While you are an inactive participant, you cannot contribute to the Plan, Company matching contributions on your behalf will end within 30 days of your termination date and you cannot request a loan or hardship or other in-service withdrawal or make rollover contributions to the Plan.

Your account will continue to grow through investment earnings (or decrease through losses) until the vested amount in your account is paid out. You will continue to be able to direct the investments in your account.

Re-employment

If you terminate your employment and are later rehired as an eligible employee, you may resume participation in the Plan immediately.

If you leave the Company before you are fully vested, receive a distribution of your total vested account and then return to work before five consecutive years (seven consecutive years, if a portion of your leave was parental leave or leave under the Family and Medical Leave Act) have passed, the non-vested portion of your account which you previously forfeited will be restored to your account if you repay the amount of your prior distribution, excluding the amount of your rollover account. If you return after this period, you will not have the option of repaying your account and the forfeited amount will not be restored.

Employee Contributions

The Plan offers you several ways to save money for your retirement. You can contribute from 1% to 75% (in whole percentages) of your eligible pay each payroll period, and you choose what type of contributions you want to make. You may also be able to make catch-up contributions if you will be age 50 or older by the end of the calendar year.

The IRS limits the amount of eligible pay the Plan may use to determine contributions to your account, the total amount that can be contributed to your account during the year and how much you can contribute on a before-tax and/or Roth 401(k) basis. See the "Contribution Limits" section for details.

Eligible Pay

Eligible pay means the amounts actually paid to you in cash and categorized by the Employer on its payroll records as:

- Wages, base salary or commissions;
- Funeral, holiday, floating holiday and vacation pay;
- Paid sick and family sick pay;
- Incentive pay, ICOMP or performance pay (excluding payments from the Performance Unit Payment Plan (PUPs) or other long-term incentive award plan);
- Military pay;
- Overtime pay;
- Shift differentials;
- Premium pay; or
- Pay for training.

Eligible pay also includes any before-tax contributions you make to a Company-sponsored 401(k) plan (including this Plan) or a Company-sponsored flexible benefits plan.

Eligible pay does not include amounts categorized on the Employer's payroll records as court settlements (other than for back-pay or wages), employee relations payments, executive life cash payments or pay outs, imputed income, miscellaneous income, severance pay, third party payments, tuition reimbursements, reimbursements for other allowable expenses (including fringe benefits and moving expenses) or any amount paid more than 30 days after your employment ends.

Before-Tax Contributions

Before-tax contributions to the Plan are made before federal (and in most cases, state and local) income taxes are deducted from the amount you elect to contribute. (Your before-tax contributions, however, are subject to Social Security taxes.) By saving on a before-tax basis, you have a dual tax advantage—your taxes are lower because your taxable income is lower, and your before-tax retirement account can grow without being taxed until you take a distribution.

Automatic Enrollment

When you are a newly eligible employee, you are automatically enrolled in before-tax contributions to the Plan equal to 6% of your eligible pay. (See the "Eligibility" section to determine if you are a newly eligible employee.) Contributions are initially invested in the qualified default investment alternative (QDIA), which is a fund selected by the Plan Administrator. (See the "Investing Your Account" section for more information about the Plan's QDIA.)

Once payroll contributions begin, you may change or stop your automatic before-tax contributions, and/or transfer money out of the QDIA into other investment funds available under the Plan at any time.

Changes Related to Your Automatic Before-Tax Contributions

To contribute more or less than 6% of your eligible pay, and/or to invest in any of the other investment funds available under the Plan, you can make the change by contacting the Koch Benefit Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

If you are a newly eligible employee and do not want to contribute to the Plan, you may opt out by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772. You will receive a notice prior to your first automatic contribution informing you of the timeline by which you must act to stop automatic contributions before they begin. However, once enrolled in the Plan, you cannot receive a refund of any before-tax contributions already deposited on your behalf to the Plan.

Roth 401(k) Contributions

Unlike your before-tax contributions, Roth 401(k) contributions are made with after-tax dollars. With Roth 401(k) contributions, you may diversify your tax risk and potentially enhance your after-tax savings in retirement.

More About the Roth 401(k) Contribution Feature

You should consult with your financial and tax advisors for advice in analyzing your tax risks and whether the Roth 401(k) contribution feature is right for you. More information is available from the Koch Benefits Solution center online at *my*LifeChoices.com or by phone at (877) 344-5772.

When you designate contributions as Roth 401(k) contributions, your decision cannot be changed. This means that once your designation is made, your Roth 401(k) contributions cannot be changed to before-tax contributions.

In-Plan Roth Conversion

You may elect to transfer funds from a non-Roth contribution account to a Roth contribution account, without removing funds from the Plan. This conversion only applies to employee contributions. Once the transfer occurs, the contributions will be treated as Roth contributions instead on non-Roth contributions. There may be tax consequences that result from the transfer. Those tax consequences will be explained online at *my*LifeChoices.com during the on-line transfer process or you can call the Koch Benefits Solution Center at (877) 344-5772 for more information.

You will be allowed to transfer vested amounts from the following accounts:

- After-Tax Rollover;
- Rollover;
- Voluntary Transfer;
- Matching;
- After-Tax Basic;
- After-Tax Supplemental;
- Pre-Tax; and
- Fixed Company Contribution.

Any amounts transferred as part of an In-Plan Roth Conversion will have the same distribution restrictions that applied before the In-Plan Roth Conversion. (See the "Roth 401(k) Distributions" section for more information.)

You can make up to two In-Plan Conversions during a calendar year.

The value of an account that may be converted after an In-Plan Roth Conversion election is determined as of the most recent valuation date. Once the In-Plan Roth Conversions is made, you are responsible for the taxable value, if any, and that amount will be included in your gross income during the taxable year in which the In-Plan Conversion occurred.

In-Plan Roth Conversions are irrevocable and irreversible and cannot be undone or recharacterized in any manner, unless specially allowed under applicable law.

After-Tax (Non-Roth 401(k)) Contributions

If you choose to save on an after-tax basis, federal (and in most cases, state and local) income taxes are deducted from your pay before contributions are deducted. By taking advantage of the after-tax contribution feature, you may diversify your tax risk and potentially enhance your after-tax savings in retirement. As with an after-tax individual retirement account (IRA), you can contribute after-tax dollars to the Plan that will generally not be subject to federal taxation when you later withdraw them (however, unlike Roth 401(k) contributions, earnings on these amounts will be taxable at distribution).

After-tax contributions that are eligible for Company matching contributions are referred to as after-tax basic contributions. After-tax contributions that are **not** eligible for Company matching contributions are referred to as after-tax supplemental contributions.

Catch-Up Contributions

If you will be age 50 or older by the end of the calendar year and you contribute the maximum amount allowed by the Plan, you can contribute an additional amount to the Plan. These are called catch-up contributions and this amount, which is set by the IRS, may change each year to reflect the cost of living change. The catch-up contribution limit for 2019 is $6,000. For more information on catch-up contribution limits, go to www.irs.gov.

If you are eligible for catch-up contributions, you must make a separate election at *my*LifeChoices.com.

If you do not meet the maximum before-tax or Roth 401(k) contribution limit, your catch-up contributions will automatically be changed to regular before-tax or Roth 401(k) contributions at the end of the plan year.

Catch-Up Contributions Are Not Eligible for Match

You will not receive Company matching contributions on your catch-up contributions.

Rollover Contributions

Under the Plan, you may roll over distributions from a former employer's tax-qualified retirement plan or amounts held in an IRA. In addition, if you have a balance in this Plan, you may roll over a lump-sum distribution received from the Koch Industries Employees' Pension Plan. If you did not elect a direct rollover from the other plan, you will be asked to certify that:

- The contribution is from a qualified plan and eligible for a rollover;
- The contribution is not part of a series of periodic payments;
- The contribution is not from a distribution received more than 60 days before the date of the rollover contribution; and
- The entire amount of the rollover contribution would be includible in gross income if it was not being rolled over (except to the extent the rollover contribution includes after-tax contributions transferred, in a direct trustee-to-trustee transfer, from another qualified plan to this Plan).

The Plan Administrator may reasonably conclude, based on your certifications and other reasonable facts and circumstances, that the contribution is a valid rollover contribution. However, if the Plan Administrator later determines that the contribution was invalid, the contribution and any earnings on the contribution will be paid out to you as soon as possible after the determination.

For more information on rollovers and for the forms you need to make a rollover contribution to the Plan, contact the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

Changing Your Contributions

You can change the percentage or type of your contributions or stop your contributions entirely at any time by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772. Your change will be effective as soon as administratively practicable (normally between two or three weeks) after the day you request the change.

Automatic Annual Increases in Your Before-Tax and/or Roth 401(k) Contribution Rate

You may have your contribution rate increased automatically each year up to a maximum of 75%. Automatic increases typically take effect in early summer (June - July). Contact the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772 for more information.

Company Contributions

If you are eligible, the Company may contribute to your account during the year. The IRS limits how much of your eligible pay the Plan can use in determining these contributions (see the "Contribution Limits" section for details).

Company Matching Contributions

If you contribute to the Plan, you are eligible to receive Company matching contributions after you complete one year of service, measured from your date of hire. Employer matching contributions will begin on the first day of the next month.

Employer matching contributions are based on your before-tax, Roth 401(k) and after-tax basic contributions. Each payroll period, the Company will contribute $1 for every $1 you contribute, up to 6% of your eligible pay. These contributions will be made as soon as administratively possible after the end of each payroll period.

Here is what Company matching contributions can mean to you. Assume that your eligible pay each payroll period is $1,500 and that you are paid bi-weekly. The table below shows how your before-tax, Roth 401(k) and/or after-tax contributions, combined with matching contributions, can really help your account grow for retirement.

If You Contribute This % Of Your Eligible Pay	Your Plan Contributions Each Pay Period Are	The Company Match Would Be	The Total Plan Contribution Each Pay Period Would Be	The Total Yearly Plan Contribution Would Be
2%	$30.00	$30.00	$60.00	$1,560.00
4%	$60.00	$60.00	$120.00	$3,120.00
6%	$90.00	$90.00	$180.00	$4,680.00
8%	$120.00	$90.00*	$210.00	$5,460.00
10%	$150.00	$90.00*	$240.00	$6,240.00
15%	$225.00	$90.00*	$315.00	$8,190.00

* *Contributions greater than 6% of your eligible pay are not matched.*

The amount of eligible pay that may be taken into account in determining your benefit—as well as the total amount that can be contributed to your account during the year—is subject to IRS limits. See the "Contribution Limits" section for details.

The Company may change or eliminate the matching contribution under the Plan at any time. You will be notified of any changes.

True-Up Matching Contributions

If you do not make before-tax, Roth 401(k) and/or after-tax basic contributions equally throughout the plan year (e.g., you change the percentage of or stop your contributions during the plan year), you may not receive the maximum Company matching contributions for which you are eligible. At the end of the plan year, the Company may make an additional matching contribution (called a "true-up matching contribution") to make up any difference between the match you actually received and the match you would have received if your before-tax, Roth 401(k) and/or after-tax basic contributions had been made equally throughout the year.

For example, if you contribute 8% of your eligible pay of $4,000 per month for the first six months of a plan year and 4% for the next six months, you will have contributed $2,880, or 6% of your total eligible pay of $48,000. This would entitle you to a match of $2,880. However, the matching contributions on a check-by-check basis will only total $2,400. If you are employed on December 31, the Employer will make an additional contribution of $480 in the next year to your account.

To receive true-up matching contributions:

- Any true-up matching contribution must be more than $10;
- You must be employed on the last day of the plan year (December 31); or
- You must terminate during the year due to disability or death.

Fixed Company Contributions

In general, if you are hired on or after January 1, 2016, you are eligible for a fixed company contribution. However, you will **not** be eligible for fixed company contributions if you are an INVISTA employee in select job classes (either as a new hire or through a role change or transfer after August 1, 2005) at the Camden or Seaford location.

If you are eligible, fixed company contributions are made to your 401(k) account beginning with your first paycheck after your eligibility date. You will receive a fixed company contribution whether or not you contribute to the Plan.

Contribution Amount

The amount of your fixed company contributions is a percentage of your eligible pay, based on your completed years of service as follows:

Completed Years Of Service	Contribution Percentage
0-4	3%
5-9	4%
10 or more	5%

A year of service is the 12-month period measured from the date you first perform an hour of service to each anniversary of that date. You will move up to the next percentage with the paycheck after your anniversary date.

Your contribution may be affected if you leave the Company and are later rehired. If you are absent from work for less than 12 months, you will keep your years of service. However, if you have a break in service of 12 months or longer, your years of service will be reset to zero.

If it is not administratively feasible for the Company to make a Fixed Company Contribution to for a specific pay period (e.g., your first paycheck after becoming an eligible), the Company will make a "true-up" Fixed Company Contribution for the amount that was not contributed. The Company will make this "true-up" Fixed Company Contribution as soon as administratively feasible after the end of the applicable plan year, but only if you are either employed on the last day of the plan year, or you had a severance from employment because of a death or disability during the applicable plan year.

Important Note

Fixed company contributions are not available for loans or in-service withdrawals.

Contribution Limits

The IRS has certain limits that affect your account:

- **Deferral Limit:** Your before-tax and/or Roth 401(k) contributions combined cannot be more than the IRS deferral limit. For 2019, that limit is $19,000. If you will be age 50 or older by the end of the calendar year, you may also make catch-up contributions, up to the IRS catch-up contribution limit which is $6,000 for 2019. If you reach the IRS limit(s) during a calendar year, your contributions will be stopped for the rest of the year. Your contributions will automatically resume on the following January 1 unless you change or stop them. (See the "For Information About Your Account" section for how to set or change your contributions.) If any contributions are made above the IRS limit(s), the Plan Administrator will refund any excess contributions to you.
- **Eligible Pay Limit:** Only pay up to the IRS annual compensation limit can be considered as eligible pay under the Plan. For 2019, the annual compensation limit is $280,000.
- **Maximum Annual Contribution Limit:** The total of all contributions to your account—including your own contributions and Company contributions are limited. The annual contribution limit for 2019 is $56,000 and includes all contributions you have made to all 401(k) plans during the calendar year. (The annual contribution limit is $62,000 if you are eligible for catch-up contributions.)
  - If you participated in a 401(k) plan that is an affiliate of the Employer and transfer to another affiliated company during the year, there is no need to individually monitor your total contribution amount.
  - If you participated in a 401(k) plan not affiliated with the Employer, you may need to report the amount contributed to all 401(k) plans to remain within the total limit for the year.

  You can notify the Plan Administrator by calling the Koch Benefits Solution Center at (877) 344-5772 and the Plan may return excess contributions to you.

The IRS may change these limits annually to reflect the cost of living. For more information on contribution limits, go to www.irs.gov.

Vesting

Vesting refers to your right to receive a benefit from the Plan. You are always 100% vested in your own contributions (including rollover contributions) and any earnings on those contributions. You become vested in all Company contributions and any earnings on those contributions based on your years of vesting service, as follows:

Years Of Vesting Service	Vested Percentage
Less than 1	0%
1 but less than 2	20%
2 but less than 3	40%
3 but less than 4	60%
4 but less than 5	80%
5 or more	100%

* *If you separated from service with the Company before January 1, 2000, your vested percentage was based on the schedule in effect at the time of your separation.*

A year of vesting service is the 12-month period measured from the date you first perform an hour of service to each anniversary of that date. If you are absent from work for less than 12 months, you also receive credit for the period of absence. If you are gone for longer than 12 months, your break in service period does not count toward your vesting service. (See the "Break in Service" section for more information.)

You also become 100% vested and you (or your beneficiary if you die) are entitled to receive the full value of your account if while an active employee, you:

- Reach normal retirement age (age 65);
- Become "disabled;" or
- Die.

You are considered disabled if you are eligible to receive disability benefits from the Social Security Administration or an Employer's long-term disability plan.

Break in Service

In general, service means the length of time you work for the Company, measured from your date of hire to the date you leave the Company. However, some situations could affect how your service is counted.

You stop earning service on the earliest of the:

- Date you quit, are discharged, retire or die; or
- Later of the:
  - Date you do not return from an approved leave of absence; or
  - First anniversary of your first day of absence if you do not return to work after vacation, holiday, disability maternity or paternity leave or military leave (unless you return to work under laws governing veterans' re-employment rights).

If you do not complete an hour of service with the Company within 12 months after the date you stop earning service, you have a "break in service." (An hour of service means each hour for which you are paid, or entitled to payment, for the performance of duties for the Employer.)

Returning to Work After a Break in Service

If you are rehired, you will get back all of your previous breaks in service. You must complete a history of service form using the Employee Self Service portal to ensure your prior service is properly credited.

Investing Your Account

Your benefit under the Plan is your account balance. Your account balance is made up of your contributions and Company contributions that are held in the Plan's Trust and invested according to your instructions. Your account will be credited with the earnings and losses of the investments you select, and will also be charged any fees or expenses associated with those investments along with your account's share of any general administrative expense that the Company does not pay.

You may choose how your account is invested among a broad range of investment funds available under the Plan. You can invest your entire account in one fund or allocate your account (in 1% increments) among several different funds. When you first begin contributing to the Plan, you will be asked to make an investment election. If you call in to enroll, a representative will handle your request over the phone; no form is required. If you enroll in the Plan through the website, you can choose your investments online. If you do not make an election, amounts contributed to the Plan will be invested in a Qualified Default Investment Alternative (QDIA; see the "Qualified Default Investment Alternative" section). If you default into the QDIA, you may change your investment at any time.

Your choices should be based on your investment goals and your willingness to assume risk to realize potentially higher returns.

Diversifying Your Savings

It is important to review your investment portfolio, your investment objectives and the Plan's investment options periodically to help ensure that your retirement savings will meet your retirement goals. For more information about individual investing and portfolio diversification, visit the Department of Labor's website at www.dol.gov/ebsa/investing.html. For help with creating your own investment strategy, visit the Online Advice tool. You may also take advantage of the Professional Management Program through Alight Financial Advisors, LLC (AFA) (certain fees apply). For more information, contact the Koch Benefits Solution Center online at *my*LifeChoices.com.

Your Investment Options

The Plan offers a range of investment funds, which are classified into three categories: Target Retirement Date Funds, Core Investment Funds and Specialty Investment Funds. These funds provide you with investments that have returns that track certain segments of the market.

Investment Fund Fact Sheets for each fund are available by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

A Note About Risk

The Plan's investment options are grouped by level of relative risk. This classification may be based on the fund's objective as stated in the fund fact sheet or the fund's categorization by independent rating organizations based on its management style. It is not meant to be a precise indicator of future risk or return levels. The degree of risk within each category can vary significantly, and a fund's risk classification may change over time. Therefore, you should read a fund's fact sheet carefully before investing to ensure its objectives, policies and risk potential meet your needs.

See the Plan's performance summary for additional disclosures.

You should also be sure to read each fund's fact sheet and the "*Annual Fee Disclosure Statement.*" This information can be requested by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

Qualified Default Investment Alternative (QDIA)

If you do not make an investment election when you begin participating in the Plan, contributions to your account will be invested entirely in the default investment selected by the Plan Administrator, known as the QDIA. Your account and all future contributions will be invested in the QDIA until you make an investment election. The QDIA is a Vanguard Target Retirement Fund based on your birth year. More information can be found by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

Self-Directed Brokerage Account (SDBA)

The Plan also offers access to a self-directed brokerage account (SDBA), which allows you to take advantage of a wide range of investment choices through Alight Financial Services. You may select from a wide range of investment vehicles, including:

- Mutual funds;
- Stocks; and
- Bonds.

The SDBA option is designed for participants with a strong knowledge of the investment market, who want the ability to create a more customized portfolio and who have the ability, time and desire to research and evaluate different investments. You may change your investment elections as often as you like on any day the market is open. But keep in mind that some investments within the self-directed brokerage window may be subject to regulatory and fund company trading restrictions. In addition, if you are designated as an employee with access to sensitive information, you may be subject to additional trading restrictions.

You can close your SDBA at any time. You can sell all the investments within your brokerage account online, through the automated phone system or with the help of an Alight Financial Services representative. Once you have liquidated your investments within your SDBA, the trades have settled and the funds are in the Alight Money Market Fund, go online at *my*LifeChoices.com to move funds back to other assets in the Plan. Once there are no assets in your SDBA, contact an Alight Financial Services representative at (800) 890-3200 to close out your account.

The maximum amount you may transfer to the SDBA is the lesser of:

- 50% of your total account balance; or
- 100% of your vested balance.

Initial and subsequent investments to the SDBA must be at least $1,000, and you must have at least $1,000 invested in the Core Investment Funds at all times. (Information about the Core Investment Funds is available from the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.)

If you choose to use the SDBA, you will be charged a maintenance fee and there may be fees assessed for certain transactions. You can get detailed information about all applicable fees and expenses in the "*Annual Fee Disclosure Statement*" for the Plan (which is available from the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

Changing Your Investments

You can change how your existing account balance is invested in whole percentages or in specific dollar amounts. For example, you could move 30% of your existing balance in one fund to another fund, or you could move $1,000 from one fund to another fund. This is called "reallocating" funds. You can also change how your *future* contributions are invested.

To change your investment elections, contact the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772. If you request an investment election change on a business day before 3:00 p.m. Central time (4:00 p.m. Eastern time), your change will take effect the same day the request is received. Requests received after the applicable deadlines will take effect the next business day (a day on which the stock markets are open for trading, except for bank holidays).

Although the Plan lets you decide how to invest your account, too many investment changes (moving large sums of money in and out of the same fund within a relatively short period) can disrupt how certain investment funds are managed and increase their costs. Accordingly, the fund manager has the right to limit investment changes if it determines, in its sole discretion, that excessive investment changes could adversely affect the fund. For more information about these limits, contact the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

How Plan Accounts Are Valued

All funds are valued as of the end of each business day, reflecting that day's gains and/or losses. To value the funds, the trustee determines the total fair market value of all assets held in each fund. The change in each fund's value is then calculated and applied to all participants' accounts, based on each participant's account balance as a percentage of the entire fund balance as of the beginning of that business day.

Information About Your Account

You will receive a statement each quarter that describes the activity in your account. Statements are available online at *my*LifeChoices.com, and a hard copy statement will be mailed to you within 45 days after the end of each calendar quarter. Your quarterly statements show:

- The Company contributions to the Plan on your behalf;
- How much you have saved;
- Your investment results;
- Any transactions you may have requested during the previous quarter; and
- Other important information about your savings, including your vested account balance.

Your statement will also contain information on how the Plan's investment funds have performed.

Other Information About Your Plan

This information is available from the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772:

- A description of the annual operating expenses of each investment option available under the Plan (e.g., investment management fees, administrative fees, transaction costs) that reduce the rate of return you receive and the aggregate amount of those expenses expressed as a percentage of average net assets of the investment option.
- Copies of any prospectuses, financial statements and reports and any other materials relating to the investment options, to

the extent that information is provided.

- Information about the total value of units in each investment option offered under the Plan, as well as the past and current investment performance of each option determined net of expenses.
- List of assets comprising the portfolio of each designated investment alternative that is considered a "plan asset" under Department of Labor regulations, the value of each asset (or the proportion of the investment alternative that it comprises) and, with respect to each asset that is a fixed rate investment contract, the name of the issuer of the contract, the term of the contract and the contract's rate of return.

Accessing Your Account While Active

Your contributions are meant to stay in the Plan until you separate from service (retire or terminate employment). However, under certain circumstances, you may be able to borrow or withdraw from your account while you are actively working for the Company.

Loans

If you qualify, you may apply for a loan from your vested account. When you take a loan, you borrow money from your account and pay your account back with interest. You will not be taxed on your loan as long as you repay it and do not default. You may only have two loans outstanding at a time.

The minimum loan amount is $1,000. The maximum amount is the lesser of 50% of your vested account balance or $50,000 minus your highest outstanding loan balance during the past 12 months. There is a $50 loan origination fee that is deducted from your loan proceeds. (Loan fees may be changed at any time without notice.)

Note

You may not borrow against fixed company contributions in your account.

Loan Terms

Loans are governed by the terms and conditions of the Plan document and the loan policy. The terms of the loan, including interest rates, repayment terms and default provisions are described in detail in the loan policy. A copy of the loan procedures is available by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

Requesting a Loan

To request a loan, contact the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone (877) 344-5772.

Once your loan request is processed, your investments will be cashed out as needed to fund your loan. Your payment (either check or direct deposit) and loan documents are generally issued within three to five business days from the date the Plan Administrator receives your request. It may take another week for you to actually receive the check and loan documents in the mail. When you accept the payment, you accept the terms of the promissory note.

Loan payments, consisting of principal and interest, are generally made through payroll deductions. Each payment is credited to your account when paid. You may make additional payments or pay off the remaining balance of your loan at any time by cashier's check.

Additional Loan Information

For more loan information, including rules that apply to international employees, please refer to the Plan's loan policy, which is available by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

Withdrawals

General Information Regarding Withdrawals

You must be eligible to contribute to the Plan (excluding suspensions) to take any of these withdrawals from your account:

- Hardship Withdrawal;

- After-Tax Withdrawal;
- Senior Participant Withdrawal;
- Age 59-1/2 Withdrawal; or
- Rollover Withdrawal.

Note

Fixed company contributions are not available for hardship withdrawals or other in-service withdrawals.

Hardship Withdrawals

If you have an extreme financial hardship, you may withdraw all or part of your contributions to your account. By law, extreme financial hardship means you have a heavy and immediate financial need and you have no other resources available to meet that need. You may apply to withdraw all or part of your before-tax, Roth 401(k) and/or after-tax contributions (including catch-up contributions). You may not withdraw any **earnings** attributable to either your before-tax or your Roth 401(k) contributions.

Acceptable hardships include:

- Unreimbursed medical expenses for you, your spouse or a dependent (that are not covered by insurance);
- Purchase of a primary residence (not including mortgage payments);
- College tuition and/or room and board expenses for up to the next 12 months for you, your spouse or a dependent;
- Prevention of foreclosure on, or eviction from, your principal residence;
- Payment for burial or funeral expenses for a deceased parent, spouse, child or dependent; and
- Certain unexpected expenses for the repair of damage to your principal residence that would qualify for the IRS casualty deduction, such as those resulting from hurricane or flood damage.

There is no minimum withdrawal amount; hardship distributions cannot be rolled over to an IRA or another qualified retirement plan.

Before taking a hardship withdrawal, you must exhaust every other possibility under the Plan and all of the Employer's other plans to get the funds you need (including loans or other withdrawals available to you under the Plan). Further, you cannot withdraw more than the amount you need to meet the hardship (plus any taxes or penalties associated with the withdrawal). The Plan will withhold the required percentage for federal taxes. Also, you may have to pay a 10% penalty tax on the withdrawal amount.

Also, note that if you receive a temporary loan from a commercial lender or a family member to pay the hardship expense, you cannot take a hardship withdrawal because the Plan will consider your financial need to have been met.

Important Note

If you receive a hardship withdrawal, you may not contribute to the Plan for six consecutive months after the date of the hardship withdrawal. To resume contributions after this six-month period, you must make a new election.

Rollover and After-Tax Withdrawals

You can withdraw all or part of your rollover account for any reason at any time.

You may take an after-tax *basic* account (non-Roth 401(k)) withdrawal once in any six-month period. If you do so, you will not be able to contribute to the Plan for six months. There is no minimum withdrawal amount.

You may take an after-tax *supplemental* (non-Roth 401(k)) account withdrawal at any time. An after-tax supplemental account withdrawal will not affect your ability to make further contributions. There is no minimum withdrawal amount.

In-Service Withdrawals (Age 59-1/2)

If you have reached age 59-1/2, you can withdrawal all or a part of your vested account balance (except fixed company contributions) at any time. This withdrawal can be for any reason. Although your withdrawal will be taxed as ordinary income (unless rolled over into another qualified plan), it is not subject to the 10% penalty tax. In addition, you may continue to contribute to the Plan without interruption after the withdrawal.

Senior Participant Withdrawal

Once you have five years of vesting service, you may make a senior participant withdrawal at any time. You may withdraw from any of your accounts in which you are fully vested, except you may not withdraw from before-tax, Roth 401(k) or fixed company contribution accounts. If you take a senior participant withdrawal, you cannot contribute to the Plan for six months. The Plan will withhold the required percentage for federal taxes. Also, you may have to pay a 10% penalty tax on the withdrawal amount.

Requesting a Withdrawal

To request a withdrawal, contact the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772. To request a hardship withdrawal, you must complete an application form and provide satisfactory proof of the financial need.

Once the Plan processes your request, your investments will be cashed out as needed to fund your withdrawal. Your check is generally issued within three to five business days. It may take another week for you to actually receive the check in the mail.

Taxation of Withdrawals

Any withdrawal from the Plan may be taxable to you. For more information about the tax consequences of taking a withdrawal or distribution from the Plan, see the "Income Tax Implications" section.

The *IRS Tax Notice* summarizes the rules related to rollovers, income tax and penalties that may apply to your withdrawal. You may request a copy of the tax notice by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

Distributions After Termination

The benefit paid to you (or your beneficiary if you die) is equal to the value of your account on the date the payment is processed.

The vested part of your benefit belongs to you if you retire or resign or your employment is terminated. You are always 100% vested in amounts *you* contribute or roll into the Plan.

You are also vested in the Company contributions according to the Plan's vesting schedule, as described in the "Vesting" section.

When you separate from service with the Company, you are entitled to a lump-sum payout from your account. (If you prefer, you may receive your account balance in the form of periodic payments. See the "Forms of Payment" section for your options.) You will receive a notice asking you to make a distribution election.

If your vested account balance is more than $5,000, you can delay receiving your benefits until you reach age 70-1/2. If you do not elect a distribution at age 70-1/2, you will automatically receive annual required minimum distributions as required by federal law. If you delay receiving your benefits, your account will remain in the Plan until you elect a distribution (but not later than age 70-1/2). As long as your account remains in the Plan, you may make changes to your investment elections.

See "Income Tax Implications" for information about the tax treatment of your distribution.

If You Are Age 70-1/2

Under IRS rules, if you leave the Company and reach age 70-1/2, you must begin taking payments from your account. This is called a "required minimum distribution." Your first required minimum distribution payment must be made no later than April 15 of the year after the year in which you turn age 70-1/2.

If you are still actively employed by the Company and reach age 70-1/2, your required minimum distribution will begin no later than April 15 of the year after the year in which you leave the Company.

You will be notified if these rules affect you.

Payments to Your Beneficiary

Your beneficiary may elect a distribution of your account balance at any time after you die, or may delay payment until the date your account must be distributed by law. Your beneficiary will be notified if and when he or she must take a distribution. The Plan Administrator will require a certified copy of your death certificate before benefits are paid; your account will be paid to your beneficiary in a single lump-sum payment or in installment payments.

After you die, your beneficiary will have the same investment rights that you had (see "Investing Your Account").

Waiver of the 30-Day Notice Waiting Period for Distributions

Federal law prohibits the Plan from making distributions to you until 30 days after you have received a "402(f) notice." The 402(f) notice explains your right to roll over your distribution to an IRA or another qualified retirement plan. Federal law allows a distribution before the end of the 30-day notice period only if you affirmatively elect to waive the 30-day notice period. You will receive a copy of this notice (*Special Tax Notice Regarding Plan Payments*) whenever you request a withdrawal or distribution.

Designating a Beneficiary

If you are married, your spouse is automatically your beneficiary. You may name a beneficiary other than your spouse if your spouse agrees to waive any right to your account balance. Once waived, your spouse cannot change that agreement.

Spousal Consent

Your spouse's consent must be in writing, be witnessed by a notary and acknowledge the specific non-spouse beneficiary. If you change your designation, your spouse must again agree to the change. (You may elect a beneficiary other than your spouse without his or her consent if you can prove to the Plan Administrator that you cannot locate your spouse.)

If you are not married when you die, your beneficiary will be the person(s) named on your beneficiary designation form. You may name a beneficiary at any time by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

If you are married and naming anyone other than your spouse, or are not married, you must complete and return the beneficiary designation form to the Koch Benefits Solution Center.

If you are a beneficiary of a former Plan participant, you may not name a beneficiary. Any account balance remaining when you die will be paid to your estate.

Important Note

Your signed beneficiary designation form must be received and approved by the Koch Benefits Solution Center before your death to be valid.

If you did not name a beneficiary, if your beneficiary dies before you do or if your beneficiary cannot be located, the Plan will pay benefits to:

- Your spouse, if living; or else to
- Your estate.

Inability to Locate Payee

If the Plan Administrator cannot locate you or your beneficiary to make a payment, payment will be forfeited. The benefit amount will be reinstated and payment will be made without any interest earned when you (or your beneficiary) make a valid claim for the forfeited amount.

Incapacity

If anyone with an interest in your account (including yourself) is a minor or is judged to be physically or mentally incompetent, the Plan Administrator may direct the trustee to distribute their share of your account to someone else for their benefit (to a legal guardian, for example). The Plan Administrator also may approve one-time transactions directed through a power of attorney. Documentation related to an authorization must be submitted to the Plan. For more information, see the "For Information About Your Account" section.

Forms of Payment

You may receive the full value of your account as follows:

- **If your vested account balance is $1,000 or less**, the entire balance will be paid directly to you in a single lump sum (minus mandatory 20% withholding for federal taxes) within 60 days of your retirement, death or termination, unless you elect to directly roll over all or part of your balance to your new employer's eligible retirement plan or to an IRA of your choice. You will need to check with the new plan or IRA provider to make sure it will accept a rollover.
- **If your vested account balance is over $1,000 but is not greater than $5,000**, you can have the account balance paid directly to you in a single lump sum (minus mandatory 20% withholding for federal taxes), or you can roll over all or part of your account balance to your new employer's eligible retirement plan or to an IRA of your choosing. Again, you will need to check with the new plan or IRA provider to make sure it will accept rollovers. If you do not elect one of these options within 60 days after your retirement, death or termination, your entire account balance will be rolled over automatically on your behalf into an IRA at Merrill Lynch (a "Rollover IRA").

  The amount transferred to a Merrill Lynch IRA will first be invested in a fund designed to preserve your investment and provide a reasonable rate of return, consistent with liquidity. However, once your IRA is established at Merrill Lynch, you may change your investment to any fund available at Merrill Lynch. While your IRA account is with Merrill Lynch, you will be charged an IRA administration fee, which will not be more than the fees charged for similar IRA accounts for non-mandatory distributions.

  You must pay all fees and expenses assessed against your automatic rollover IRA, and if you choose to transfer your IRA from Merrill Lynch to another custodian, you may be charged a transfer fee. For additional information on IRAs at Merrill Lynch and the fees and expenses associated with a Merrill Lynch IRA, call (877) MY-MLIRA (696-5472).
- **If your account balance is more than $5,000**, a distribution from the Plan will generally not be made without your consent. You can receive an immediate payment from your account, or you can delay payment of your account until you reach age 70-1/2. If you delay your distribution to a later date, you may continue to make changes to your investment funds under the Plan.

  You can have your account distributed in a single lump-sum cash payment, a portion paid in a lump sum and the remainder paid later or periodic installments over a period of up to 30 years, subject to any minimum distributions required by law.

Rollover Distributions

If your employment ends and you take a distribution of the vested portion of your Plan account before you reach age 70-1/2, you may roll over your Plan benefit to another tax-qualified plan, such as a Rollover IRA or another employer's tax-qualified plan, such as a 401(k), 403(b) or 457(b) plan.

You may roll over any distribution from the Plan that qualifies as an eligible rollover distribution. In general, a Plan distribution is an eligible rollover distribution if it was not:

- A required minimum distribution because of your age (70-1/2 or older);
- Part of a series of substantially equal periodic payments paid over 10 or more years; or
- A hardship distribution.

There are two ways to make a rollover from the Plan.

Indirect Rollover

First, you may take the distribution in cash and then contribute it to the IRA or eligible retirement plan within 60 days of the original distribution. If you wait more than 60 days to complete your rollover, you will be taxed on the full value of your distribution from the Plan.

The Plan must withhold 20% of the distribution of your Plan benefit for federal income taxes. To postpone taxes on the full value of your Plan benefit, you must roll over 100% of your Plan benefit within the 60-day limit. This means you will have to add other funds to your rollover contribution to make up the 20% withheld for taxes, otherwise the 20% withheld will become taxable to you.

Direct Rollover

Second, you may elect a "direct rollover," in which the trustee of this Plan pays the amount directly to the trustee or custodian of the IRA or eligible retirement plan. Taxes will not be withheld on a direct rollover.

Requesting a Distribution

Soon after your termination of employment, you will automatically receive a distribution kit from the Koch Benefits Solution Center that explains how to apply for a distribution. Alternatively, you also may request a distribution by contacting the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772. See the "Claims and Appeals" section for more details.

Receiving Your Payment

Your distribution check is generally issued within three to five business days after your request is received. It may take another week for you to actually receive the check.

Assignment of Benefits

Your benefits under the Plan are solely for you (or your beneficiary). Generally, they cannot be assigned, transferred or pledged to anyone else, nor can Plan benefits be attached, garnished, executed or subject to legal process. However, the Plan will honor Qualified Domestic Relations Orders (QDROs).

Qualified Domestic Relations Orders (QDRO)

A Domestic Relations Order (DRO) is a judgment, decree or order that includes a property settlement agreement that is made under a state domestic relations law (including community property law) relating to child support, alimony payments or marital property rights for the benefit of your spouse, former spouse, child or other dependent. Such an order may affect your account once it is deemed "qualified" under the Plan, at which point it becomes known as a Qualified Domestic Relations Order (QDRO). The determination of a QDRO is made by the Plan's QDRO Administrator.

A DRO should be sent immediately to the QDRO Administrator to determine if the Order is qualified and for processing. This will prevent the Plan from processing any transactions that may be restricted by the DRO. For purposes of this section, restricted transactions include withdrawals, distributions and initiating Plan loans. You are not restricted from contributing to the Plan, from suspending your contributions or from making investment changes.

An alternate payee under a QDRO may not name his or her current spouse as a beneficiary under the Plan.

A copy of the Plan's procedures for reviewing QDROs is available, at no cost, from the QDRO Administrator by contacting the Koch Benefits Solution Center at:
P.O. Box 7144
Rantoul, IL 61866-7144
*my*LifeChoices.com
(877) 344-5772

QDRO Fees

A one-time fee will be split equally between your and the alternate payee's account for processing and administering your QDRO, unless the QDRO specifically requires you or the alternate payee to pay all or a different portion of the fee. Fees are subject to change at any time without notice.

Right to Recover or Withhold Benefits

The Plan has the right to recover any mistaken payment, overpayment or any payment that is made to any individual who was not eligible for that payment. The Plan may:

- Withhold or offset future benefit payments;
- Sue to recover such amounts; and
- Use any other lawful remedy to recoup any such amounts.

Income Tax Implications

If you request a withdrawal or distribution from the Plan, you will receive a *Special Tax Notice Regarding Plan Payments* that provides detailed information about the tax consequences of receiving a payment from the Plan. You should read this notice carefully. Tax laws are subject to change, and may vary by state; you should consult with your tax advisor before taking a withdrawal or distribution from the Plan.

Taxation of Distributions and Withdrawals

When you receive a distribution or withdrawal, you must pay income taxes on the value of your before-tax contributions, Company contributions, rollover contributions and any investment earnings on these contributions, as well as on the earnings on your after-tax and Roth 401(k) contributions (except as described below under "Roth 401(k) Distributions"). These taxes are described below.

You may postpone part or all of your taxes by making a direct rollover of the taxable portion of your account balance into another employer's eligible retirement plan or an individual retirement account (IRA). (See "Forms of Payment" under the "Distributions" section for more information about rollovers.)

Mandatory Withholding Requirements

The Plan will withhold 20% on most taxable withdrawals or distributions you receive—even if you plan to roll over your withdrawal or distribution on your own (which you have 60 days to do). This 20% withholding is required by law as a partial payment of the income taxes you will owe on a taxable distribution. It does not include the 10% early withdrawal penalty you may have to pay the IRS (see the "Early Withdrawal Penalty" section for more information).

The mandatory 20% withholding does not apply if:

- You elect a direct rollover into another employer's eligible retirement plan;
- You or your surviving spouse elect a direct rollover into an IRA;
- The total amount of your accumulated distributions is less than $200;
- You are 70-1/2 or older, are no longer working for the Company and receive only the required minimum distribution from your account;
- Payments are made to someone other than you or your spouse (or former spouse) under a QDRO; or
- You elect a hardship withdrawal (however, you will be subject to a 10% withholding fee if you are under age 59-1/2).

Roth 401(k) Distributions

Your Roth 401(k) distribution will be exempt from the mandatory withholding requirements described above if it is a qualified distribution.

Qualified Distributions

In general, a qualified distribution is a distribution made after:

- You reach age 59-1/2, you die or you become disabled; and
- You meet the five-year exclusion period described below.

Five-Year Exclusion Period

Your Roth 401(k) contributions must remain in the Plan for five years, starting January 1 of the year you first make Roth 401(k) contributions to the Plan. For example, assume you make Roth 401(k) contributions for the first time on June 1, 2018. Your five-year exclusion period starts on January 1, 2018, and runs for five consecutive years. Assuming you are age 59-1/2, have died or become disabled, distributions of your Roth 401(k) contributions (and the related earnings) after December 31, 2022, will be tax-free since you met the five-year exclusion period.

If you receive a distribution of your Roth 401(k) contributions and their related earnings and that distribution is not qualified, the Plan will withhold 20% from your distribution.

Early Withdrawal Penalty

If you withdraw money or receive a distribution from your Plan account before you are eligible for retirement, the IRS may require you to pay a 10% early withdrawal penalty on the taxable part of your distribution. However, you will not have to pay the penalty if:

- You leave the Company during or after the year you reach age 55, and you receive your account balance because you terminated your employment;
- You leave the Company at any age and elect to receive substantially equal payments based on your life expectancy (distributions must continue for five years or until you reach age 59-1/2, whichever is longer);
- You are at least age 59-1/2 when you receive the payment;
- Your account is paid because you died or became disabled;
- The withdrawal is used to pay unreimbursed medical expenses greater than 7.5% of your adjusted gross income;
- The payment is made to someone else under a Qualified Domestic Relations Order (QDRO);
- The distribution is rolled over to an IRA or another employer's eligible retirement plan within 60 days; or
- The distribution is a qualified reservist distribution.

Circumstances Affecting Your Participation

This section describes certain circumstances that may affect your participation in the Plan or cause you to lose benefits.

Qualified Domestic Relations Orders (QDROs)

If, as the result of a divorce, you are responsible for child support, alimony or marital property rights payments, your benefits could be assigned to meet these payments if a court issues a Domestic Relations Order (DRO) and it is considered "qualified" by the Plan.

For more information about QDROs, see the "Assignment of Benefits" section.

Military Leave

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) gives certain reemployment and benefits rights to employees who take a leave of absence to serve in the uniformed services of the United States. Contact the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772 if you think you may be entitled to any of these rights.

Missed Contributions While on Military Leave

If you return from a qualified military leave, you may be eligible to make up any missed contributions. You must meet the requirements of USERRA, which include giving notice within certain timeframes to your employer and returning to employment within prescribed time periods. If you have any questions, contact the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772.

In general, you can make up any contributions you would have made if you had remained employed during your period of qualified military service. You can repay these contributions over a period three times the length of your military service, but no longer than five years. If your repayment of contributions includes years other than the current calendar year, these contributions will count toward the IRS annual plan limits for the years to which the repayments relate, rather than toward the current year's limits. Any Company matching contributions will be based on the amount of contributions that you repay. In addition, you will receive any fixed company contributions you would have received if you were not on leave. To request make-up contributions, contact the Koch Benefits Solution Center at (877) 344-5772 and speak to a representative.

Military Withdrawal

If you have been called to active military duty for more than 30 days, you can withdraw your before-tax or Roth 401(k) contributions. This distribution may be subject to a 10% early distribution penalty if you are under age 59-1/2, unless an exception applies. If you take this distribution, your future before-tax contributions are suspended for six months after the date of distribution. You must re-enroll after the six-month period.

If You Die While Performing Military Service

If you die while absent from employment performing qualified military service, your beneficiary will be entitled to your account balance.

Claims and Appeals

Initial Claims

A claim is made whenever you or your beneficiary submits a request for benefits. If your request is denied or you believe there is a discrepancy with the information you received, you may submit a formal claim. Generally, when you submit a formal claim, the Plan Administrator reviews the claim and lets you know its decision within 90 days. However, if the Plan Administrator determines that due to special circumstances it needs more time to make a decision, it may ask for up to 90 days more to make a decision (for a total review period not to exceed 180 days). If the Plan Administrator needs more time, you will be notified in writing before the end of the initial 90-day review period.

If your claim is denied in whole or in part, the Plan Administrator will provide you with a written notice that:

- Explains the reason or reasons for the decision;
- Includes specific references to Plan provisions used in making the decision;
- Documents your right to receive, at your request and free of charge, reasonable access to, and copies of, all Plan documents, records and other information applicable to your claim;
- Provides a description of any additional material or information that might help the Plan Administrator make a decision, including an explanation of why this information may be necessary; and
- Describes the appeals procedures and related filing deadlines, including your right to bring a civil legal action under the Employee Retirement Income Security Act of 1974 (ERISA) if the claim continues to be denied on review.

If you have not been notified of the Plan Administrator's decision within the applicable 90- or 180-day review period, you can consider your claim denied and you may file an appeal.

Appeals

You may appoint a representative to act on your behalf in filing a claim for benefits or appealing a denied claim. If your claim is denied in whole or in part, you (or your authorized representative) may appeal the decision by submitting a written request for review within 60 days after the date of the denial notice. If you do not file a written request for review within this period, your right to review will be considered waived.

Your written request for review must be sent to the following address:

Employee Benefits Administrative Committee
Attn: Shannon McClung
4111 East 37th Street North
Wichita, KS 67220

You may submit written comments, documents, records and other information relating to the claim even if you did not provide that information when you first filed your claim. Additionally, if you ask, you may have reasonable access to and copies of all documents, records and other information related to the claim, at no charge.

The Committee will review your appeal, and will take into account all documents, records and other information submitted that relate to your claim.

Generally, the Committee will make its decision within 60 days after it receives your appeal. However, if the Committee determines that special circumstances require more time, the Committee may request up to 60 more days to make its decision. If this is the case, the Committee will tell you, in writing, of any extension before the first 60 days are up. The notice will let you know why the extension is needed and the date by which the Committee expects to make a decision.

If your appeal is denied, the Committee will provide you with a written notice that:

- Explains the reason or reasons for the decision;
- Includes specific references to Plan provisions used in making the decision;
- Documents your right to receive, at your request and free of charge, reasonable access to, and copies of, all Plan documents, records and other information applicable to your claim; and
- Describes your right to bring a civil legal action under ERISA.

If you follow **all** of these procedures and are not satisfied with the decision on your appeal, you may file suit in court to review the Plan's decision. Any action must begin no later than 12 months after the date:

- The Committee sends you written notice of its final decision on your appeal; or
- Your claim is denied or deemed denied if you did not file an appeal within the required timeframe.

Administrative Information

This section provides important administrative and legal information about the Plan, including Plan identification and contact information.

Plan Name	Koch Industries Employees' Savings Plan
Plan Number	002
Plan Type	Defined contribution
Plan Year	January 1 through December 31
Plan Sponsor and Plan Administrator	**Plan Sponsor:** Koch Industries, Inc. 4111 East 37th Street North Wichita, KS 67220 (316) 828-5500 **Plan Administrator:** Employee Benefits Administrative Committee c/o Legal Department PO Box 2256 Wichita, KS 67220
Employer Identification Number	48-0484227
Agent for Service of Legal Process	ERISA Attorney Koch Industries, Inc. 4111 East 37th Street North Wichita, KS 67220 Service of legal process may also be made upon the Trustee or the Plan Administrator
Type of Administration	Third party contract
Recordkeeper	Alight Solutions 4 Overlook Point PO Box 1437 Lincolnshire, IL 60069-1437

Plan Administrator

The Plan Administrator has the full discretionary authority and power, as appropriate under Plan terms and applicable laws, to:

- Control and manage all aspects of the Plan;
- Determine who is eligible for Plan benefits;
- Interpret and construe the Plan terms and provisions;
- Determine questions of fact and law;
- Direct disbursements; and
- Adopt rules for administering the Plan.

The Plan Administrator may assign responsibility for Plan administration to others, including assigning discretionary authority to interpret Plan terms, direct payment of benefits and determining eligibility for Plan benefits.

The Company has also appointed an Investment Committee to select and monitor investment funds for the Plan.

Koch Benefits Solution Center

The Plan has appointed Alight Solutions to provide recordkeeping and website services as well as to provide services through the Koch Benefits Solution Center. You can access the Koch Benefits Solution Center as described in the "For Information About Your Benefit" section.

Address Changes

To be sure that you receive future benefit communications, please let the Company know if your address changes. If you are an active employee, notify the Human Resources Service Center at (800) 700-3365 of any change. If you are a terminated employee and have postponed your distribution, contact the Koch Benefits Solution Center at (877) 344-5772. Address changes will take effect immediately.

Employment Rights

Being a participant in this Plan does not grant you any current or future employment rights. Plan participation is not an inducement or condition of employment. Your right to benefits is determined solely under the Plan's provisions.

For Information About Your Account

<table>
<tr><th>If You Want To</th><th>You Need To Do The Following</th></tr>
<tr><td>Enroll in the Plan and begin making contributions</td><td rowspan="11">Call the Koch Benefits Solution Center at (877) 344-5772, 7:00 a.m. to 7:00 p.m. Central time
Hearing Impaired (TTY): (800) 345-1833
International: (877) 344-5772, collect
Internet: myLifeChoices.com
You can also contact the Koch Benefits Solution Center at:
U.S. Mail:
PO Box 7126
Rantoul, IL 61866-7126

Overnight Delivery:
1000 S Perimeter Rd
Rantoul, IL 61866</td></tr>
<tr><td>Discontinue or resume contributions</td></tr>
<tr><td>Change your current contribution rate or amount</td></tr>
<tr><td>Obtain account balances or plan information</td></tr>
<tr><td>Change your investment instructions or obtain investment information</td></tr>
<tr><td>Transfer your existing investments</td></tr>
<tr><td>Request loan or withdrawal information</td></tr>
<tr><td>Process a loan</td></tr>
<tr><td>Process a withdrawal</td></tr>
<tr><td>Arrange to continue loan payments after termination</td></tr>
<tr><td>Access learning tools</td></tr>
<tr><td>Make a rollover contribution</td><td>You may request a Rollover Contribution Form from the Koch Benefits Solution Center at (877) 344-5772. You must complete a certification form to provide that your rollover is eligible. Return the completed form to the address listed on the form for processing.</td></tr>
<tr><td>Speak with a Koch Benefits Solution Center representative</td><td>7:00 a.m. to 7:00 p.m. Central time, any business day
(877) 344-5772</td></tr>
</table>

(All calls to the Koch Benefits Solution Center are recorded for your protection.)

You will need your User ID and password (PIN) to access your account information through both the Koch Benefits Solution Center phone number and *my*LifeChoices.com.

Note: This document and the attachments constitute part of a prospectus covering securities that have been registered under the Securities Act of 1934. This booklet reflects the benefits at the time of publication but in no way limits the Company's right to change or discontinue any benefit plan at any time. It is also not a contract of employment but a reference source about the Plan. The program outlined herein may or may not be applicable to employees represented by a labor organization. Coverage depends on the agreement of the labor organization or the applicable collective bargaining contract.

The Plan is meant to constitute a plan described in Section 404(c) of ERISA and Title 29 of the Code of Federal Regulations Section 2550.404c-1 and, therefore, the Company, the Trustee, the Recordkeeper and the fiduciaries of the Plan may be relieved of liability for any losses that are the direct and necessary result of investment instructions you or your beneficiary may give. The Company does not guarantee the performance of these investment funds and is not liable for any losses you may experience due to investment performance.

Collective Bargaining Agreement

This Plan may be maintained according to a collective bargaining agreement (if so bargained). If this applies, you have the right to examine the bargaining agreement governing the terms and conditions of your employment by contacting your local Human Resources representative. You may also request a copy of the agreement. There will be a copying charge.

Plan Trust Fund

All of the Plan's assets are held in a trust fund, which is the sole source of all benefit payments. The trust fund is a separate and distinct legal entity, and is not part of a company. The assets of the trust fund are not commingled with any corporate assets. Generally, no part of the trust fund can be attached by creditors of any Plan participant or of a company. Assets of the trust fund are held exclusively to pay Plan benefits and expenses, and cannot revert to or be paid to any company, except companies that perform services for the Plan, such as recordkeepers, auditors and investment firms.

This money is invested by the trustee in the Plan funds as you direct. The Plan's trustee is:

Northern Trust
50 South LaSalle Street, M-28
Chicago, IL 60603

Plan Costs

All reasonable expenses associated with Plan and fund administration that are not paid by the Company may be paid with assets of the Plan. The trustee's recordkeeping and asset management fees are paid from the trust fund. Investment fees are deducted from fund assets, and therefore may affect net returns.

Investment management and other fees and expenses (such as loan and QDRO fees) may be deducted from your account, at the Plan's discretion. You can get detailed information about all applicable fees and expenses in the "*Annual Fee Disclosure Statement*" for the Plan (which is available from the Koch Benefits Solution Center online at *my*LifeChoices.com or by phone at (877) 344-5772), by reviewing the fee information on your quarterly statement or by contacting the Plan Administrator (see the "Administrative Information" section for more information on the Plan Administrator). For the investment funds, you may also consult each fund's fact sheet.

Pension Benefit Guaranty Corporation

As a defined contribution plan, the Plan is not covered by the plan termination insurance of the Pension Benefit Guaranty Corporation, a government corporation established under the Employee Retirement Income Security Act of 1974 (ERISA).

Top-Heavy Rules

A retirement plan that primarily benefits key employees is called a top-heavy plan. Key employees are certain owners or officers of the Employer. A plan is considered top-heavy if more than 60% of the plan's assets are attributable to key employees.

If the Plan becomes top-heavy in any plan year, non-key employees may be entitled to certain additional benefits, and other special rules may apply. You will receive more detailed information if the Plan becomes top-heavy.

Right to Change Benefits or Terminate the Plan

No amendment to this Plan can retroactively reduce benefits you have already earned, except if required to comply with an act of Congress or an Internal Revenue Service rule. Although the Company intends the Plan to be permanent, the Company reserves the right to end, amend, suspend contributions or terminate it at any time. If the Plan is terminated, you will be 100% vested in your account balance.

The Company may decide to continue the trust after the Plan terminates and pay out benefits as if the Plan had not terminated. Of course, no further contributions will be made. Otherwise, the Company will direct the trustee to make distributions (in the form of a lump-sum payment) as soon as administratively feasible and will terminate the trust as well.

Your ERISA Rights

As a participant in the Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan participants are entitled to the following rights.

Receive Information About Your Plan and Benefits

- Examine, without charge, at the Plan Administrator's office and at other specified locations such as worksites and union halls, all documents governing the Plan, including a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.
- Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, copies of the latest annual report (Form 5500 Series) and an updated summary plan description. The Plan Administrator may make a reasonable charge for the copies.
- Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

Obtain a statement telling you whether you have a right to receive a benefit at normal retirement age (age 65), and if so, what your benefits would be at normal retirement age if you stop working under the Plan now. If you do not have a right to a benefit, the statement will tell you how many more years you have to work to get a right to a benefit. This statement must be requested in writing and is not required to be given more than once every 12 months. The Plan must provide the statement free of charge.

Prudent Action by Plan Fiduciaries

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way just to prevent you from obtaining a benefit or exercising your rights under ERISA.

Enforce Your Rights

If your claim for a benefit is denied in whole or in part, you have the right to know why this was done, to obtain copies of documents relating to the decision, without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If you have a claim for benefits, which is denied or ignored, in whole or in part, you may file suit in a state or federal court. In addition, if you disagree with the Plan Administrator's decision or lack thereof concerning the qualified status of a domestic relations order, you may file suit in a federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees; for example, if it finds your claim is frivolous.

Assistance with Your Questions

If you have any questions about your Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest area office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U. S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

Key Terms

To understand how the Plan works, you should be aware of some key terms.

Beneficiary—The person(s) you name to receive your account balance when you die. If you are married on the date you die, your spouse is automatically your beneficiary unless you named someone else with your spouse's notarized consent.

Company—Koch Industries, Inc.

Disabled, Totally Disabled—You are considered disabled if you qualify for disability benefits from Social Security or the Company's long-term disability plan.

Employer—The Company and any other affiliated companies that adopt this Plan for the benefit of their employees.

Highly Compensated Employee (HCE)—A person whose pay during the previous calendar year equaled or was more than a specific dollar amount, as defined by the IRS (this amount may change annually) or who owns (or is considered to own) more than 5% of the outstanding stock of the Company or an affiliated company. Visit www.irs.gov for more information.

Normal Retirement Age—Age 65.

Qualified Domestic Relations Order (QDRO)—A legal order, part of a divorce or legal separation, that splits and changes ownership of a retirement plan to give the divorced spouse their share of the benefit. QDROs may grant ownership in your account to an alternate payee, who must be a spouse, former spouse, child or other dependent.

Spouse—Your legal spouse, as recognized under federal law.

Year of Service—A 12-month period of service beginning on your date of hire and ending on the date you quit, retire, are discharged or die, or the first anniversary of the date you remain absent from work for any reason other than your resignation, retirement, discharge or death.

2019

Koch Industries Employees' Savings Plan

Effective Date: 1/1/2019

Print Date: 1/2019