

State Street by first class mail or by overnight delivery within fifteen (15) calendar days of the date of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR § 2570.43(b)(2), which will advise such interested persons of their right, to comment on the proposed exemption.

With regard to notification to the active participants in the IP Retirement Plan, John Hancock proposes: (1) To ask International Paper to distribute the required notification pursuant to its usual and customary procedures for dissemination of information to employees; and (2) to direct that notification be posted within twenty-one (21) calendar days of the date of publication of the Notice in the **Federal Register**. Such postings will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR § 2570.43(b)(2), which will advise interested persons of their right to comment. International Paper has agreed to post the required notification on bulletin boards in prominent areas at those International Paper work sites at which more than ten (10) participants of the IP Retirement Plan work. Further, it is represented that International Paper will also provide written confirmation to the Department that it posted the required notification at the various work sites on a specified date.

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the *later of*: (1) The date when posting of a copy of the Notice and a copy of the Supplemental Statement was completed at all those International Paper work sites at which more than ten (10) participants in the IP Retirement Plan work; or (2) the date a copy of the Notice and a copy of the Supplemental Statement was received in the mail or by overnight delivery by State Street.

FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department, telephone (202) 693-8540 (This is not a toll-free number.)

G.D. Castillo, M.D., Ltd, Profit Sharing Plan (the Plan), Located in Savoy, IL

[Application No. D-11107]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective August 23, 1999, to the sale of two parcels of unimproved real property (the Properties) by the Plan to Doctor G.D. Castillo (the Sales), a party in interest with respect to such Plan, provided that the following conditions are met:⁶

(a) The terms and conditions of the Sales were at least as favorable to the Plan as those obtainable in similar arm's-length transactions involving unrelated parties;

(b) Each Sale was a one-time transaction for cash;

(c) The amount of cash received by the Plan for each Property was not less than the fair market value of such Property as of the date of the Sales as determined by a qualified, independent appraiser; and

(d) The Plan did not pay any fees or commissions in connection with the Sales.

EFFECTIVE DATE: August 23, 1999.

Summary of Facts and Representations

1. Doctor G.D. Castillo (Dr. Castillo), a physician specializing in plastic surgery, is the sole owner of G.D. Castillo, M.D., Ltd., a medical office located in Savoy, Illinois. G.D. Castillo, M.D., Ltd. is the sponsor of the Plan, a profit sharing plan having three participants and approximately \$2,667,475 in assets as of December 31, 1999. On the date of the Sales, the assets of the Plan were invested primarily in the Properties, stock, and other non-cash assets.

2. The assets of the Plan are invested according to the sole discretion of Dr. Castillo. In 1995 and 1996, Dr. Castillo directed the Plan to acquire the Properties from unrelated third parties (the Acquisitions). The first of the Properties is located at 1804A Woodfield Drive, Savoy, Illinois (the First Property) and is described as a commercial lot comprising approximately 17,178 square feet. Dr. Castillo directed the Plan to acquire this property for \$72,000 in 1995. The second of the Properties is located at Lot

50, J.L. Smith Lane, Monee, Illinois (the Second Property) and is described as an air park subdivision lot comprising approximately 43,200 square feet. Dr. Castillo directed the Plan to acquire this property for \$39,845 in 1996.

3. Subsequent to the Acquisitions, Dr. Castillo decided that the Properties were no longer appropriate investments for the Plan. In this regard, by 1999, Dr. Castillo determined that the Properties, while incurring certain costs to the Plan, were not appreciating as expected.⁷ As a result, Dr. Castillo directed the Plan to sell the Properties on the open market.

4. Concurrent with the offering of the Properties on the open market, Dr. Castillo identified a new investment opportunity for the Plan. In this regard, Dr. Castillo sought to acquire a certain improved real property located in Golden, Colorado (the New Property) on behalf of the Plan. Given that the Plan lacked sufficient liquid assets to acquire the New Property, Dr. Castillo initiated the Sales. In this regard, on August 23, 1999, the Plan sold the First Property and the Second Property to Dr. Castillo for \$70,000 and \$42,000, respectively. Dr. Castillo represents that both transactions were for cash and that the Plan was not charged any costs or fees arising in connection with the Sales.⁸ Thereafter, an accountant reviewed the Sales when preparing an Internal Revenue Service Form 5500 on behalf of the Plan with respect to the 1999 Plan year. Upon being notified that the Sales constituted a prohibited transaction, Dr. Castillo voluntarily filed this application for an exemption on January 15, 2001.

5. Dr. Castillo states that the amount of cash the Plan received for the Properties pursuant to the Sales equaled the fair market value of the Properties as of the date of the Sales. In this regard, Dr. Castillo states that the Properties were appraised by Mr. Carl Hill (Mr. Hill), a real estate appraiser with over 22 years of specialized experience in valuing commercial properties. In appraising these Properties, Mr. Hill used the sales comparison approach and determined that the fair market value of the First Property was \$70,000 as of March 15, 1999 and the fair market value of the Second Property was \$42,000 as of March 15, 1999.

⁷ The applicant represents that at the time of the Sales, these costs (i.e., taxes, association dues, and maintenance) totaled \$1,297.

⁸ Using the cash received from the Sales, the applicant states that the Plan acquired the New Property on August 27, 1999 from an unrelated third party for approximately \$690,000. Dr. Castillo states further that he has been unsuccessful in his attempts to resell the Properties on the open market.

⁶ The application for this proposed exemption, which was filed on January 19, 2001, was initially assigned the number D-10967 before being reassigned the above-referenced application number on July 22, 2002.