

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into as of _____, 2004, by and between BCBSM, Inc. d/b/a Blue Cross and Blue Shield of Minnesota (“Blue Cross”) and Tow Distributing, Inc., The Zierke Company, Big Valley Milling, Inc., Arrowhead Procure, and Mark Rime and Jack Spillane in their capacities as Trustees of the Teamsters Local #638 Health & Welfare Fund (collectively the “Plaintiffs”) individually and on behalf of the putative class described below, acting by and through their undersigned counsel (“Plaintiffs’ Counsel”).

RECITALS

1. On August 17, 1994, Blue Cross initiated a lawsuit in the Minnesota District Court for the Second Judicial District (File #C1-94-8565) against Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, B.A.T. Industries, P.L.C., Lorillard Tobacco Company, The American Tobacco Company, Liggett Group, Inc., The Counsel for Tobacco Research-USA, Inc., and the Tobacco Institute, Inc. (“Tobacco Litigation”). In this lawsuit, Blue Cross sought to recover damages for excess health care costs paid by Blue Cross due to smoking-related illnesses for its fully insured groups, as well as injunctive relief.
2. On May 8, 1998, Blue Cross settled the Tobacco Litigation for approximately \$469 million, to be paid over five years (“Tobacco Settlement”).
3. As a result of the Tobacco Settlement, Blue Cross developed a financial surplus in excess of that permitted by Minnesota law. In November 2001, Blue Cross submitted a Plan of Action to the Commissioner of Commerce for the State of Minnesota (“Commissioner”) to correct that excess surplus condition (“Plan of Action”). *See* Minn. Stat. § 62C.09, subd. 3.
4. The Plan of Action addressed the spending of \$160 million that Blue Cross had

received from the Tobacco Settlement. The Plan of Action did not address the remaining amount of \$252 million that Blue Cross received from the Tobacco Settlement, after payment of taxes and certain other expenditures approved by the Commissioner.

5. The Plan of Action provides that the amount of \$30,034,190.00 shall be distributed to groups that were fully insured by Blue Cross as of June 15, 2001. However, the Plan of Action also stipulates that Blue Cross will not distribute these funds to fully insured groups unless the United States Department of Labor (“Department of Labor”) issues an advisory opinion, pursuant to ERISA Procedures 76-1, that the distribution does not violate the Employee Retirement Income Security Act (“ERISA”) 29 U.S.C. §§1001, et seq.

6. On June 5, 2002, the Commissioner approved the Plan of Action.

7. On July 22, 2002, Plaintiffs Tow Distributing, Inc., The Zierke Company, Big Valley Milling, Inc., Robert Imdieke and Mary Ann Imdieke filed their Complaint against Blue Cross in the Minnesota District Court (“District Court”) for the First Judicial District (File #19-C4-02-9317) (“Lawsuit”). Plaintiffs thereafter filed a First Amended Complaint that added Arrowhead Procure as a plaintiff, and a Second Amended Complaint that added the Teamsters Local #638 Health & Welfare Fund as a plaintiff.

8. The Lawsuit is brought as a class action and seeks to recover damages from the Tobacco Settlement. The Lawsuit asserts claims against Blue Cross for breach of special duty, unjust enrichment, restitution, accounting, or for a constructive trust or an injunction.

9. After completing factual discovery, Plaintiffs’ Counsel have concluded that there is no evidentiary basis to support the claims of individuals and entities other than the groups fully insured by Blue Cross that are members of the Settlement Class, as defined in Paragraph 16. Plaintiffs’ Counsel have further determined that they could have a substantial conflict of interest

and that they presently do not have a good faith basis to hereafter assert claims against Blue Cross on behalf of any individuals or entities other than the members of the Settlement Class. Accordingly, in March 2004, plaintiffs Robert Imdieke and Mary Ann Imdieke voluntarily moved to dismiss their individual claims with prejudice, and Plaintiffs' Counsel moved to dismiss, without prejudice, any and all claims asserted against Blue Cross on behalf of any individuals or entities who are not Class Members, as defined in Paragraph 20. The District Court granted the motions on April 13, 2004, and ordered partial judgment.

10. Having conducted substantial discovery, investigations and negotiations and, considering the benefits of the settlement and the risks of litigation, Plaintiffs' Counsel conclude that it is in the best interest of Plaintiffs and the Settlement Class to enter into this Settlement Agreement.

11. Blue Cross disputes the material allegations of the Lawsuit, both as to the facts and law. Blue Cross has denied, and continues to deny, any liability to Plaintiffs or the Settlement Class.

12. Blue Cross desires to settle the Lawsuit to avoid the uncertainties and risks of trial, to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to enable Blue Cross to commence various health improvement programs that will benefit its members and all Minnesotans, and to obtain the covenants, releases, orders and judgments contemplated by this Settlement Agreement to put to rest totally and finally the matters at issue in the Lawsuit.

13. Plaintiffs' Counsel will move the District Court to certify the Settlement Class. Blue Cross and its counsel will not oppose the motion to certify the Settlement Class solely for purposes of carrying out the Settlement Agreement.

14. Plaintiffs' Counsel and Blue Cross agree that this Settlement Agreement is subject to Rule 408 of the Minnesota Rules of Evidence, and that this Settlement Agreement cannot be used by any person with respect to the certification or denial of certification of a litigation class, or with respect to the merits or lack of merits of any claims or defenses which have been asserted in this Lawsuit.

DEFINITIONS

15. The following terms are defined in this Settlement Agreement:

- A. "Blue Cross" is defined in the introductory paragraph.
- B. "Claim Form" is defined in Paragraph 22.
- C. "Class Member(s)" is defined in Paragraph 20.
- D. "Class Period" is defined in Paragraph 16.
- E. "Commissioner" is defined in Paragraph 3.
- F. "Contract Holders" is defined in Paragraph 20(C).
- G. "Department of Labor" is defined in Paragraph 5.
- H. "Distribution Eligibility" is defined by Paragraph 20(A).
- I. "District Court" is defined in Paragraph 7.
- J. "Eligibility Date" is defined in Paragraph 20(B).
- K. "ERISA" is defined in Paragraph 5.
- L. "Final" is defined in Paragraph 40.
- M. "Lawsuit" is defined in Paragraph 7.
- N. "Lead Plaintiffs' Counsel" is Karl L. Cambronne, at Chestnut & Cambronne, P.A.
- O. "MID" is defined in Paragraph 20(A).

- P. “Participating Class Member(s)” is defined in Paragraph 20, and its subparts.
- Q. “Plaintiffs” is defined in the introductory paragraph.
- R. “Plaintiffs’ Counsel” is defined in the introductory paragraph.
- S. “Plan of Action” is defined in Paragraph 3.
- T. “Service Cooperatives” is defined in Paragraph 17.
- U. “Settlement Agreement” is defined in the introductory paragraph.
- V. “Settlement Amount” is defined in Paragraph 18.
- W. “Settlement Class” is defined in Paragraph 16.
- X. “Tobacco Litigation” is defined in Paragraph 1.
- Y. “Tobacco Settlement” is defined in Paragraph 2.

SETTLEMENT TERMS

16. **Settlement Class.** Pursuant to this Settlement Agreement only, Plaintiffs and Plaintiffs’ Counsel will move the District Court to certify a settlement class (the “Settlement Class”) under Rule 23.02(c) of the Minnesota Rules of Civil Procedure. The Settlement Class shall consist of:

all fully insured groups, service cooperatives, pools and associations, including but not limited to all predecessors, successors, assigns, trustees, sponsors, affiliated entities, groups, subgroups, retiree groups, employers, and health and welfare plans, that were fully insured by Blue Cross at any time from January 1, 1978 through June 15, 2001 (“Class Period”). The Settlement Class shall not include (i) individuals who purchased health insurance from Blue Cross through individual or Medicare Supplement contracts, (ii) self-insured groups, including self-insured employers, (iii) stop-loss insureds, (iv) the Minnesota Comprehensive Health Association, (v) the Federal Employee Plan, (vi) subscribers and groups that belong to other Blue Cross-affiliated companies, and (vii) persons or groups who received services from Blue Cross through relationships with a Blue Cross plan headquartered in a state other than Minnesota, except to the extent that such group included persons living in Minnesota for whom Blue Cross assumed insurance risk but then only to the extent of the membership for which Blue Cross

assumed such risk.

There may be instances where self-insured employers and others may nonetheless be members of the Settlement Class. This may occur, for example, if an employer had a fully insured contract with Blue Cross during the Class Period, but later became self insured. In that event, the employer will be considered a member of the class, but its share of the Settlement Amount will be based solely on the time period in which it held a fully insured contract.

17. **Treatment of Service Cooperatives.** During the Class Period, entities organized under Minn. Stat. § 123A.21 and/or predecessor statutes (“Service Cooperatives”) purchased fully insured group policies from Blue Cross and then later became self-insured. For purposes of this Settlement Agreement, a Service Cooperative will be deemed a fully insured group for any time during which it purchased or arranged for the purchase of a fully insured group policy from Blue Cross and the effective date of any such contract with Blue Cross was on or before June 30, 1992. Upon the effective date of any contract renewed on or after July 1, 1992, a Service Cooperative will be deemed self-insured (and therefore its share of the Settlement Amount will be based solely on the earlier time periods in which it may have held a fully insured contract).

In addition to the Service Cooperatives listed in Exhibit 2, a number of cities, counties, and other governmental agencies belonged to a state-wide service cooperative until approximately July 2000. At that time, these governmental units no longer belonged to a state-wide service cooperative and instead were divided among the several regional Service Cooperatives that are listed in Exhibit 2. For purposes of this Settlement Agreement, a governmental unit identified by this paragraph will be deemed a member of the regional Service Cooperative in which the governmental unit is geographically located.

18. **Settlement Amount.** Blue Cross agrees to pay \$41,034,190.00 to the Settlement Class (“Settlement Amount”). The Settlement Amount shall consist of the amount of \$30,034,190.00 to be distributed by Blue Cross to fully insured groups, subject to certain contingencies, under the Plan of Action previously approved by the Commissioner, together with the additional amount of \$11,000,000 to be paid by Blue Cross from proceeds of the Tobacco Settlement.

19. **Regulatory Approvals.** This Settlement Agreement is subject to the Commissioner approving the transfer of \$30,034,190.00 from the Plan of Action to the jurisdiction of the District Court for distribution to the Settlement Class as provided in this Settlement Agreement. Blue Cross and Plaintiffs’ Counsel will cooperate in requesting that the Commissioner approve the transfer of the \$30,034,190 to the jurisdiction of the District Court, effective upon this Settlement Agreement becoming Final.

This Settlement Agreement is also subject to the determination by the Department of Labor that the proposed settlement distribution does not violate ERISA. Blue Cross has requested an advisory opinion from the Department of Labor that the proposed distribution does not violate ERISA.

20. **Settlement Distribution.** The entire Settlement Amount (less attorneys’ fees and costs awarded by the District Court) will be distributed among all entities that are members of the Settlement Class (“Class Members”) and who timely submit a claim pursuant to the terms of this Settlement Agreement. A Class Member who timely submits a claim pursuant to the terms of this Settlement Agreement is a “Participating Class Member.” The Settlement Amount will be divided so that, to the extent possible and subject to the maximum distribution provision provided in subparagraph G below, Participating Class Members of approximately the same size

and of similar lengths of years of coverage will receive the same amount. The following subparagraphs further describe the identification of Participating Class Members and how Blue Cross will calculate the size and length of years of coverage of each Participating Class Member. This distribution formula is largely based on the formula contained in the Plan of Action, which the Commissioner determined to be fair to Blue Cross fully insured groups.

A. **Distribution Eligibility.** Each Participating Class Member is entitled to only one distribution. Because a Participating Class Member includes all predecessors, successors, assigns, trustees, sponsors, affiliated entities, groups, subgroups, retiree groups, employers, and health and welfare plans, Blue Cross shall, in its exercise of reasonable discretion and to avoid double payments, determine which entities are included within a single Participating Class Member for purposes of Distribution Eligibility. Blue Cross will primarily identify Participating Class Members based on their Market Identification Numbers (“MID”), which Blue Cross began using in 1983.

B. **Eligibility Date.** For Participating Class Members that had fully insured contracts with Blue Cross as of June 15, 2001, their Eligibility Date is June 15, 2001. For all other groups, the Eligibility Date will be the last day on which the group held a fully insured contract with Blue Cross during the Class Period.

C. **Calculation of Group Size.** Participating Class Members will be divided into categories depending on their size. Participating Class Member size is the number of employee participants covered by the Participating Class Member’s contract with Blue Cross, including former employees who continued to obtain Blue Cross health insurance through the Participating Class Member’s fully insured contract (“Contract Holders”). It does not include dependents or other beneficiaries. Participating Class Member size will be calculated as the total

number of Contract Holders covered by the fully insured contract from the beginning of the month in which the Eligibility Date falls to the Eligibility Date.

If several groups or subgroups have been combined into a single Participating Class Member for purposes of Distribution Eligibility, as described in Paragraph 20(A), above, then the calculation of group size will include each of the several groups or subgroups. This calculation, however, is based on the last Eligibility Date that any of the several groups or subgroups were fully insured with Blue Cross. Therefore, if a Participating Class Member has several subgroups that have been fully insured with Blue Cross at various times, then the calculation is based on the total number of that Participating Class Member's Contract Holders during the month of the last Eligibility Date of any one of the subgroups was with Blue Cross.

To ease the calculation and minimize the cost of the distribution, Participating Class Members will be placed into categories based on the number of Contract Holders. The distribution calculation will be determined based on the mid-point of each category. The groupings and their weighted amount of distribution are shown in attached Exhibit 1, subject to the maximum distribution provision in subparagraph G, below.

D. Calculation of Years of Coverage. For each Participating Class Member, Blue Cross will calculate the number of years that the Participating Class Member purchased a fully insured contract during the Class Period. The years do not need to be consecutive.

A consecutive twelve-month period cannot count toward more than one year. For example, if several subgroups have been combined into a single entity for purposes of Distribution Eligibility, as described in Paragraph 20(A), above, then the Participating Class Member cannot claim the same calendar year as counting toward more than one year of purchase.

For purposes of weighting the calculation of distribution, Participating Class Members will be placed into one of three categories: (a) those Participating Class Members that have contracted with Blue Cross for at least one full day but less than one year, as of the Eligibility Date; (b) those Participating Class Members that have contracted with Blue Cross for one year but less than three years, as of the Eligibility Date; and (c) those Participating Class Members that have contracted with Blue Cross for three or more years, as of the Eligibility Date. Groups that have contracted with Blue Cross for one year but less than three years, will receive four times more than groups of the same size category that contracted with Blue Cross for at least one full day but less than one year, but subject to the maximum distribution provision in subparagraph G, below. Groups that have contracted with Blue Cross for three or more years will receive nine times more than groups of the same size category that contracted with Blue Cross for at least one full day but less than one year, but subject to the maximum distribution provision in subparagraph G, below. See Exh. 1.

E. **Treatment of Service Cooperatives.** At different times within the Class Period, some Class Members may have entered into fully insured group contracts both in their own name as well as through a Service Cooperative. Blue Cross will determine the Eligibility Date, group size, and years of coverage for each such Class Member. The provisions of this subsection apply to Class Members who, at any time, have been members of any Service Cooperative that is listed in Exhibit 2, or any of the predecessors or successors to those Service Cooperatives.

(1) If the Class Member was not a member of a Service Cooperative on the Class Member's Eligibility Date, then the Class Member must complete and file a Claim Form to be a Participating Class Member. Blue Cross will issue the distribution directly to this

Participating Class Member.

(2) If the Class Member was a member of a Service Cooperative on the Class Member's Eligibility Date, then Blue Cross will not issue a distribution to that Class Member. Instead, the Class Member's share of the Settlement Amount will be eligible for distribution directly to the Service Cooperative. This Class Member is not required to submit a Claim Form. The Service Cooperative must submit a Claim Form in order to receive its portion of the Settlement Amount. A distribution to a Service Cooperative equals the sum of the amounts that the Service Cooperative's members would have received had the distribution been made directly to those members; except that the total distribution to a Service Cooperative is subject to the maximum distribution provision in subparagraph G, below. *See Example A*, attached. By submitting a Claim Form, an eligible Service Cooperative becomes a Participating Class Member.

F. Treatment of Associations and Pools. At different times within the Class Period, some Class Members may have obtained fully insured group coverage through an association or pool. These provisions apply to Class Members who, at any time, have been members of any association that is listed in Exhibit 3, or any of the predecessors or successors to those associations; or to any member of a pool that is listed in Exhibit 4, or any of the predecessors or successors to those pools.

(1) If the Class Member belonged to an association, then the Class Member will not receive any distribution based on an Eligibility Date, its group size, or its years of coverage for the time that it obtained fully insured group coverage through the association. The association can receive a distribution if it becomes a Participating Class Member. The association must submit a Claim Form in order to participate in the distribution of the Settlement

Amount. By submitting a Claim Form, an eligible association becomes a Participating Class Member. The distribution to the association will be based on the association's Eligibility Date, group size, and years of coverage; and not the Eligibility Dates, group sizes, or years of coverage of the association's members. *See Example B, attached.*

(2) If a Class Member belonged to a pool, then the Class Member will receive a distribution based on the Class Member's Eligibility Date, its group size, and its years of coverage. The pool itself will not be eligible for a distribution. The calculation of each Class Member's years of coverage will include the entire time that it was a fully insured group with Blue Cross, regardless of whether it was a member of a pool at any particular time.

G. **Maximum Distribution.** In no event will any Participating Class Member receive a distribution of more than \$400,000.00. If the distribution to any Participating Class Member is capped by this provision, the excess will be distributed to other Participating Class Members based on the calculation procedures stated above. Each Service Cooperative and association is also subject to this maximum distribution provision.

H. **Unclaimed Funds.** No Participating Class Member has any property interest in the distribution until such time as the Participating Class Member has cashed any distribution check. In the event that any distribution checks are returned to Blue Cross, or are not cashed within 180 days of the date printed on the check, the funds shall be distributed either to the Healthier Minnesota Community Clinic Fund or another organization mutually agreeable to the parties.

21. **Escrow.** Once this Settlement Agreement is Final, Blue Cross shall deposit the Settlement Amount in a separate escrow account subject to the jurisdiction of the District Court. All interest earned on the escrow account shall inure to the benefit of the Settlement Class. Any

interest earned after the distribution checks are prepared shall be distributed either to the Healthier Minnesota Community Clinic Fund or another organization mutually agreeable to the parties.

22. **Claims.** To receive a settlement payment, each Class Member must submit a Claim Form that, in substance, provides the information required in the form that is attached to this Settlement Agreement as Exhibit 5. The required information includes the name of the Class Member, its current address, its Blue Cross group identification number (if known), the Class Member's tax identification number, the name and telephone number of a contact person, and a statement of whether the Class Member had coverage before 1983. The individual signing the Claim Form must certify that the Class Member is eligible for a share of the distribution and that the person has authority to sign the Claim Form on behalf of the Class Member. The Claim Form must be signed under penalty of perjury.

23. **Disputes regarding Distribution Eligibility, Eligibility Date, Size, or Years of Coverage.** Blue Cross will determine a Participating Class Member's Distribution Eligibility, Eligibility Date, size, and years of coverage based on its internal business records. Blue Cross's records shall alone determine the Eligibility Date, size and years of coverage.

In the event that Blue Cross disputes the Distribution Eligibility of any person or entity to obtain a distribution, Blue Cross will notify the person or entity as well as Plaintiffs' Counsel within 21 days following the District Court's Final Judgment and Order. From the date that Blue Cross mails its notification, the person or entity will then have 21 days to file and serve a motion before the District Court to determine whether it is eligible for a distribution from the Settlement Amount. If the person or entity fails to bring a motion within that time, Blue Cross's decision with respect to Distribution Eligibility is final.

24. **Vacating Certification of the Settlement Class.** The certification of the Settlement Class shall be binding only with respect to the settlement of the Lawsuit. In the event that the Settlement Agreement is terminated in the manner provided herein or is not approved by the District Court, or is reversed, vacated, or modified by any appellate court, the certification of the Settlement Class shall be deemed vacated, and the Lawsuit shall proceed as though the Settlement Class had never been certified. The certification of the Settlement Class, or any documents related thereto, shall not be admissible for any purpose if the Settlement Agreement does not become Final.

25. **Exclusion Threshold.** If Class Members that, in the aggregate, either (a) have more than 10,000 Contract Holders or (b) would otherwise be entitled to receive more than 2.5% of the Settlement Amount if they had participated in the settlement (totaling \$1,025,854), elect to exclude themselves from the Settlement Class, then Blue Cross will have the option, at its sole discretion, to withdraw from this Settlement Agreement. Blue Cross must notify Plaintiffs' Counsel and the District Court of its decision within seven days of determining that the requests for exclusion exceed the exclusion threshold described above. Because this right to withdraw depends in part on the claims submitted by Participating Class Members, the parties understand that Blue Cross's time for terminating the Settlement Agreement under this paragraph may extend beyond the date scheduled for the District Court's fairness hearing. If that occurs, the parties may ask the District Court to reschedule the fairness hearing until Blue Cross's time for terminating the Settlement Agreement under this paragraph has ended.

26. **Administration.** Blue Cross will be responsible for providing notice to the Settlement Class, calculating claims, and paying amounts due to Participating Class Members. Blue Cross will begin mailing the distribution to Participating Class Members within 30 days

after the Settlement Agreement has become Final, as defined in Paragraph 40; *except* the distribution may be delayed if the resolution of any dispute, described in Paragraph 23, would alter the distribution calculation. If the distribution is delayed for this reason, then Blue Cross will begin mailing the distribution to Participating Class Members within 30 days after all disputes described in Paragraph 23 that might alter the amount of distribution to other claimants have become Final. Along with the distribution, Blue Cross may include a Form 1099, and also may include other literature, subject to timely disapproval by Lead Plaintiffs' Counsel. Lead Plaintiffs' Counsel may monitor Blue Cross's administration.

27. **Flexible Administrative Deadlines.** Blue Cross currently intends to hire a third-party administrator with respect to the mailing of class notices, the processing of Claim Forms, the settlement distribution, and other matters. Blue Cross intends to oversee the administrator, determine Distribution Eligibility, respond to telephone inquiries by Class Members, and other matters. Due to the seasonal nature of its business requirements, however, Blue Cross may not be able to perform its tasks timely to the extent that they occur between November 1 and January 31. Accordingly, Plaintiffs and Blue Cross agree that the deadlines contained in this Settlement Agreement will be reasonably modified in order to ease Blue Cross's administrative burden.

28. **Costs of Notice/Distribution/Administration.** In addition to the Settlement Amount, Blue Cross shall contribute an additional amount, not to exceed \$250,000, from the proceeds of the Tobacco Settlement to cover its own out-of-pocket costs (e.g. notice, publication, printing, copying, postage, incidental temporary staff) incurred in connection with the administration of the Settlement Agreement. Any out-of-pocket costs incurred in excess of \$250,000 shall be paid from the Settlement Amount. If Blue Cross anticipates that its out-of-pocket costs will exceed \$250,000, Blue Cross will notify Lead Plaintiffs' Counsel as soon as

practicable.

29. **Plaintiffs' Attorneys' Fees, Incentive Awards and Costs.** Plaintiffs' Counsel shall be entitled to seek an award of attorneys' fees, incentive awards, and their costs from the District Court solely from the Settlement Amount. Blue Cross shall have no obligation to Plaintiffs' Counsel except with respect to payment of the Settlement Amount. Blue Cross shall, within ten (10) days of the Settlement Agreement becoming Final, pay from the Settlement Amount the awarded attorneys' fees, incentive awards, and costs, as directed by the District Court. Plaintiffs will move the District Court to have the funds paid to the Chestnut & Cambronne Trust Account. To the extent required by law as a condition for receiving payment: Chestnut & Cambronne shall advise Blue Cross of the identity of each person receiving a distribution and the amount of the distribution within 30 days of the Settlement Agreement becoming Final; and each person entitled to receive a payment of attorneys' fees, incentive awards, or costs, shall furnish to Blue Cross a completed IRS tax information form W-9.

30. **Release of Claims.** In consideration for the payment by Blue Cross of the Settlement Amount, each Plaintiff and each Class Member (except any person who has obtained proper and timely exclusion from the Settlement Class), for itself, its present, former and future parent companies, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, subsidiaries, trustees, sponsors, affiliated entities, subgroups, retiree groups, employers, and health and welfare plans, shall hereby release and forever discharge Blue Cross, its present, former and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, successors, predecessors-in-interest, officers, directors, employees, attorneys, representatives and agents, from any and all rights, duties, obligations, demands, claims, actions, causes of action, or liabilities, whether arising under local, state, or

federal law, whether by statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, whether brought directly or indirectly, representationally, derivatively or in any capacity, for or on account of or arising or growing out of or based upon, related to or concerning the Tobacco Litigation, or the Tobacco Settlement, or Blue Cross's plans to spend or expenditure of any proceeds of the Tobacco Settlement, including, for example, all claims asserted in the Second Amended Complaint for breach of special duty, unjust enrichment, restitution, accounting or for a constructive trust or an injunction together with any additional claims that could have been asserted against Blue Cross as a result of the matters alleged in the Second Amended Complaint.

31. **Dismissal of Named Plaintiffs.** The claims of each named Plaintiff asserted against Blue Cross in the Lawsuit shall be dismissed with prejudice.

32. **Miscellaneous.**

A. Each current health insurance contract between Blue Cross and each Class Member shall remain in effect according to its terms, and each Class Member shall remain obligated to pay Blue Cross any and all premiums when due.

B. The parties and their counsel shall defend the Settlement Agreement against all objections and appeals.

C. The Settlement Agreement, and all negotiations, pleadings, acts, statements or conduct of the parties or their counsel related to the Settlement Agreement, shall not be deemed as an admission of wrongdoing or liability of any kind by Blue Cross or as an acknowledgment that a litigation class can be certified in this Lawsuit or any other litigation. The Settlement Agreement and all negotiations, pleadings, acts, statements or conduct of the

parties or their counsel related to the Settlement Agreement shall be subject to Rule 408 of the Minnesota Rules of Evidence and shall not be offered into evidence or otherwise be used against Blue Cross in the Lawsuit or any other case or proceeding. If the Settlement Agreement does not receive preliminary or final approval, or is terminated, Blue Cross retains the right to object to any motion to certify any litigation class on any grounds.

D. The parties shall have no further discovery or document preservation obligations after the Settlement Agreement becomes Final, and shall return to one another all documents produced during discovery in this Lawsuit.

E. Whenever Blue Cross or Plaintiffs' Counsel are required to provide notice to the other, the notice shall be directed as follows:

(1) For Plaintiffs' Counsel

Karl L. Cambronne, Esq.
Chestnut & Cambronne, P.A.
222 So. 9th Street, Suite 3700
Minneapolis, MN 55402

(2) For Blue Cross

James R. Safley, Esq.
Robins, Kaplan, Miller & Ciresi L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402

F. In addition to providing written notice to Class Members in the manner provided in this Settlement Agreement, Blue Cross may directly communicate with some but not all Class Members, as it deems necessary, to promote or effectuate this Settlement Agreement.

SETTLEMENT PROCEDURE

33. **Preliminary Approval.** Within fifteen (15) days after all parties have executed this Settlement Agreement, Plaintiffs and Blue Cross shall jointly submit this Settlement

Agreement to the District Court. Plaintiffs shall also move the District Court to issue an order that:

- (a) Preliminarily approves this Settlement Agreement;
- (b) Preliminarily certifies the Settlement Class;
- (c) Appoints Lead Plaintiffs' Counsel and Plaintiffs' Counsel;
- (d) Approves the proposed Notice, attached hereto as Exhibit 6, and directs its mailing to Class Members as provided in this Settlement Agreement;
- (e) Approves the proposed Notice, attached hereto as Exhibit 7, and directs its publication as provided in this Settlement Agreement;
- (f) Finds that the method and manner of providing notice will fully and adequately advise Class Members of their rights and obligations under the Settlement Agreement and is the best notice practicable under the circumstances; and
- (g) Schedules a hearing to determine the reasonableness, adequacy, and fairness of this Settlement Agreement pursuant to Minn. R. Civ. P. 23(e), and whether it should be finally approved.

34. **Notice.** After receiving preliminary approval from the District Court of this Settlement Agreement and of the Class Notice, and no later than 15 days after such Preliminary Approval, Blue Cross shall begin to mail the Notice of the Settlement Agreement ("Notice") to all Class Members at their last address readily known to Blue Cross as well as to all Service Cooperatives, associations, or pools listed in Exhs. 2-4. Blue Cross shall conduct a reasonable search only of its records that are readily available in a manner that is not unduly burdensome or expensive to compile the names and last known addresses of Class Members. If Blue Cross maintains only the address of the Class Member's agent, Blue Cross will mail the notice to the

agent's address. Blue Cross will exercise its best efforts to complete the mailing within 30 days after receiving Preliminary Approval of this Settlement Agreement. Blue Cross shall have no obligation to re-mail any notices that are returned, unless updated address information is provided by the United States Postal Service on the returned envelope. Blue Cross shall also provide notice, no later than 30 days after receiving Preliminary Approval of this Settlement Agreement, by a one-day publication in each of the periodicals listed in Exhibit 8. The parties agree that the notice provided by this Settlement Agreement satisfies all federal and state due process requirements as well as all requirements under Rule 23 of the Minnesota Rules of Civil Procedure.

35. **Claims for Settlement Payment.** A Claim Form will be included in the mailing to Class Members and, at or near the time of the mailing, a Claim Form will also be posted at a Blue Cross web site. Plaintiffs' Counsel will also provide a Claim Form to Class Members on request. All fully completed Claim Forms must be postmarked or received by Blue Cross no later than 45 days after Blue Cross's deadline for completing the mailing of notices, as set forth in Paragraph 34. If a deficient Claim Form, as described in Paragraph 36, is received before this deadline, then the claimant may timely resubmit a Claim Form within ten days after the date of the letter notifying the claimant of the Claim Form's deficiency. All information submitted with a Claim Form is subject to verification by Blue Cross and Plaintiffs' Counsel as a condition of receiving payment under this Settlement Agreement.

36. **Claim Forms that do not Qualify for Distribution.** Claimants are alone responsible for timely submitting complete and accurate Claim Forms. In the event that a Claim Form is submitted such that it does not qualify for a distribution under this Settlement Agreement, Blue Cross will notify the claimant, by mail, that the claim does not qualify and the

reason(s) that it does not qualify, in the form substantially like Exhibit 9 (claim deficiency) or Exhibit 10 (lack of eligibility). The corrected Claim Form must be postmarked or received by Blue Cross on or before the later of (a) ten days after the date of the letter notifying the claimant of the deficiency or (b) the deadline for submitting claims as set out in Paragraph 35. Blue Cross is not required to provide more than one opportunity for claimants to correct a deficient Claim Form. Blue Cross will notify claimants if their claim has been denied.

37. **Plaintiffs' Right of Exclusion.** All Class Members who properly file a timely written request for exclusion from the Settlement Class shall be excluded from the Class, shall have no rights as Participating Class Members pursuant to this Settlement Agreement, and shall receive no portion of the Settlement Amount as provided herein. A request for exclusion must be in writing, must be signed by a person with authority, and must identify the current name, address, and phone number, of the Class Member seeking exclusion.

A request for exclusion must be received by Lead Plaintiffs' Counsel at the address provided in the Class Notice. The written request for exclusion must be postmarked or received by Lead Plaintiffs' Counsel no later than 45 days after Blue Cross's deadline for completing the mailing of notices, as set out in Paragraph 34. Lead Plaintiffs' Counsel shall forward copies of each request for exclusion to counsel for Blue Cross no later than seven (7) days from receipt of such request. The parties may require a person filing a written request for exclusion to certify under oath that such person has authority to request exclusion on behalf of a Class Member. With the consent of Lead Plaintiffs' Counsel and Blue Cross, a Class Member can rescind its request for exclusion and become a Participating Class Member at any time before the District Court conducts its fairness hearing.

38. **Plaintiffs' Right of Objection.** Any Class Member who timely objects to the Settlement Agreement may appear by an authorized representative or through counsel, at its own expense, at the fairness hearing to present any evidence or argument that may be proper and relevant. No Class Member shall be heard and no papers, briefs, or pleadings submitted by any such Class Member shall be received and considered by the District Court unless both the District Court and Lead Plaintiffs' Counsel receive such Class Member's written and signed objection that includes (a) the name, address, and telephone number of the Class Member filing the objection; (b) a notice of intention to appear with the name, address, and telephone number of the representative or attorney who will appear at the hearing; (c) certification of membership in the Settlement Class; and (d) the grounds and reasons for the objection. This written and signed objection must be postmarked or received by both the District Court and Lead Plaintiffs' Counsel no later than 45 days after Blue Cross's deadline for completing the mailing of notices as set out in Paragraph 34. Any Class Member who fails to object in the manner prescribed herein shall be deemed to have waived its objections and forever be barred from making any such objections in the Lawsuit or in any other action or proceeding. Lead Plaintiffs' Counsel shall forward a copy of each written objection to counsel for Blue Cross within seven (7) days of receipt of such objection.

39. **Fairness Hearing, Final Judgment and Order.** Plaintiffs and Blue Cross will request the District Court to set a date for a fairness hearing that will fall at least 30 days after the deadline for Class Members to submit Claim Forms, request exclusions, or file objections. At the final hearing pursuant to Minn. R. Civ. P. 23(e), Plaintiffs and Blue Cross shall jointly move the District Court to issue an order in the form of attached Exhibit 11:

- (a) Granting final approval of this Settlement Agreement without material alteration

of its terms;

(b) Finding that the terms of this Settlement Agreement are fair, reasonable, and adequate as to the Settlement Class;

(c) Providing that each Class Member, except those who have properly filed a timely written request for exclusion as provided herein, is bound by this Settlement Agreement and its releases regardless of whether such Class Member submits any claim;

(d) Approving such requests for exclusion as have been timely submitted to the District Court;

(e) Dismissing all claims against Blue Cross in this Lawsuit on the merits and with prejudice and entering final judgment thereon; and

(f) Providing that the District Court shall maintain jurisdiction over the implementation of this Settlement Agreement and any dispute, claim, or action arising out of or related to this Settlement Agreement.

40. **Final Approval.** The Settlement Agreement shall be deemed to be Final one day after the later of: (a) expiration of the date by which any Class Member must file a document seeking an appeal, review, rehearing, reconsideration, or any other action regarding the Final Judgment and Order, if no such document has been filed; or (b) in the event that any Class Member files a document seeking an appeal, review, rehearing, reconsideration, or any other action regarding the Final Judgment and Order, then the date upon which all appellate and/or other proceedings resulting from such document have been finally terminated in such a manner as to permit no further judicial action, and with the Final Judgment and Order being affirmed and approved in all material respects.

41. **Defendant's Right to Withdraw.** Blue Cross shall have the option in its sole

discretion to withdraw from this Settlement Agreement, and thereby render the Settlement Agreement null and void, as follows:

(a) If requests for exclusion exceed the exclusion threshold as stated in Paragraph 25, above; or

(b) If Plaintiffs breach any material provision of this Settlement Agreement or the Preliminary Approval Order, or fail to fulfill any obligation hereunder or thereunder; or

(c) If Blue Cross, in its sole discretion, determines that it has not obtained a satisfactory advisory opinion from the Department of Labor that the proposed settlement distribution does not violate ERISA; or

(d) If the Commissioner does not approve the transfer of \$30,034,190.00 from the Plan of Action to the jurisdiction of the District Court.

42. **Effect of Withdrawal or Non-approval.** This Settlement Agreement shall become null and void, all orders pursuant to this Settlement Agreement shall be deemed vacated, and the Lawsuit may continue, in the event that:

(a) Blue Cross withdraws from the Settlement Agreement, as permitted by the terms of this Settlement Agreement;

(b) The District Court does not issue the Preliminary Approval Order, or Final Judgment and Order; or

(c) The Final Judgment and Order is reversed, vacated, or modified by any appellate court.

Upon withdrawal or non-approval, all parties will return to their respective positions as if they had not entered into this Settlement Agreement. Any funds held in an escrow account, including interest, shall be returned to Blue Cross within 3 days of Blue Cross's request.

GENERAL TERMS AND CONDITIONS

43. **Settlement Negotiations.** This Settlement Agreement is the result of extensive arms-length negotiations between the parties and their analysis of all relevant issues involved, both legal and factual. The parties strongly dispute the factual and legal issues raised by the Second Amended Complaint. Taking into account the risks, uncertainties, burdens, delays, and costs of further litigation, Plaintiffs and Blue Cross have each concluded that it is in their best interests, and in the best interests of the Settlement Class, to compromise and settle the Lawsuit on the terms set forth in this Settlement Agreement.

44. **Effective Date.** The effective date of this Settlement Agreement shall occur on the day the Final Judgment and Order has become Final in accordance with Paragraph 40 of this Settlement Agreement.

45. **Drafting.** The parties agree that no single party shall be deemed to have drafted this Settlement Agreement or any portion thereof, and that for purposes of construing any ambiguity it is agreed that this Settlement Agreement is the collaborative effort of all parties and their attorneys and there will be no construction of an ambiguity against any party on account of any claim that such party drafted the subject language.

46. **Authorization.** Plaintiffs' Counsel and Blue Cross represent that they are expressly authorized by the parties whom they represent to enter into this Settlement Agreement, to take all appropriate action required or permitted to be taken pursuant to this Settlement Agreement, and to execute any other documents required to effectuate the terms of this Settlement Agreement.

47. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one of the same

instrument provided that counsel for the parties to this agreement shall exchange among themselves original signed counterparts.

48. **Integration of Exhibits.** The exhibits to this Settlement Agreement are an integral and material part of the Settlement Agreement and are hereby incorporated and made a part of the Settlement Agreement.

49. **Cooperation.** The parties shall cooperate in presenting papers, affidavits and/or testimony to the District Court as may be necessary to effectuate the purposes and intent of this Settlement Agreement.

50. **Integration Clause.** This Settlement Agreement represents the entire and sole agreement negotiated and agreed to by and between Plaintiffs and Blue Cross. This Settlement Agreement is an integrated document and shall not be amended, modified, or supplemented, nor shall any of its provisions be deemed waived, unless by written agreement signed by the respective attorneys for the parties.

51. **Jurisdiction.** The District Court shall maintain jurisdiction over all disputes and administrative matters pertaining to this Settlement Agreement.

52. **No Admission.** Nothing in this Settlement Agreement shall constitute or be construed as an admission by Blue Cross of any liability or wrongdoing whatsoever, nor shall any portion or aspect of this Settlement Agreement be offered or received in evidence, or be subject to discovery, in this Lawsuit or any other action or proceeding against Blue Cross, except to implement the terms of this Settlement Agreement.

ON BEHALF OF PLAINTIFFS AND THE SETTLEMENT CLASS:

Tow Distributing, Inc.

By: s/Keith M. Tow

Its: President

Date: 9/27/04

The Zierke Company

By: s/Bruce Zierke

Its: President

Date: 9-27-04

Big Valley Milling, Inc.

By: s/Thomas Daline

Its: General Manager, Secretary

Date: 9-27-04

Arrowhead Procure

By: s/William R. Hachey

Its: Chairman

Date: 10/5/04

Teamsters Local #638 Health & Welfare Fund

By: s/Mark C. Reim
Mark Rime, Trustee

Date: October 28, 2004

By: s/Jack Spillane
Jack Spillane, Trustee

Date: 11-01-04

Chestnut & Cambronne, P.A.

By: s/Karl L. Cambronne

Date: Oct. 5, 2004

Lockridge Grindal Nauen, LLP

By: s/Robert K. Shelquist

Date: Sept. 24, 2004

Heins Mills & Olson

By: s/Daniel C. Hedlund

Date: 9-27-04

Cochrane & Bresnahan, P.A.

By: s/James R. Bresnahan

Date: 9/27/2004

Reinhardt, Wendorf & Blanchfield

By: s/Garrett Blanchfield

Date: September 24, 2004

Meshbeshner & Spence, LTD.

By: s/Tony J. Nemo

Date: 9-24-04

Meagher & Geer, PLLP

By: s/James F. Rogge

Date: 9-24-04

Mansfield Tanick & Cohen, P.A.

By: s/Seymour J. Mansfield

Date: 9/29/04

Perry, Perry & Perry

By: Shawn Perry

Date: 9/28/04

Schwebel Goetz & Sieben, P.A.

By: s/Sharon L. Van Dyck

Date: 30 September, 2004

Darval, Wermerskirchen & Frank, P.A.

By: s/Mark Wermerskirchen

Date: 9-24-04

Colosimo, Patchin, Kearney, Lindell & Brunfelt, Ltd.

By: s/Mitchell Brunfelt

Date: 10/6/04

McGrann Shea Anderson Carnival Straughn & Lamb.

By: s/Corey J. Ayling

Date: 11/8/04

ON BEHALF OF DEFENDANT

BCBSM, Inc.

By: s/Mark W. Banks

Its: CEO

Date: 5/17/05

Robins, Kaplan, Miller & Ciresi L.L.P.

By: s/James R. Safley

Date: 5/17/05

Examples

Example A: Group A was a member of a service cooperative from 1985 through 1995, then it left the service cooperative and became a fully-insured group with Blue Cross from 1995 to 1996, and had 100 Contract Holders during its last month of coverage. Group B was a fully insured group with Blue Cross before 1985, in 1985 it joined the service cooperative, it has remained a member of the service cooperative since then, and it had 30 Contract Holders in June 1992. Group C first became a Blue Cross fully insured group when it joined the service cooperative in January 1991, it has remained a member of the service cooperative, and it had 20 Contract Holders in June 1992. The service cooperative became self-insured on July 1, 1992. Groups A and B, as well as the service cooperative timely submit complete Claim Forms. Group C does not submit a Claim Form.

Result. Group A receives a distribution based on 100 Contract Holders and having had three or more years of coverage. Groups B and C do not receive any distribution. The service cooperative receives a distribution that is the sum of (1) a group with 30 Contract Holders having three or more years of coverage and (2) a group with 20 Contract Holders having more than one year but less than three years of coverage, but (3) the distribution is subject to the maximum distribution provision in paragraph 20(G).

Example B: Group A obtained coverage through an association from 1985 through January 2000, then it left the association and became a fully-insured group with Blue Cross for the eleven remaining months in 2000, and had 100 Contract Holders during its last month of coverage. Group B began obtaining coverage through the association in January 2000, has continued to do so, and had 30 Contract Holders in June 2001. Group C began obtaining coverage through the association in January 2001, has continued to do so, and had 20 Contract Holders in June 2001. Group D first became a Blue Cross fully insured group in 1991; it then joined an association in 1995; it has remained a member of the association since then; during its last month as a separate fully insured group with Blue Cross in 1995, it had 5 Contract Holders; and it had 10 Contract Holders in June 2001. Neither Groups A, B, C, or D had separate MIDs during the time that obtained coverage through the association. Groups A, B and D, as well as the association timely submit complete Claim Forms. Group C does not submit a Claim Form.

Result. Group A receives a distribution based on 100 Contract Holders and having had less than one year of coverage. Groups B and C do not receive any distribution. Group D receives a distribution based on 5 Contract holders have having had coverage for more than three years. The association receives a distribution based on 60 Contract Holders having three or more years of coverage (but subject to the maximum distribution provision in paragraph 20(G)).