

SETTLEMENT AGREEMENT AND RELEASE

The parties hereby agree to settle the Class Action (defined below) based upon the terms of this Settlement Agreement and Release and the accompanying Exhibits (“the Agreement”). This Agreement is made and entered into by and among Bowater Incorporated (“Bowater”), the Bowater Incorporated Retirement Plan (the “Bowater Plan”), and the Bowater Incorporated Retirement Plan for Salaried Employees of Great Northern Paper Inc. (the “GNP Plan”) (collectively “Defendants”), and Frank Crosby (“Crosby”), on behalf of himself and each of the Class Members (this and other capitalized terms are defined below).

ARTICLE I

History of the Litigation

In 2001, Crosby sued in the U.S. District Court for the Western District of Michigan claiming that Defendants were liable under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), based on the alleged failure of the administrator of the GNP Plan to pay participants the correct amount if they elected to receive an optional lump sum distribution of their accrued benefit under the GNP Plan.

Although Crosby prevailed in the Michigan District Court, *Crosby v. Bowater Inc. Ret. Plan for Salaried Employees of Great N. Paper, Inc.*, 212 F.R.D. 350, 362 (W.D. Mich. 2002), the Sixth Circuit reversed, holding that his claim was not proper under ERISA § 502(a)(3) because it was a claim for money damages and not for “appropriate equitable relief.” *Crosby v. Bowater Inc. Ret. Plan for Salaried Employees of Great N. Paper, Inc.*, 382 F.3d 587, 594-595 (6th Cir. 2004). Crosby petitioned the Sixth Circuit for a rehearing en banc (which was denied) and the Supreme Court for a writ of certiorari (also denied). After exhausting his appeals, Crosby refiled his claim in the U.S. District Court for the Northern District of Illinois under ERISA §502(a)(1)(B), where it was assigned to Judge Mark Filip and given case number 05-3478. The currently-pending lawsuit is referred to herein as the “Class Action.”

Defendants have vigorously defended against Crosby’s claim at all stages of this litigation and continue to deny that Crosby or the Class is entitled to any relief whatsoever. However, in the interest of reaching an amicable and expedited resolution of this dispute, the parties participated in an arms-length negotiation, with the assistance of retired Judge Richard Neville on February 27, 2007. At that mediation, the parties agreed to settle the Class Action on the basis set forth in this Agreement.

ARTICLE II

Definitions

The following terms have the meanings specified below:

1. “Aggregate Benefit Payment” refers to the aggregate payment of Benefits described in Article IV, paragraph 2.

2. “Class” means all persons who fall within the definition of the Class set forth in Article III of this Agreement.

3. “Class Claims” means and includes all claims, causes of action, or liabilities that have been asserted or could have been asserted by the Class Members, or any of them, against any of the Defendants in the Class Action related to any Class Member’s entitlement to a supplemental lump sum distribution of accrued benefits under the GNP Plan or provisions of the Bowater Plan incorporating the GNP Plan that arise out of or relate to the allegations set forth in the Amended Complaint filed in this lawsuit.

4. “Class Counsel” means Bradley J. Schram, Robert P. Geller, and Eva T. Cantarella, Hertz Schram PC, 1760 South Telegraph Road, Suite 300, Bloomfield Hills, MI 48302.

5. “Class Member” means a person who falls within the definition of the Class.

6. “Class Representative” means Frank Crosby.

7. “Court” means the United States District Court for the Northern District of Illinois.

8. “Defendants” means Bowater, the Bowater Plan and the GNP Plan.

9. “Defendants’ Counsel” means Thomas J. Piskorski, Ian H. Morrison and Ada W. Dolph, Seyfarth Shaw LLP, 131 S. Dearborn Street, Suite 2400, Chicago, IL 60603-4205.

10. “Distribution Date” means the date that is 120 days after the Settlement Effective Date.

11. “Election Form” means the form provided to each Class Member to make elections pursuant to this Agreement.

12. “Fairness Hearing” means the hearing conducted by the Court to determine the fairness, reasonableness, and adequacy of this Agreement under Fed. R. Civ. P. 23, and to permit the Court to issue all orders it deems appropriate.

13. “Final Order” means the Order and Final Judgment to be mutually agreed to and proposed by the parties and entered by the Court following the Fairness Hearing, in substantially the form attached as Exhibit B.

14. “HSPC” means Hertz Schram PC

15. “Individual Benefit Amount” means the amount of additional benefits and interest allocated to each Class Member, under the formula set forth in Article IV, paragraph 3 of this Agreement.

16. “Michigan Class Action” means the case entitled *Crosby v. Bowater Inc. Ret. Plan for Salaried Employees of Great N. Paper, Inc.*, No. 01-00683 filed in the United States District Court for the Western District of Michigan and all subsequent appeals therefrom.

17. “Net Benefit Payment” means the funds available for distribution to the Class from the Aggregate Benefit Payment after all permissible deductions and adjustments under this Agreement.

18. “Newspaper Notice” means the notice that will be published in the Bangor Daily News on the first 4 consecutive Mondays and first 4 consecutive Fridays, after entry of the Preliminary Order (but in no event beginning less than 5 days after entry of such Order), notifying Class Members of the proposed settlement and the right to object to such settlement, in substantially the form attached as Exhibit D.

19. “Notice” means the written notice mailed to each Class Member informing him or her of the proposed settlement and the right to object to such settlement, in substantially the form attached as Exhibit C.

20. “Original Lump Sum” means the lump sum amount previously distributed to the Class Member in payment of his or her accrued benefit under the GNP Plan or provisions of the Bowater Plan incorporating the GNP Plan.

21. “Parties” means the Defendants and the Class Representative, on behalf of himself and each of the Class Members.

22. “Plan” means the GNP Plan and the provisions of the Bowater Plan incorporating the GNP Plan.

23. “Plan Actuary” means Hewitt Associates, actuary for the Plan.

24. “Preliminary Order” means the Order granting preliminary approval of the proposed settlement, authorizing the dissemination of the Notice and Election Form to the Class and publication of the Newspaper Notice, and setting the procedural steps for final approval of the settlement, in substantially the form attached as Exhibit A.

25. “Settlement Effective Date” shall be the first day after which each and all of the following have occurred:

- (a) The Court has entered the Preliminary Order;
- (b) The Court has held a Fairness Hearing and ruled on any objections by Class Members;
- (c) The Court has made a determination with respect to Class Counsel’s request for common fund attorneys’ fees and costs and a Class Representative fee for Crosby;
- (d) The Court has given final approval of the settlement and has entered the Final Order; and

- (e) The Final Order has become final and non-appealable, either through the passage of time or the exhaustion of all appeals or other methods of review by appellate courts, without any modification to the Judgment.

26. “Specified Rate” means the interest rate that, when applied to the total of all Class Members’ Individual Benefit Amounts determined as set forth in Article IV, paragraph 3 of this Agreement, will yield the Aggregate Benefit Payment of \$2,900,000.

ARTICLE III

Class Certification And Preliminary Approval Of Settlement

1. The Parties agree to the certification of the Class Action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(1)(A) and (b)(2) for purposes of settlement. There are three groups of individuals that comprise the Class. Group 1 includes all participants and former participants in the Plan who:

- (i) prior to the date of execution of this Agreement, elected to receive an optional lump sum distribution under the Plan; and
- (ii) after the elimination of the “pre-retirement mortality discount” from the calculation of his or her lump-sum distribution are eligible to receive an additional lump sum distribution of accrued benefits under the Plan.

Group 2 includes the estates of Group 1 Class Members who died after electing to receive their optional lump sum distribution and before receiving such lump sum distribution.

Group 3 includes all “alternate payees” under a “qualified domestic relations order” (“QDRO”) (as these terms are defined or delineated in 29 USC § 1056(d)(3)) received by the GNP Plan or the Bowater Plan prior to the execution of this Agreement who received, or are entitled to receive, under such QDRO, any portion of any lump sum distribution of accrued benefits that a Group I Class Member or such Class Member’s estate received or is eligible to receive.

2. No member of the Class shall have the right to opt-out of the Class; however, any member of the Class shall have the right to file objections and to appear at the Fairness Hearing as provided herein.

3. Defendants will not oppose plaintiffs’ motion to certify the Class defined in paragraph 1 above. The Parties agree that Crosby will ask the Court to appoint Class Counsel as counsel for the Class pursuant to Federal Rule of Civil Procedure 23(g) and to designate Crosby as the representative of the Class.

4. The Parties agree to cooperate in presenting to the Court, as soon as practicable, a motion for preliminary approval of this Agreement and in preparing the Notice. The Parties will represent and opine to the Court that this Agreement provides for relief that is fair, reasonable, and adequate to the Class as a whole, within the meaning of that phrase contemplated by Rule 23(e) of the Federal Rules of Civil Procedure. If the Court does not enter the Preliminary Order

in the form attached and fully incorporated herein at Exhibit A in any material part, the Parties agree that this Agreement shall be null and void and the respective rights of the Parties in the Class Action or in any other case shall not be prejudiced in any way by this Agreement or any proposed order presented to the Court or the Court's refusal to enter an order approving this Agreement.

ARTICLE IV

Total Liability

1. The Parties Agree that Defendants' total liability in this matter is capped at three million, two hundred thousand dollars and no cents (\$3,200,000.00), representing payment in full settlement and compromise of the Class Members' and Class Counsel's claims for additional benefits under the Plan, prejudgment interest, attorneys' fees and expenses of the litigation and/or settlement (notwithstanding the provisions of Article VI, paragraph 2), and Crosby's request for a Class Representative fee.

Payments to Class Members

2. The Parties agree that the Bowater Plan will pay certain additional benefits and interest to Class Members. The aggregated sum of these payments is two million, nine hundred thousand dollars and no cents (\$2,900,000.00) (i.e., the Aggregate Benefit Payment), subject to any deductions for costs and attorneys' fees awarded by the Court to Class Counsel, and other deductions or adjustments contemplated under this Agreement (i.e., the Net Benefit Payment). The following paragraphs contain formulas intended to result in a payment to each Class Member of an amount approximating the value of the preretirement mortality discount previously used in the calculation of his or her Original Lump Sum, plus interest at the Specified Rate, less a proportional share of all deductions contemplated under this Agreement.

3. In order to allocate the Aggregate Benefit Payment, an amount will be determined for each Class Member as follows.

- (a) As of the date the Original Lump Sum was paid, the Plan's actuary will compute without a pre-retirement mortality discount the lump sum payable to the Class Member.
- (b) The Plan's actuary will then subtract the lump sum computed with a pre-retirement mortality discount (or the Original Lump Sum, if greater) from the amount determined under subparagraph (a).
- (c) The Plan's actuary will then add interest on the amount determined under subparagraph (b) at the Specified Rate, compounded annually from the date the Original Lump Sum was paid and accruing and prorated to the date of the Final Judgment.

4. For each Class Member who signs and returns all required paperwork under this Agreement, an amount will be paid, which will be determined by multiplying the amount determined after application of subparagraphs (a), (b), and (c) of paragraph 3 above by a fraction

the numerator of which is the Net Benefit Payment and the denominator of which is the Aggregate Benefit Payment. For example, if the amount determined after application of subparagraphs (a), (b) and (c) equals \$5,000, and the Net Benefit Payment, hypothetically, equals \$2,100,000, the amount payable to this hypothetical Class Member would equal \$3,620.69 [$\$5,000 \times \$2,100,000 / \$2,900,000 = \$5,000 \times .724138 = \$3,620.69$].

5. Within 21 days after entry of the Preliminary Order, Defendants shall mail to each Class Member the Notice and an Election Form that will (i) indicate the amount of the Original Lump Sum and the approximate date it was paid, (ii) inform the Class Member of the methodology for computing the amount payable to each Class Member under this Agreement, (iii) provide the Class Member the option of directly receiving any payment under this Agreement or of transferring it to an individual retirement account ("IRA"), (iv) provide instructions for completing the Election form and submitting any required documentation, and (v) advise the Class Member that if he or she believes the indicated amount of the Original Lump Sum, or the date of its payment, is incorrect, such Class Member must so notify Class Counsel in writing and provide any documentation in support of such contention within 75 days after entry of the Preliminary Order. Class Counsel and Defendants' Counsel shall jointly resolve such dispute within 7 days after Class Counsel receives such notice and promptly notify the Class Member of their determination, and such determination shall be final and non-appealable. It shall be the Class Member's responsibility to establish with a bank, brokerage firm, or other financial institution, any IRA to which the payment under this Agreement will be transferred. The payment due to each Class Member will be paid as a supplemental lump sum distribution from the Plan.

6. All payments to Class Members under this Agreement shall be made by the Plan, which shall determine the amount of tax withholdings, if any, required from all payments and perform tax reporting required with respect to such payments. It is the intention of the Parties that all payments due to Class Members hereunder be treated as distributions from a tax qualified pension plan as defined in Section 401(a) of the Internal Revenue Code. Accordingly, all payments to Class Members under this Agreement shall be made in a manner intended to comply with the requirements applicable to distributions from tax qualified pension plans. The Parties recognize that payments may be delayed beyond the Distribution Date if (i) a Class Member is deceased or (ii) there is a dispute as to the allocation of the amount payable between a Class Member and any alternate payee under a QDRO.

If the recipient of the Original Lump Sum is deceased as of the date of such recipient's payment hereunder, the payment shall be made to the recipient's surviving spouse (if the recipient was a participant in the Plan, as opposed to the beneficiary of such participant) or, if there is no surviving spouse, the recipient's estate to the extent the recipient's estate or heirs thereof can be identified. Notwithstanding anything in this Agreement to the contrary, Defendants' Counsel and Class Counsel shall use reasonable efforts to resolve any disputes concerning payments with respect to deceased Class Members, provided that they shall not be required to institute any judicial proceedings to effect a resolution of such disputes.

7. If a Class Member believes that his or her payment hereunder is understated because it has not been calculated in accordance with the methodology set forth in the Notice, such Class Member shall submit a written statement to Class Counsel detailing the basis for the

miscalculation and stating the amount he or she believes is correct, which must be postmarked no later than 15 days after the Class Member receives the payment. For these purposes, a Class Member shall be deemed to have received the payment 3 days after the later of (i) the initial first class mailing by Defendants of the payment and (ii) the date of any first class re-mailing by Defendants if such initial mailing is returned or the Defendants otherwise discover the proper address of the Class Member. Within 21 days of receipt of the written objection, Class Counsel shall respond in writing with a final determination of the Class Member's payment, which determination shall be final and non-appealable. All notifications to the Class Members concerning any such final determinations with respect to such disputes shall be by certified mail, postage pre-paid, return receipt requested. Except as otherwise expressly provided herein, the Defendants, Defendants' Counsel, Plaintiff and Class Counsel shall have no liability, obligation, or responsibility arising from the distribution of the Aggregate Benefit Payment or Net Benefit Payment in accordance with this Agreement.

8. In addition to any information, signatures, and notarizing required under the Election Form, Class Counsel and Defendants' Counsel shall determine the nature and type of documentation and other proofs that must be submitted by members of the Class prerequisite to receiving the payments under this Agreement.

9. To the extent reasonably possible, the payments under this Agreement of supplemental lump sums to Class Members shall be made on or before the Distribution Date. Payments may be made after the Distribution Date if any of the circumstances contemplated in paragraph 6 of this Article IV prevent payments from being made on or before the Distribution Date.

10. Within a reasonable time after the Distribution Date, Defendants shall provide Class Counsel a report showing the payments made pursuant to this Agreement. Within a reasonable period of time thereafter, Defendants shall file with the Court a summary of payments made under this Agreement, specifying the number of Class Members to whom payments were made and identifying those Class Members, if any, to whom payments have not yet been made and the reason(s) therefor. In addition, within a reasonable time after the date that is 180 days after the Distribution Date, Defendants will file with the Court a final report certifying that all distributions contemplated under this Agreement, including reversions to the Plan, have been made to the extent possible and as required under this Agreement. No payments to Class Members may be made after this date.

11. All inquiries from Class Members related in any way to this Agreement or to the facts and circumstances giving rise to this litigation, including, but not limited to, inquiries concerning the reasonableness of the settlement, Class Counsel's attorneys' fees and costs, and Class Members' payments, shall be referred to Class Counsel for response. Class Counsel shall promptly forward a copy of any written communication to Defendants' Counsel and shall retain responsibility for responding to any such inquiries, as necessary.

12. The following Class Members and other persons to whom Class Members' payments under this Agreement are derivatively owed shall forfeit any and all rights to receive payments under this Agreement:

- (a) Any Class Member (or other person to whom a Class Member's payment under this Agreement is derivatively owed) whose identity is not contained in the records of Defendants (or their agents or representatives) unless such person submits written notification to Class Counsel of his or her membership in the Class (or his or her derivative entitlement), including full name, current address, date of birth, Social Security number and telephone number(s) and e-mail address(es), if any, at which he or she may be contacted, postmarked no later than 90 days after entry of the Preliminary Order. Such person will only be deemed to be a Class Member upon verification of his or her participation in the Plan (or derivative entitlement) by Defendants.
- (b) Any Class Member whether or not identified in the records of Defendants (or other person to whom a Class Member's payment under this Agreement is derivatively owed), who fails to claim the payment within 90 days after the Distribution Date or who fails to negotiate any check or payment instrument respecting the payment within 90 days after it was mailed to the Class Member; provided that this forfeiture provision shall not include any Class Member (or other person to whom the Class Member's payment under this Agreement is derivatively owed) who has not negotiated such check or payment instrument because of any outstanding dispute contemplated under paragraphs 6 and 7 of Article IV.

Any such Class Member or person who forfeits his or her payment under this Agreement shall nevertheless remain bound by all of the terms and conditions of this Agreement, including, but not limited to, all aspects of the release specified in Article VII below. Any and all amounts that are forfeited pursuant to this paragraph 12 of Article IV shall revert to, and remain unrestricted assets of, the Plan.

ARTICLE V

Approval and Class Notice; Fairness Hearing

1. Within 21 days after the Court's entry of the Preliminary Order, Defendants shall send by first class mail the Notice and Election Form to all Class Members, using the last known address of each Class Member as it appears in the records of Defendants. Defendants shall also coordinate the publishing of the Newspaper Notice. All direct expenses incurred by Defendants in connection with publishing the Newspaper Notice shall be deducted from the Aggregate Benefit Payment.

2. In the event that any Notice and Election Form are returned as undeliverable, Defendants shall, within 7 days of such mail being returned, (i) re-mail that Notice and Election Form to any new address obtained from the returned Notice and Election Form, or (ii) if no new address is indicated, promptly notify Class Counsel. Class Counsel shall, within 14 days of receipt of such notification, undertake reasonable efforts to locate the Class Member and shall notify Defendants of any new address for the Class Member. If Defendants are notified of a new address within such 14 day period, they will resend the Notice and Election Form within 7 days

of receipt of such new address. Unless otherwise provided herein, if the Notice and Election Form are again returned as undeliverable, Plaintiff, Class Counsel, Defendants and Defendants' Counsel shall have no further obligation to attempt to locate the Class Member.

3. Amounts owed with respect to Class Members who cannot be located and are not otherwise entitled to a payment hereunder shall revert to the Plan.

4. It shall be the responsibility of every Class Member to notify Defendants of any change of address after the Election Form is returned. If any settlement check is returned or is not cashed within 90 days after it is mailed to the Class Member, the related funds shall revert to the Plan and such Class Member shall forfeit his or her payment unless such settlement check was not negotiated due to an outstanding dispute contemplated in paragraph 6 or 7 of Article IV. This reversion will not affect any other Class Member's payment nor will it affect the amount of attorneys' fees to be paid.

5. Each Class Member shall have 120 days from the final mailing of the Notice and Election Form in which to execute and return the Election Form. Except as otherwise provided herein, if a completed and signed Election Form is not postmarked within 120 days after the last date it was mailed to the Class Member in accordance with Article V, paragraph 2, the Class Member will be deemed to have forfeited his or her right to any payment hereunder and any amounts owed with respect to such Class Member shall revert to the Plan.

6. The Parties shall jointly request that the Court schedule the Fairness Hearing for a date that is no less than 90 days but no more than 105 days after entry of the Preliminary Order.

7. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement must file written objections with the Clerk of the Court and serve Class Counsel, Eva T. Cantarella, Hertz Schram PC, 1760 South Telegraph Road, Suite 300, Bloomfield Hills, Michigan 48302, and Defendants' Counsel, Ian Morrison, Seyfarth & Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, Illinois 60603, no later than 14 days before the Fairness Hearing. The written objections must contain the individual's name, address, telephone number, case name, (*Crosby v. Bowater Incorporated Retirement Plan for Salaried Employees*) and the Case No. (1:05-CV-3478), and must include a statement of objection(s) and the specific reason for each objection, including any legal support or evidence that the person filing the objection(s) wishes to bring to the Court's attention. Class Members may file and serve written objections on their own or through an attorney hired at their own expense. The copies of the written objections served on Class Counsel and Defendants' Counsel must contain the Class Member's Social Security Number.

If a Class Member hires an attorney to represent him or her at the Fairness Hearing, the attorney must:

- a. File a notice of appearance with the Clerk of the Court at least 14 days before to the Fairness Hearing or as the Court may otherwise direct, and
- b. Serve a copy of such notice of appearance on attorneys Cantarella and Morrison, at the above-noted addresses.

Any Class Member who files and serves a written objection, as described herein, may, but shall not be required to, appear at the Fairness Hearing to object to the fairness, reasonableness, or adequacy of this Agreement or the terms of the settlement. Subject to the Court's discretion, any Class member or attorney failing to comply with the provisions of this paragraph may forfeit any and all rights to appear separately and/or to object.

8. At the Fairness Hearing, the Parties will request that the Court, among other things, (i) enter the Final Order in accordance with this Agreement in substantially the form attached as Exhibit B, (ii) approve the proposed Agreement and settlement as final, fair, reasonable, adequate, and binding on all Class Members, (iii) approve the payment of attorneys' fees and expenses to Class Counsel, (iv) approve the methodology for calculating the Class Members' distributions, and (v) approve the payment of a Class Representative fee to Crosby.

ARTICLE VI

Attorneys' Fees and Costs

1. Defendants agree to pay three hundred thousand dollars and no cents (\$300,000.00) in attorneys' fees. This constitutes payment for attorneys' fees of Class Counsel in litigating both the Class Claims and the Michigan Class Action. Class Counsel, the Class Representative, and the Class Members agree that this Agreement or the disposition of the Class Action pursuant to this Agreement shall not render them to be prevailing parties or otherwise entitled to attorneys' fees or costs under the Employee Retirement Income Security Act ("ERISA") or any other law or rule, except as provided in paragraph 2 of this Article VI.

2. At the Fairness Hearing, Class Counsel will petition the Court for an award of attorneys' fees, for reimbursement of previously incurred and future out-of-pocket expenses, and for a Class Representative fee of not more than \$25,000. Defendants agree not to contest Class Counsel's application for attorneys' fees based upon a common fund recovery theory, provided that Class Counsel do not request attorneys' fees which, when combined with the attorneys' fees provided in paragraph 1 of this Article VI, exceed one million, sixty-six thousand six hundred sixty six dollars and no cents (\$1,066,666.00). The Parties agree that if the Court approves attorneys' fees based on the common fund theory, Defendants' total liability will not increase. Rather, the Parties agree that any additional attorneys' fees recovered by Class Counsel will come from the Aggregate Benefit Payment (\$2,900,000.00).

3. Any attorneys' fees, expenses and Class Representative fee payable under paragraphs 1 and 2 of this Article VI shall be wired or mailed via overnight delivery to HSPC within 17 days after the Settlement Effective Date. HSPC will provide Defendants with an executed IRS Form W-9 in connection with payment of any attorneys' fees. HSPC shall be solely responsible for payment of any Class Representative fee awarded by the Court following the wire transfer referenced in this paragraph 3.

ARTICLE VII

Release and Covenant Not to Sue

1. As of the Settlement Effective Date, the Class Representative and each Class Member shall be deemed to have forever released, acquitted, satisfied and discharged each Defendant and their parents, subsidiaries, affiliates, sponsors, predecessors, successors, agents, employees, administrators, sponsor(s), fiduciaries, assigns and representatives from any and all manner of causes of action, claims, controversies, covenants, agreements, damages (including claims for attorney's fees or costs), debts, demands, liability, and promises, whatsoever, and any equitable, legal and administrative relief, whether based on federal, state or local law, statute or ordinance, regulation, contract, common law, or any other source including any claims relating to federal or state law, that were asserted or could have been asserted in the Class Action or in any other court action or before any administrative or governmental body or agency, tribunal, arbitration panel or private administrative committee, on the basis of, relating to, or arising out of, in whole or in part, the Class Claims, including claims under the Employee Retirement Income Security Act, and claims under common law.

2. As of the Settlement Effective Date, the Class Representative and each Class Member expressly agrees that he or she, whether acting individually or together, shall not seek to institute, maintain, prosecute, sue or assert in any action or proceeding, a cause of action, claim, controversy, covenant, agreement, damages (including a claim for attorney's fees or costs), debt, demand, liability, and promise, whatsoever and any equitable, legal and administrative relief, whether based on federal, state or local law, statute or ordinance, regulation, contract, common law, or any other source including any claims relating to federal or state law, that were asserted or could have been asserted in the Class Action or in any other court action or before any administrative or governmental body or agency, tribunal, arbitration panel or private administrative committee, on the basis of, relating to, or arising out of, in whole or in part, the Class Claims, including any claim under the Employee Retirement Income Security Act, and any claim under common law. If a Class Member violates this paragraph 2 of this Article VII, he or she will be liable for reasonable attorneys' fees and costs incurred by the defendant in such action.

3. Each Class Member who signs and returns an Election Form shall thereby confirm his or her assent to the terms of paragraphs 1 and 2 of this Article VII.

ARTICLE VIII

No Admission of Liability

This Agreement shall not be construed by anyone as an admission of any liability by any Defendant. Each Defendant vigorously denies the allegations in the Class Action and enters into this Agreement solely to settle any and all Class Claims among the parties.

ARTICLE IX

Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

1. The Parties understand and agree that because they are settling a class action, Rule 23 of the Federal Rules of Civil Procedure requires that the Court approve this settlement for it to become effective. Therefore, the parties agree to cooperate in presenting this Agreement to the Court for its approval.

2. In the event that the Agreement is not approved by the Court or fails to become effective in accordance with its terms, this Agreement and all negotiations, proceedings and documents relating hereto shall be without prejudice as to the rights of any and all parties hereto, who shall be restored to their respective positions in the Class Action prior to the execution of this Agreement.

3. It shall not be deemed a failure to approve the Settlement if the Court denies, in whole or in part, Class Counsel's request for common fund attorneys' fees and costs.

Miscellaneous

4. **Binding Effect.** This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof shall be binding upon and shall inure to the benefit of the Parties and their respective estates, heirs, executors, administrators, legal representatives, personal representatives, agents, spouses, successors, and assigns, merged entities, purchasers, parent corporations, subsidiaries, divisions, joint ventures, spin off entities. All material terms have been agreed upon and resolved and any open/unresolved issues are, by agreement, non-material and may be resolved by the Court or its designee, and shall be binding upon the parties.

5. **No Media Contact.** Neither the Class Representative nor Class Counsel shall initiate any media contact or publicity, including publicity on the Internet, regarding this Agreement, settlement or the underlying Class Action. If contacted by the media, the Class Representative and Class Counsel shall refer them to the publicly-filed pleadings in the Class Action and refrain from comment other than to state that the Class Action has been resolved. The Class Representative and Class Counsel shall not post the terms of this Agreement or settlement, or otherwise exploit the settlement terms for marketing reasons having nothing to do with the administration of the settlement.

6. **Tax Consequences.** The Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendants, Class Counsel and the Class Representative will provide no tax advice to the Class Members and make no representations regarding the tax consequences of the terms described in this Agreement. Although the Plan may be required to withhold taxes from certain payments to Class Members, to the extent that any portion of the settlement money is subject to income or other tax, the Class Member or Class Counsel, as the case may be, shall ultimately be responsible for payment of any such tax. No deduction for taxes shall be made by Defendants from the payment to Class Counsel.

7. **Sole Agreement.** This Agreement sets forth the entire agreement between the parties as it pertains to the subject matter of the Class Action.

8. **Future Changes to the Plan.** Nothing in this Agreement shall be construed as a limitation on Defendants' right to amend or clarify any term or condition of the Plan or the GNP Plan, subject to the terms of these plans and applicable law. Any change or amendment to the Plan or the GNP Plan shall not affect any of the rights of Class Members to receive the payments provided for by this Agreement.

9. **Counterparts; Facsimile Signatures.** This Agreement may be executed in several counterparts and all such counterparts when executed shall together constitute one final Agreement, as if one document had been signed by all parties. Any signature made and transmitted by facsimile for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement, and shall be binding upon the party transmitting the signature by facsimile.

10. **Advice of Counsel.** Each party to this Agreement hereby acknowledges that he, she or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that party by his, her or its counsel.

11. **Headings for Convenience Only.** The headings included in this Agreement are for convenience only and do not in any way limit, alter, or affect the terms of the Agreement.

12. **Amendments.** This Agreement may not be amended or modified except by a writing signed by all of the Parties or signed by their respective attorneys as authorized.

13. **Entire Agreement.** All of the stipulations, covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Agreement are contained in this Agreement.

14. **Exhibits.** All of the exhibits attached hereto are incorporated by reference as though fully set forth herein.

15. **Choice of Law; Retention of Court's Jurisdiction.** This Agreement shall be interpreted, construed and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, with the laws of the State of Illinois, excluding its choice of law rules. The Court is deemed an appropriate jurisdiction and venue for the resolution of any dispute concerning the implementation, enforcement, or construction of this Agreement, and any disputed questions of law or fact related thereto, and the parties hereby agree to be subject to the personal jurisdiction of the Court for the purpose of any such resolution. Any and all Class Members or other persons claiming damages or payments under the terms of this Agreement shall submit themselves to the jurisdiction of the Court with respect to any disputes or litigation, of any kind or nature, involving any such damages or payments.

