

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN,
ROBERT POINDEXTER, MIKE MITCHELL,
ROY L. COOK, ALEX SHUGART, H.
RANDLE WOOD, ROBIN ROGERS and
DANIEL LEE NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

**DEFENDANT U.S. TOBACCO COOPERATIVE INC.'S
OMNIBUS RESPONSE TO OBJECTIONS TO SETTLEMENT**

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Defendant U.S. Tobacco Cooperative Inc. (the “Cooperative”), by and through the undersigned counsel, pursuant to Paragraph 24 of this Court’s Order Preliminarily Approving Settlement (“Preliminary Approval Order”), Dkt. 63, hereby respectfully responds to the objections to the Settlement (collectively, “Objections”).¹

PRELIMINARY STATEMENT

The Settlement provides constructive, reasonable and satisfying means of resolving years of protracted, costly litigation, with tens of millions of dollars (no small sum for this Cooperative) being paid for the benefit of class members rather than for the Cooperative’s otherwise-continuing litigation defense. None of the objections to the Settlement addresses the substance of the claims at issue or even purports to outline why or how class members might realistically hope to achieve a better result through the end of trial and any appeal.

While asserting that the Settlement is inadequate, no objector soberly analyzes the actual strength of their case on the merits, in light of operative facts and law; instead the objectors at best offer wishful allusions to the Cooperative’s total assets. Their approach is thoroughly misconceived: No rational assessment of a particular class-action suit against Google, for instance, could soundly derive the projected, risk-adjusted recovery simply as a percentage of Google’s \$750+-billion market capitalization. Yet that is precisely the extent of the analysis that Mr. Sharp’s

¹ On December 20, 2017, the Cooperative filed its response to the objections of Melvin M. McElveen, James A. Miles, James D. Miles, and Nellirea Miles (collectively, the “Miles Objections”). *See* Dkt. 84, 123. On January 8, 2018, the Cooperative filed its response to the objection of Robert Louis Worley. *See* Dkt. 90, 220. On January 10, 2018, the Cooperative filed its response to the objection of Billy Alan Kirby, Jr. *See* Dkt. 91, 227. This Omnibus Response is incorporated by reference in those submissions and addresses all other docketed objections, including those objections postmarked after the Court’s December 20, 2017 objection deadline. *See* Dkt. 198, 200, 201, 202, 203, 212, 223, 224.

The Cooperative will also be respectfully submitting, for the Court’s convenience, a hyper-linked electronic copy of this Response and all supporting documents, in addition to the courtesy hard copy required by this Court’s Practice and Procedures.

lone putative expert, Dr. Harrison, now advances before this Court. As Dr. Harrison testified at deposition yesterday, defending the analysis advanced in his declaration supporting Mr. Sharp's declaration, "If there's a class action lawsuit brought against Google by shareholders seeking the dissolution of Google," he would on that basis "calculate the upper bound of the appropriateness of any settlement by referring to the \$120 billion" in shareholder equity, just as he has here with the Cooperative's so-called reserve. Ex. CC (Harrison Deposition) at Tr. 110:8-111:22. Of course, such a barebones calculus is utterly unhelpful here when it comes to assessing *actual litigation prospects* against the Cooperative.

Once operative facts and law are duly considered, numerous and severe flaws in Plaintiffs' claims become apparent. Among other things:

- All of the conduct at issue is expressly authorized by, *inter alia*, the North Carolina statute that authorizes the Cooperative's existence and operation, the Cooperative's Articles of Incorporation and by-laws, and the Cooperative's marketing agreements with its members.
- The "reserve" that underlies Plaintiffs' overall claim is itself a false construct, as the vast bulk of the "reserve" is comprised of illiquid assets that are indispensable to the Cooperative's ongoing, irreproachable day-to-day operations.
- The Cooperative's good-faith decision-making is protected by law against second-guessing by Plaintiffs or any other challengers.
- The Cooperative retained and accumulated the funds at issue over its lengthy history, dating back over four decades, such that Plaintiffs' claims are untimely.
- Pursuant to the stock certificates issued to each member by the Cooperative, the maximum amount of damages available to any one Plaintiff is expressly capped at \$5 per member.

Complete failure of Plaintiffs' entire case, with \$0.00 recovery, is no mere theoretical prospect. In fact, it is the empirical result of parallel litigation to date. When members of the class brought a series of individual suits against the Cooperative in Georgia, seeking the same relief and invoking the same theories that Plaintiffs do here, they lost on final judgment as to every one, as

affirmed on appeal. *See, e.g., Rigby v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 339 Ga. App. 558, 794 S.E.2d 413 (2016) (“*Rigby*”). Even though *Rigby* is the only case attacking the Cooperative’s reserve that has reached final judgment, and thus provides on-point, definitive evidence of how similar suits are likely to fare, Mr. Sharp’s purported expert on the adequacy of this settlement, Dr. Glenn Harrison, testified at deposition that he had not been informed about *Rigby*, nor did he “want to know more about that case” to inform his opinions.² Similarly, sworn testimony from objectors themselves confirms the weakness of their claims, including large gaps and fundamental misunderstandings about their supposed legal and factual bases. Once critical defects are accounted for, Plaintiffs’ likely recovery is likely to be much closer to \$0.00 than it is to the current Settlement of \$24 million.³ As such, the Settlement amply satisfies Rule 23’s requirement that it be fair, reasonable, and adequate. For the reasons set forth and substantiated herein, the Cooperative respectfully submits that the Settlement provides generous, certain recovery to the Class Members, pursuant to a fair distribution scheme, and that it should be finally approved.

² *See* Ex. CC (Harrison Deposition) at Tr. 83:16-20; 85:2-8, 86:1-16.

³ Some objectors see a prior proposed settlement from a decade ago as a baseline indicator that this Settlement is unfair. Their perspective is understandable but misconceived. The prior proposal is an artifact of the past and thoroughly divorced from sound legal analysis today, as well as from the fairness or adequacy of the Settlement as proposed. Judge Bullock, no less than the parties, was well aware of the previous settlement figure when he conducted the mediation leading to the Settlement. But the outdated proposal was no substitute, then or now, for rational, risk-discounted analysis of what class members should actually expect to recover through continued litigation. Indeed, the settlement figures under discussion a decade ago had little to do with the facts and law as they existed then, let alone as they exist today. The earlier settlement was proposed at a time when the federal price-support program for tobacco was just ending, when the Cooperative was first exploring how to position itself in the modern marketplace, and when political (as distinct from legal) considerations loomed large. In the years since, the Cooperative has completed its transition to the post-price-support era and has made operational commitments and investments that it must now sustain for the benefit of current and future tobacco growers. All of this is further discussed and substantiated here. *See infra* Statement of Facts § E; Part VI.A.

A few objectors and their counsel have nonetheless mounted a fierce campaign to prevent the Settlement from being approved, largely in deference to the parallel case proceeding in North Carolina state court, *Lewis v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 188 (N.C. Super. Ct.); *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 1938 (N.C. Super. Ct.) (as consolidated, “*Fisher-Lewis*”). Without establishing why they should recover a greater sum in court, however, representatives of the *Fisher-Lewis* plaintiffs miss the mark. Neither they nor their expert explain why the class’s legal claims have any real merit. Of course, the mere desire of a (miniscule) subset of the class to pursue class-wide litigation in a different forum (with different class counsel and fee structure) does not provide a good basis to disapprove the Settlement for the benefit of class members. Under well-established case law, overlapping class actions frequently proceed in parallel until one reaches final judgment. That some class members hoped that *Fisher-Lewis* would result in a final judgment first does not mean this Settlement is unfair or should not be approved. Nor does the fact that the Cooperative entered into the Settlement with one set of named plaintiffs versus another mean that the Settlement is the product of collusion. The Settlement was in fact mediated by a retired federal judge, after two days of intensive, hard-fought, arm’s-length negotiation. Far from being the weaker set of plaintiffs, the Plaintiffs here posed a greater threat than the *Fisher-Lewis* plaintiffs in important respects, including that these Plaintiffs sought to dissolve the Cooperative in its entirety, as opposed to limiting themselves (as the *Fisher-Lewis* plaintiffs have) to whatever portion of the Cooperative’s retained funds is calculated to exceed a “reasonable” reserve.

Given the numerosity of the class and the common issues of law and fact, a class action is the best way to resolve this case, as North Carolina courts have already ruled. With so much costly litigation looming, this Settlement will provide definitive resolution of the Cooperative’s liability

while ensuring a fair and reasonable payment that flows directly and efficiently to Plaintiffs themselves, without still more of the Cooperative's limited resources being drained by counsel for either side. Final approval is the correct, lawful, and just result from the perspective of class members themselves, as well as the Cooperative. The proof of that is in the substantive pudding of the record and submissions now before this Court. The Cooperative respectfully urges this Court to grant final approval and encourages all members of the class—thousands of whom have already submitted claims—to continue participating in the Settlement and submitting their claims in the months ahead.

STATEMENT OF FACTS

A. The Cooperative's Organizing Documents Give Broad Authority To The Board; Nothing Limited The Cooperative's Purpose To Price Support

The Cooperative, originally known as the Flue-Cured Tobacco Cooperative Stabilization Corporation, was organized in 1946 pursuant to the North Carolina Cooperative Marketing Act, N.C.G.S. § 54-129 *et seq.* The Cooperative Marketing Act gives marketing associations, including the Cooperative, broad powers to “engage in *any activity* in connection with the producing, marketing, selling . . . processing . . . or utilization of any agricultural products produced or delivered to it by its members and other farmers; or the manufacturing or marketing of the by-products thereof,” to “borrow money,” and to “*establish reserves and invest the funds . . . in bonds or such other property as may be provided in the bylaws.*” *Id.* § 54-151(1), (2), (5) (emphasis added). The Cooperative's Articles of Incorporation confirm its broad powers to “engage in any activity in connection with the marketing, selling[,] processing, manufacturing[,] or utilization of flue-cured tobacco . . . or the manufacture or marketing of products or by-products derived therefrom, or in the financing of any such activity,” and vest the Cooperative's Board of

Directors (“Board”) with authority to “enact and determine” its by-laws. Dkt. 123-8 (Articles of Incorporation, Art. VII, Art. X) at SC 16256-57, 16259.

From the beginning, the Cooperative’s by-laws have correspondingly empowered the Board to “conduct, manage and control the affairs and business of the association,” “[t]o make and enter into agreements for the processing, manufacturing, warehousing . . . and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities,” and to borrow money “for any corporate purposes.” Ex. A (1947 Bylaws, Art III, § 1(a), (d), Art. XV) at SC-GA 10774, 10780.

Neither the stock certificates issued to each member by the Cooperative nor the marketing agreements entered into by individual members and the Cooperative have ever purported to limit the Cooperative’s purpose or powers. The stock certificate states that any producer who patronizes the Cooperative can be a member. Dkt. 73-29 (Sample Stock Certificate). The Cooperative used several versions of the marketing agreement over its history, but they all provide generally that the grower agrees to sell tobacco to the Cooperative, and that the Cooperative agrees to receive, handle, and sell it, “in accordance with terms of such program as [the Cooperative] may announce.” Ex. DD (Sample Marketing Agreement).

B. The Cooperative Establishes A Reserve During The Tobacco Price Support Program

From 1946 to 2004, the Cooperative administered the Tobacco Price Support Program, a federal price-support program for flue-cured tobacco. *See* Declaration of Ed Kascuta dated Jan. 11, 2018, ¶ 12 (“Kacsuta Decl.”). Under this Program, tobacco growers agreed to limit their production in exchange for a minimum price guarantee, backed by the federal government. *Id.* If tobacco buyers, such as cigarette companies, did not purchase from farmers any of the tobacco grown pursuant to quota, the Cooperative would purchase that tobacco at the guaranteed price and

then market it to tobacco buyers. *Id.* To finance its purchases of tobacco, the Cooperative borrowed from the Commodity Credit Corporation (“CCC”), an arm of the United States Department of Agriculture (“USDA”). *Id.* Until 1982, the CCC’s loans were “nonrecourse” and were collateralized only by the tobacco the Cooperative purchased in any given crop year. *Id.* ¶ 14. Consequently, the CCC bore losses for any crop years in which the Cooperative did not resell tobacco above the guaranteed price; on the flip side, the CCC did not reap any benefits when the Cooperative resold tobacco *above* the guaranteed price. *See id.* ¶ 15.

The Cooperative generally lost money on the purchase (using loans from the CCC) and subsequent resale of tobacco during this time period, with the U.S. Treasury effectively picking up the tab for the loss. *Id.* ¶ 14. In none of those years were any of the Cooperative’s members made to make up the shortfall between the guaranteed price they had been paid for their tobacco and the lower price for which their tobacco was actually sold. *See id.* ¶ 13. For the 1967 through 1973 crop years, however, there was a felicitous anomaly insomuch as the Cooperative turned a profit on the tobacco it purchased. *Id.* ¶ 15. The Cooperative distributed a portion of those profits to members in cash, but the Board elected to keep approximately \$26.8 million as a reserve and issued Capital Equity Credits redeemable at the Board’s discretion to growers in lieu of cash. *Id.* ¶¶ 16, 19. The Cooperative openly explained to its membership that it was electing to build the reserve fund to “maintain the viability of [the Cooperative] during periods of limited receipts and operations” and “prepare for rainy days.” Dkt. 73-4 (December 1975 Newsletter) at SC-GA3398; *see also* Ex. B (February 1976 Letter to Members) at SMF00331 (“The uncertainty in connection with the future of the tobacco program points up the wisdom and practical necessity of [the Cooperative] maintaining a capital reserve to be used if needed to continue operations and to meet other unforeseen emergencies.”). The Cooperative was and has always been expressly authorized

to maintain a capital reserve pursuant to North Carolina law, the Cooperative's Articles of Incorporation, and the Cooperative's by-laws. *See* N.C.G.S. § 54-151; Dkt. 123-8 (Articles of Incorporation, dated as of June 1, 1946) at Art. VII(g); Ex. A (By-laws dated June 3, 1947) at Art. XVI; *see infra* Part V.A. No member of the Cooperative challenged the establishment of the reserve at that time. Declaration of Jimmy Hill, dated Jan. 11, 2018, ¶ 18. ("Hill Decl.") .

In 1982, Congress enacted the No Net Cost Act in an attempt to protect taxpayers from continuing losses under the Tobacco Price Support Program. Around that time, there was significant opposition to the Program because of its high costs to the U.S. Government; supporters of the Program responded to lobbying efforts to terminate the Program by developing the No Net Cost Act legislation. Declaration of Randal R. Rucker, Ph.D., ¶ 23 ("Rucker Decl."); Hill Decl. ¶ 17. The No Net Cost Act required tobacco farmers to pay an additional assessment (essentially, a tax) on the tobacco they sold. Kacsuta Decl. ¶ 20. During the No Net Cost era, the Cooperative collected those assessments. *Id.* ¶ 23. In doing so, however, the Cooperative served merely as the middleman, collecting assessments on behalf of the CCC and holding those assessments in an account maintained and controlled by the CCC; the Cooperative did *not* retain those assessments for its own use.⁴ *Id.* Although originally only growers paid assessments, Congress soon amended the No Net Cost Act to require that assessments also be paid by tobacco buyers (starting in 1986) and importers (starting in 1993). *See* P.L. 97-218; P.L. 99-272; P.L. 103-66. The No Net Cost Act also required that any net gains earned by the Cooperative in any given year be paid to the

⁴ From 1982 to 1985, the Cooperative held the assessments in a fund that it controlled and issued certificates of retain and preferred stock to members. But this triggered tax burdens for the Cooperative's members, who had to report certificate receipts as income and pay taxes on it even though the payment of cash patronage was effectively impossible. So, in 1985, the Cooperative moved the money into an account controlled by the CCC, thereby eliminating the adverse income-tax consequence and offsetting the adverse tax implications growers had suffered. Ex. C (December 1985 Newsletter) at SC 09979; Kacsuta Decl. ¶¶ 21-22.

CCC to cover losses from prior and subsequent years, thereby effectively eliminating the Cooperative's ability to pay patronage dividends. Kacsuta Decl. ¶ 20. The Cooperative continued to administer the Tobacco Price Support Program during this time, always paying members the full federally-guaranteed price for tobacco it received (less the assessment), even though it regularly sold growers' tobacco for less than the price paid to growers. *See id.* ¶¶ 23-24.

The funds held in the No Net Cost account could be used only for limited purposes, as set forth in the No Net Cost legislation: under the original legislation, the No Net Cost assessments could be used only to ensure that the CCC suffered no net losses under its loan agreements with the Cooperative (P.L. 97-218); in 1983, the statute was amended to permit other uses, including those approved by the United States Secretary of Agriculture (P.L. 98-180). The assessments in the account—which were collected from growers, buyers, and importers alike, and whose use was limited to purposes specified by federal law—did not belong to the Cooperative's members. *See infra* Part V.C.

In 1990—eight years after Congress enacted the No Net Cost Act—the CCC, at the Cooperative's request, agreed to use the assessments that had been collected from the 1982-1984 crop years to redeem the loans it had provided to the Cooperative to purchase the 1982 crop. Kacsuta Decl. ¶ 24. The CCC then granted the remaining unsold tobacco from that crop year to the Cooperative: in a June 1990 letter, the USDA wrote that, with the CCC's approval, the Cooperative “may ***retain the sales proceeds*** resulting from the sale of the remainder of the 1982 crop inventory once the 1982 loan account with CCC is closed.” Dkt. 217-2 (Jun. 8, 1990 letter) at SC 08740 (emphasis added). The Cooperative sold that tobacco at a profit. Kacsuta Decl. ¶ 24. The CCC similarly agreed in 1992 to use money in the account (which had been collected in 1984

and 1986 to redeem loans provided in 1983 and 1984)⁵ to release unsold tobacco inventory from the relevant crop years to the Cooperative. *Id.* ¶ 26.

As it had done in 1975, the Cooperative elected to hold the approximately \$110 million it earned from the sale of such tobacco in reserve. *Id.* ¶ 24. The Cooperative promptly informed its members of the decision, explaining that it would hold the funds in reserve because, if the Tobacco Price Support Program were to disappear, “the Board of Directors would be in position with surplus No Net Cost funds and reserves to operate a program *to protect and stabilize the market for flue-cured tobacco growers*.” Dkt. 123-18 (July 1990 Newsletter) at SC-GA3625 (emphasis added). The Cooperative did not allocate these funds to the membership, but simply recorded them on the stockholder’s equity portion of its balance sheet as “Additional Paid-In Capital.” Ex. E (1993 Financial Statements) at SC 01308. Again, no member of the Cooperative challenged the Board’s decision to hold these funds in reserve for future operations. Kacsuta Decl. ¶ 27; Declaration of Charlie Batten, dated Jan. 11, 2018, ¶ 18 (“Batten Decl.”).

C. The Cooperative Overcomes The End Of The Tobacco Price Support Program

During the Tobacco Price Support Program, the Cooperative acquired tobacco leaf (freshly grown tobacco), processed it, and sold the processed leaf to tobacco manufacturers, but had no other lines of business. *Id.* ¶ 32. In the late 1990s to early 2000s, the Cooperative’s Board became increasingly aware that the Tobacco Price Support Program would likely be coming to an end, not least because the No Net Cost Act had ultimately failed to protect taxpayers from losses and because the subsidization of tobacco had drawn the ire of public-health advocates. *See* Hill Decl. ¶¶ 12; Declaration of Andrew Quinn Shepherd, dated Jan. 11, 2018, ¶¶ 14-15 (“Shepherd Decl.”)

⁵ The assessments used to pay off the 1983-1984 loans consisted of the No Net Cost assessments from 1984, and a special “crop excess Graham-Rudman-Hollings (GRH) assessment” that Congress had imposed in 1986. Ex. D at SC 08650.

Because the market for flue-cured tobacco was declining, especially domestically, the Board understood that the Cooperative would need to establish alternative lines of business in order to continue to serve flue-cured tobacco growers and to continue buying their crop each year.

Even before Congress terminated the Program, the Board considered ways of supporting its members once federal price support for tobacco disappeared. *See* Shepherd Decl. ¶¶ 14-17. Anticipating the Program's end, the Board decided in June 2004, after receiving management's recommendation and deliberating extensively, to purchase a tobacco manufacturing and processing facility located in Timberlake, North Carolina. Kacsuta Decl. ¶ 34; Shepherd Decl. ¶ 17. The Cooperative's 2004 Annual Report specifically explained to members that it decided to purchase the Timberlake facility because it "must promote and sell [its] own products if [it] want[ed] to continue producing tobacco"; this facility would enable the Cooperative to become "a full service marketing cooperative" that would be able to produce and sell "tobacco strips, cut rag, puffed stems, and cigarettes under one roof." Dkt. 123-17 (2004 Annual Report) at page 5.

In October 2004, Congress enacted the Fair and Equitable Tobacco Reform Act ("FETRA"), thereby ending the Tobacco Price Support Program, precisely as long foreseen by the Cooperative and its Board. FETRA provided flue-cured tobacco growers, including the Cooperative's members, with a significant "buyout"—that is, payments—financed by cigarette manufacturers. Hill Decl. ¶ 27; Shepherd Decl. ¶ 20. The upshot was that tobacco growers each received buyouts pegged to their respective quotas; depending on quota size, these buyouts were often quite large, even as high as millions of dollars. Hill Decl. ¶ 27; Rucker Decl. ¶ 24.

Separate from the substantial buyouts, FETRA included a provision requiring the CCC to call its remaining loans. Kacsuta Decl. ¶ 29. As required, in March 2005, the CCC called those loans, took possession of the remaining funds in the No Net Cost account held by the Cooperative,

and took possession of the tobacco the Cooperative had purchased using the CCC's loans. *Id.* The CCC sold some of that tobacco and applied the funds from the No Net Cost account to help cover outstanding loan balances. *Id.* Certain No Net Cost funds, on the order of \$7 million, were routed by the CCC to the Cooperative specifically for the Cooperative to distribute directly to growers, and the Cooperative proceeded to do precisely that without controversy or complaint. *Id.* ¶ 30. The CCC then ceded the remaining tobacco to the Cooperative pursuant to FETRA, 7 U.S.C. § 519. *Id.*⁶ In a 2005 letter to the Cooperative, the USDA specifically stated that “[o]nce this tobacco has been transferred to the [Cooperative], the [Cooperative] *may utilize these lots of tobacco in any manner that it desires.*” Dkt. 123-16 (2005 Letter to Lioniel Edwards) at SC 016058(emphasis added). The Cooperative booked this tobacco as an inventory asset and as “Contributed Capital” on its balance sheet, and ultimately sold it for approximately \$81 million dollars. Kacsuta Decl. ¶ 29.

In early 2005, the Board considered distributing capital to members. Hill Decl. ¶¶ 31-33. After receiving management's recommendation that it not distribute funds, and after duly considering a motion to distribute funds, however, the Board decided to retain capital so that it could be strategically deployed to support tobacco growers and the flue-cured tobacco industry in the post-FETRA era, when federal subsidies and federal support are no longer available. *Id.* ¶ 34.

⁶ The amount of tobacco that was retained by the CCC versus transferred to the Cooperative was determined according to a formula in the FETRA legislation. 7 U.S.C. § 519. The assessments and tobacco inventory given to the CCC upon FETRA was not sufficient to compensate the CCC for the net losses it had incurred in administering the price-support program. These losses were only compensated through assessments imposed on cigarette manufacturers. 7 U.S.C. §§ 518d, 518e, 519.

D. The Cooperative Executes A Successful Post-FETRA Strategy

Throughout its existence, the Cooperative has sought to (1) maintain and increase the price of tobacco; (2) increase the amount of tobacco that it purchases, by boosting larger market demand; and (3) best position itself to pay patronage dividends to its membership. Kacsuta Decl. ¶ 31. These are the Cooperative's goals because its membership benefits when the price of tobacco is relatively high and when there is consistent demand for tobacco products. *Id.* ¶¶ 53-54. To achieve these goals, the Cooperative has made a number of strategic business decisions (in addition to the Timberlake acquisition). Among those decisions were:

- The Cooperative sought to expand demand for flue-cured tobacco by seeking customers overseas, most notably in Japan and in China, which is now the Cooperative's biggest customer. *Id.* ¶ 35.
- The Cooperative launched its own cigarette brand, "1839." *Id.* ¶ 36.
- The Cooperative acquired Premier Manufacturing and the cigarette brands "Wildhorse," "First Class," "Shield," and "Ultra Buy," thereby enabling it to sell more tobacco grown by members in its own products and to take advantage of a valuable exemption to the Tobacco Master Settlement Agreement ("MSA").⁷ *Id.* ¶¶ 36-37.
- The Cooperative acquired two new distribution subsidiaries to permit better distribution of its products. *Id.* ¶ 38.
- The Cooperative constructed a new green tobacco storage facility, increasing the yield it could generate from members' tobacco. *Id.* ¶ 40.
- The Cooperative acquired King Maker Marketing, Inc. and the cigarette brands "Ace," "Hi-Val," "Gold Crest," and "Checkers," continuing to sell member-grown tobacco in cigarettes that were previously manufactured in India and to take advantage of additional tax exemptions associated with the MSA. *Id.* ¶ 36.

⁷ The MSA, an agreement between cigarette companies and forty-nine state attorneys general, charges cigarette manufacturers a tax per carton of cigarettes. The Cooperative's brands are permanently exempted from that tax obligation unless their market share exceeds a certain percentage of the total market, thereby allowing the Cooperative to realize a greater profit on the sale of cigarettes. Kacsuta Decl. ¶ 37.

Many of these decisions—particularly the acquisitions—are necessarily costly, and the Cooperative has used its funds, supplemented with additional debt, to pursue and sustain them. *Id.* ¶ 45. By comparison, the large tobacco manufacturers the Cooperative competes against have resources that dwarf those of the Cooperative. *Id.* ¶ 51. The Cooperative remains hard pressed, therefore, to compete effectively on market terms while making maximum, strategic use at all times of its available funds. *Id.*

Once the CCC stopped offering loans to purchase tobacco, the Cooperative lost its financing for purchasing millions of pounds of tobacco from its members. *Id.* ¶ 42. Given the considerable lag between when the Cooperative buys tobacco from members and then sells it, which can take three years or longer, the Cooperative required substantial upfront financing. *Id.* To obtain the financing necessary to allow it to purchase greater quantities of green tobacco from members, the Cooperative acquired a line of credit from a private bank. *Id.* ¶ 43. Currently, the Cooperative may borrow up to \$195 million against this line of credit at favorable interest rates. *Id.* To secure its favorable interest rates, however, the Cooperative must keep substantial cash-on-hand and investments to serve as collateral, lest it default. *Id.* ¶ 44. As such, the Cooperative is obliged to deploy reserve funds to collateralize the line of credit and maintain compliance with its financing agreements. *Id.* ¶¶ 44-45.

At present, the profitable consumer-products business effectively subsidizes the Cooperative's unprofitable purchases of green leaf and sales of processed leaf. The latter is what directly benefits member-growers by enabling them to grow a greater volume of tobacco, and to obtain a better price for it, than they otherwise would. *Id.* ¶ 47; Rucker Decl. ¶¶ 49-51. In particular, the Cooperative makes a concerted effort to set an early, higher price for flue-cured tobacco, thereby raising the market price for both members and non-members alike. Kacsuta Decl.

¶ 54. The Cooperative can afford to pay these higher prices to growers only thanks to the profits it earns through the non-leaf businesses. Kacsuta Decl. ¶ 50; Rucker Decl. ¶¶ 46-47. Similarly, the Cooperative is able to maintain and to grow its profits from the non-leaf business only thanks to its aggressive efforts to market its products, its leafs, and flue-cured tobacco internationally. Kacsuta Decl. ¶¶ 35, 51.

The Cooperative's post-FETRA strategy has demonstrably worked. The Cooperative is meeting its stated goals. Because of the consumer-products side of the business, the Cooperative has been able to distribute patronage dividends to its members throughout recent years. *Id.* ¶¶ 55-56. The Cooperative paid \$24.3 million in cash patronage dividends from 2011-2016 (and issued a similar amount in equity credits). *Id.* ¶ 56. Continuing to deliver and to maximize the annual patronage dividend for growers—while maintaining a sustainable business—remains a top priority for the Cooperative and its Board. *Id.* The Cooperative also offered the 1967-1973 Capital Equity Credit Holders the opportunity to redeem their Credits for cash. *Id.* ¶ 57. The Cooperative opened the first redemption period in 2011, and thereafter continually opened redemption periods through 2017. *Id.* Despite opening these redemption periods for six years, only \$5.5 million of these Credits were redeemed. *Id.*

For all of its demonstrated success, the Cooperative still faces difficult decisions about how it can best serve current and future growers of flue-cured tobacco consistent with its limited resources and challenging market decisions. *Id.* ¶ 52. In particular, the Cooperative and its Board in today's era must decide how to allocate contracts among members who consistently want to deliver more tobacco than the Cooperative can afford to purchase each year. *Id.* ¶ 53. In making agonizing decisions about such matters, the Cooperative and its Board are mindful of the need to operate sustainably, so that the Cooperative can continue its mission for the benefit of future

generations of growers. *Id.* ¶ 52. Consistent with that imperative, one way to accommodate growers' excess demand for the Cooperative's contracts is—in simple terms—by trimming contract poundage across the board, or across wide swaths of growers. *Id.* ¶ 53. Another way is by altogether dropping low-performing growers. *Id.* Needless to say, these decisions are not easy for the Cooperative or its Board. The less resources the Cooperative has available, however, the more it needs to make them. *Id.* What the Cooperative strives to do is to continue to grow the overall market for its tobacco products so that it can sell them profitably, and on that basis increase the total poundage of annual leaf it can contract to buy from growers. *Id.* ¶ 53.

E. The Cooperative's Current Financial Position

As of April 30, 2017, the Cooperative had approximately \$522 million in assets, \$173 million in liabilities, and \$349 million in shareholders' equity. Ex. F (2017 Financial Statements) at USTC-FL000874. The Additional Paid in Capital, Capital Equity Credits, and Contributed Capital—the funds that Plaintiffs and objectors claim must be distributed—are entries on the stockholders' equity portion of the balance sheet. *Id.*; Kacsuta Decl. ¶ 69. They **do not** reflect cash on hand at the Cooperative, and they are **not** reserves. Kacsuta Decl. ¶¶ 68-69.

Rather, the Cooperative holds only approximately \$11.5 million in “cash and cash equivalents,” as shown on the **asset side** of the balance sheet. *Id.* ¶ 71; Ex. F at USTC-FL000874. The Cooperative's remaining assets consist of \$52 million in accounts receivable (*i.e.*, monies owed the Cooperative on tobacco it has already sold and delivered); \$129.6 million in inventories (mainly tobacco that conservatively will take years to sell); \$40.6 million in property, plant, and equipment (primarily the Timberlake facility); and \$156.5 million in intangible assets. Kacsuta Decl. ¶¶ 72-75. Notwithstanding their status on the balance sheet, none of these assets could be profitably liquidated. *Id.* The remaining material asset—\$129.5 million in investments in interest-bearing obligations—collateralizes the line of credit. *Id.* ¶ 71. Selling these assets would require

the Cooperative to attempt to renegotiate its credit agreement, which would under the best of circumstances result in higher financing costs and inure to the detriment of its members. Any diminishment of the assets would reduce the amount of money that the Cooperative could borrow and, consequently, reduce the amount of tobacco it could purchase from members. *Id.*

PROCEDURAL BACKGROUND

A. The *Fisher-Lewis* Action

In January 2005, a few months after FETRA was enacted, Dan Lewis (among others), represented by Shipman & Wright (currently co-counsel to Plaintiffs here), brought suit in North Carolina Superior Court (the “State Court”), challenging the Cooperative’s decision-making respecting its reserve funds.⁸ The following month, Kay Fisher (among others), represented by Philip Isley and Alan Runyan, brought a similar suit.⁹ Both cases asserted that the Cooperative must distribute reserve funds.

The Cooperative engaged in settlement negotiations with the *Lewis* plaintiffs. Dkt. 73 (Opposition to Intervention Motion) at 6-7. The *Fisher* plaintiffs, however, expressed no interest in settlement. After voluntary discovery and extensive negotiation, the Cooperative and the *Lewis* plaintiffs reached a proposed settlement that was submitted to the State Court for approval in September 2005 (the “2005 Settlement”). The 2005 Settlement contemplated a payment by the Cooperative on the order of \$76.8 million in cash distributions (*i.e.*, redemption of the Capital Equity Credits and payment of a \$50 million cash settlement fund) and book allocations of the Additional Paid-In-Capital and retained earnings, based on the Cooperative’s status at the time

⁸ See *Lewis v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 188 (N.C. Super. Ct.).

⁹ See *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 1938 (N.C. Super. Ct.).

FETRA was ending and the premium the Board placed on appeasing former growers to the fullest possible extent. *See* Hill Decl. ¶¶ 33-36. Upon objections from the *Fisher* plaintiffs (represented by Isley and Runyan), the State Court denied preliminary approval “*without prejudice*” and concluded that the *Fisher* plaintiffs “shall be entitled to undertake discovery on the merits of the proposed Settlement.” Dkt. 70-2 (May 9, 2006 Order) at 4-5. Thereafter, the parties engaged in further discovery and conducted multiple-day settlement conferences in 2008, but they were ultimately unsuccessful. Shipman & Wright withdrew as counsel for the *Lewis* plaintiffs in September 2007 due to disagreements with co-counsel.

The *Lewis* and *Fisher* plaintiffs subsequently consolidated and filed an amended and consolidated complaint. At its core, the consolidated *Fisher-Lewis* complaint, like the one here, seeks distribution from the Cooperative’s reserve. The *Fisher-Lewis* plaintiffs moved to certify a class, which motion was granted in 2014 and affirmed by the North Carolina Supreme Court in December 2016. Dkt. 73-8 (Dec. 21, 2016 North Carolina Supreme Court Class Certification Decision). Since then, litigation in *Fisher-Lewis* has proceeded in the State Court pursuant to the operative Case Management Order.

B. The *Speaks* Action

This Action was filed in October 2012 by Teresa Speaks and eight other plaintiffs, challenging the same conduct and seeking the same funds at issue in *Fisher-Lewis*. Although it challenged the same conduct, this Action posed a bigger threat to the Cooperative in significant ways. First, unlike the plaintiffs in *Fisher-Lewis*, the Plaintiffs in this Action made a demand on the Cooperative’s Board, thereby endeavoring to obviate a potential affirmative defense that had been prominently raised—specifically, that the *Fisher-Lewis* theories are in whole or in part foreclosed as derivative. Dkt. 64 (Amended Class Action Complaint) ¶ 6; *see also* Dkt. 73-8 (Dec. 21, 2016 North Carolina Supreme Court Class Certification Decision) at 11-12. Second, the

Plaintiffs here sought dissolution, a more drastic remedy that stood to enhance their negotiating leverage and raise their ceiling on damages. Dkt. 64 (Amended Class Action Complaint) ¶¶ 97-102. The *Fisher-Lewis* plaintiffs did not seek to intervene in this Action at the time, nor did they raise any concerns about this parallel action for some five subsequent years.

This Action was stayed pending resolution of class certification in *Fisher-Lewis*. When *Fisher-Lewis* was remanded to the trial court in early 2017, the Cooperative and Plaintiffs here discussed the implications of the North Carolina Supreme Court's affirmance, agreed that this case was not moot, outlined potential next steps, and in turn began to discuss exploring a possible resolution of the case through settlement. The Parties agreed to engage The Honorable (Ret.) Frank W. Bullock, Jr. as a neutral mediator.¹⁰ Prior to the mediation, which took place on May 11-12, 2017, each Party submitted mediation statements to Judge Bullock and the Cooperative voluntarily produced documents to the Plaintiffs as requested.

As a courtesy, the Cooperative informed the *Fisher-Lewis* plaintiffs on or around April 20, 2017 that the Parties in this Action planned to mediate. The *Fisher-Lewis* plaintiffs did not ask to participate. On May 5, 2017, prior to the mediation, counsel to the *Fisher-Lewis* plaintiffs instead sent a letter to Plaintiffs' counsel here. Specifically, Bob Cherry wrote to Gary Shipman: "If we have not heard from you by 5 pm on Monday, May 8, 2017 that either the mediation will not occur as scheduled or that it will go forward but just as to the individual interests of the *Speaks* Plaintiffs, we will assume your intent to mediate all claims that fall within the *Speaks* putative class designation." Dkt. 73-20 (May 5, 2017 letter from B. Cherry) at 3-4. Three days later, Mr.

¹⁰ Judge Bullock served for 24 years on the Middle District of North Carolina and now practices at Womble Carlyle Sandridge & Rice, LLP. See Womble Bond Dickinson, "Judge Frank W. Bullock, Jr." <https://www.womblebond Dickinson.com/uk/people/judge-frank-w-bullock-jr> (last visited Jan. 3, 2018).

Shipman made clear that the mediation in this Action would in fact proceed as planned and stated: “I am sure that you are aware and have researched the impact, if any, of class certification in the state court *Lewis* case and a competing putative class action in Federal Court, a dynamic which is not unique . . . suffice it to say that [it] is our firm belief that both the *Lewis* case and the *Speaks* case are free to proceed until there is a final judgment in one of them.” Dkt. 73-21 (May 8, 2017 letter from G. Shipman) at 3.

Before the mediation, the Cooperative provided these letters to Judge Bullock. Furthermore, before the mediation took place, the Parties met with Judge Bullock to discuss the letters and the parallel *Fisher-Lewis* case, including its history and the terms of the 2005 Settlement. The Parties also submitted to Judge Bullock competing mediation statements setting forth their positions, legal analyses, and rationales. Over the course of two intensive days, the Parties then hashed out what began as starkly divergent positions and worked hard, with Judge Bullock’s supervision and guidance, to explore reasonable middle ground. *See* Hill Decl. ¶ 4; Shepherd Decl. ¶ 3. Towards the end of the second day, the Parties reached agreement in principle on a settlement whose terms are described in this Court’s preliminary approval order and further detailed below.

The Parties promptly reported to this Court, as well as the State Court, that an initial settlement had been reached, and that the Parties were continuing to finalize its terms and hoping soon to submit a proposed settlement for preliminary approval. Dkt. 52 (June 5, 2017 Motion for Status Conference); Dkt. 73-22 (June 9, 2017 Status Report to the State Court); Dkt. 73-23 (June

22, 2017 Status Report to the State Court). On September 7, 2017, Plaintiffs moved for preliminary approval,¹¹ which the Court granted on September 13, 2017. Dkt. 63.

On September 15, 2017, Dan Lewis, a named plaintiff in *Fisher-Lewis*, moved to intervene in this case and urged the Court to vacate the Preliminary Approval Order. Dkt. 70. Among other things, Mr. Lewis argued that the Settlement was not fair or adequate in light of prior settlement offers from 12 years ago, and chastised the Parties' "failure" to "adequately inform the Court" of these outdated settlement proposals (as well as settlement offers that never went anywhere). Dkt. 70-1 (Memorandum in Support of Intervention Motion), at 12-13. This Court considered the motion on an expedited basis (consistent with impending notice expenditures and deadlines) and denied it, finding that intervention was not timely given that Mr. Lewis had known about this Action for years and about the Settlement for months: "This court refuses to endorse a wait-and-see strategy designed to disrupt a preliminary settlement at the eleventh hour." Dkt. 82 at 2-4. The Court also found that the intervention motion "lack[ed] merit." *Id.* at 4.

The Court set a hearing for January 19, 2018 to consider final approval of the Settlement, and required class members who disapproved of the Settlement terms to either object or opt-out by December 20, 2017. Dkt. 63, 77.

C. Efforts In *Fisher-Lewis* To Disrupt The Settlement Case

While seeking to intervene in this Court, the *Fisher-Lewis* plaintiffs opened another line of attack in the State Court, filing on September 22, 2017 a "Motion to Show Cause [or for] Sanctions," Dkt. 73-25, claiming that the Cooperative's mediation and settlement proposal in this case violated North Carolina's Rules of Professional Conduct, as well as the State Court's Case

¹¹ Plaintiffs submitted an amended motion for preliminary approval on September 8, 2017 to reflect non-substantive changes. Dkt. 60.

Management Order. That motion amounted to a collateral attack on proceedings in this Court, going so far as asking the State Court to order the Cooperative to “withdraw any offer made to any person or attorney other than class counsel [in State Court] to resolve the claims in this case,” and to “prohibit [the Cooperative] from participating . . . in providing notice” for the Settlement. Dkt. 73-25 at 15.¹² By written order on October 13, 2017, the State Court denied the requests for contempt and sanctions, but ordered the Cooperative to produce communications that it and its counsel had with opposing counsel in this case. The State Court also found—contrary to the Cooperative’s submissions—that the Cooperative could not communicate with members of the *Fisher-Lewis* class (which, as discussed below, is co-extensive with the class in this proceeding), without violating Rule 4.2 of the North Carolina Rules of Professional Conduct.¹³ Dkt. 123-2. This ruling has ever since hampered the Cooperative’s ability to answer in good faith basic factual inquiries from current and former tobacco growers (and their loved ones) who seek simply to understand this Settlement and to obtain information helpful to claims submissions (although this role has been served well by the efforts of the Claims Administrator and opposing counsel). When the Cooperative recently sought relief from the State Court’s order simply to the extent of being

¹² *Fisher-Lewis* was reassigned to the Honorable A. Graham Shirley on October 5, 2017, following recusal by the prior judge.

¹³ As the Cooperative submitted to the State Court, its communications ***with opposing counsel*** here should not be deemed to violate Rule 4.2’s proscription against contacting represented ***parties*** without the presence of counsel. Alternatively, even if contact with opposing counsel could be construed as contact with represented parties—and it should not be—the American Bar Association has made clear that, in the class-action context, an attorney-client relationship sufficient to implicate Rule 4.2 does not arise “until the class has been certified ***and the time for opting out by a potential member of the class has expired.***” ABA Formal Op. 07-445 (emphasis added). North Carolina’s Rules are directly derived from the ABA Model Rules. See North Carolina State Bar, “Rules of Professional Conduct,” <http://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct> (last visited Jan. 6, 2018). Because the opt-out period in *Fisher-Lewis* continued through October 27, 2017, the Cooperative’s May-September, 2017 mediation and settlement discussions could not possibly have violated Rule 4.2.

able to supply basic membership information in response to inquiries, that request was opposed by counsel for *Fisher-Lewis* and denied.

The *Fisher-Lewis* plaintiffs returned to the State Court on November 28, 2017, submitting a “Motion for Rule 23(c) Review of Compromise,” urging the State Court to review the Settlement as pending before this Court and to hold that it is “not approved,” at least for purposes of achieving preclusion. Dkt. 123-3 (subject to seal); Dkt. 124 (filed under seal with the Court). The Cooperative has opposed this request in written submissions and at hearing before the State Court, which, as of the date hereof, has not issued a ruling.

D. Terms Of The Settlement

The Settlement defines the proposed settlement class of Plaintiffs as follows:

All individuals, proprietorships, partnerships, corporations, and other entities that are or were shareholders and/or members of U.S. Tobacco at any time during the Class Period, without any exclusion, including any heirs, representatives, executors, powers-of-attorney, successors, assigns, or others purporting to act for or on their behalf with respect to U.S. Tobacco and/or the Settled Claim. Dkt. 60-1 at 7.¹⁴

The Settlement Class includes approximately 800,000 members and extends to **all** current and former members of the Cooperative, as well as their heirs, assigns, representatives, *etc.*, across the United States. Under the Settlement, the Cooperative agreed to pay \$24 million into a Settlement Fund over a five-year period: (1) 75% of the Fund will initially fund “Group 1,” to be allocated to claimants on a pro rata basis according to the number of pounds they marketed and sold to the Cooperative (subject to a \$15,000 cap per claimant); and (2) 25% of the Fund (plus any remaining funds carried over from Group 1) will fund “Group 2,” to be allocated to claimants on a pro rata basis according to the number of years in which the claimant marketed and sold flue-

¹⁴ Capitalized terms not defined otherwise herein have the meanings given them in the Settlement Agreement. Dkt. 60-1.

cured tobacco. *Id.* at 12-14. Claimants will be paid the total allocation amounts from both Group 1 and Group 2.

The Settlement provides for a release of all claims by the Settlement Class against the Cooperative related to any of the conduct or matters at issue in this Action. *Id.* at 24. By its express terms, the Settlement will not go into effect until and unless *Fisher-Lewis* is dismissed or enjoined. *Id.* at 8. As this Court has recognized, it has long been clear to all concerned, including the *Fisher-Lewis* plaintiffs and their counsel, that preclusion of *Fisher-Lewis* and any other parallel class action would be a necessary precondition to the Cooperative funding any class-action settlement. *Id.*; Dkt. 63 (September 13, 2017 Order Preliminarily Approving Settlement).

The Parties, with the Claims Administrator—Rust Consulting (“Rust”)—have developed a detailed protocol setting out the procedure Rust will use to verify claims, determine allocation, and distribute payments to authorized claimants, consistent with the Settlement terms. Dkt. 217-6 (Supplemental Stinehart Declaration) at 9-10.

E. Notice Program

The Parties provided notice of the Settlement to known and potential class members. Dkt. 63 (September 13, 2017 Order Preliminarily Approving Settlement) at 6-7; Dkt. 217-5 (January 5, 2018 Wheatman Declaration). The Notice Program was designed to provide constitutionally adequate notice and builds in complementary components in order to maximize its nationwide reach and prominence:

- **Direct Mail Notice** in the form of Postcard Notices mailed pursuant to the Cooperative’s historical membership records and research to identify or confirm present mailing addresses;
- **Paid Media Notice** through national and local publications—including internet, print, and television advertising; and
- **Earned Media** coverage through a press release.

Dkt. 58-1 (September 7, 2017 Wheatman Declaration) at 5; Dkt. 217-5 (January 5, 2018 Wheatman Declaration) at 2.

As Dr. Wheatman attests, each element of the Notice Program approved by the Court was implemented. Dkt. 217-5 at 2-3. Dr. Wheatman concludes that the Notice Program achieved each of the planned objectives, reaching at least 70% of the Class Members. *Id.* at 10. She further opines that the three-part notification program affords the best notice practicable under the circumstances pursuant to Rule 23 of the Federal Rules of Civil Procedure. *Id.* at 10-11.

F. Coordinated Submission Of Objections Led By *Fisher-Lewis* Plaintiffs

The Court has received 72 Objections to the Settlement, most of which are substantially similar. These Objections make clear that plaintiffs in *Fisher-Lewis* and their counsel have sponsored the objection campaign in this Action, while, as explained above, the Cooperative has been prevented from communicating with members of the class (even when fielding basic inquiries). The Objections largely replicate the same points, often in identical language, if not on identical forms, and, as such, are less distinct than the docket might otherwise suggest:

- An objection initially filed by Pender Sharp, Dkt. 92,¹⁵ is copied nearly word-for-word, in full or partially, by an additional 11 objectors, Dkt. 127, 137, 144, 145, 149, 156, 163, 175, 186, 196, 221.
- Chandler Worley, a named plaintiff in *Fisher-Lewis*, filed an objection, Dkt. 100, on a template form (presumably provided by counsel in *Fisher-Lewis*) that was used by an additional 17 objectors, Dkt. 101, 104, 107, 109, 111, 114, 115, 139, 174, 198, 200, 201, 202, 203, 212, 223, 224. Mr. Worley is a brother of Chandler and Alford Worley, who are both named representative in *Fisher-Lewis*, as well as Dennis Worley, who is among class counsel in *Fisher-Lewis*.
- Members of the Vick family (E. Jerome Vick, Diane V. Vick, Charlotte D. Vick, and Lynwood J. Vick) filed an objection on behalf of Vick Family Farms

¹⁵ Mr. Sharp filed two objections. Dkt. 92, 192. The Cooperative notes that the Preliminary Approval Order does not include provisions for filing multiple sets of objections and questions the propriety of Mr. Sharp's second objection even while responding in full.

Partnership through counsel, Dkt. 162, which was copied nearly word-for-word by other objectors, Dkt. 187, 190.

- Pender Sharp filed two objections, the second of which was submitted by and through the same set of counsel who now serve as class counsel in *Fisher-Lewis*. Dkt. 192.
- 18 *pro se* objectors filed objections stating that they anticipated class counsel in *Fisher-Lewis* would file an objection and incorporating their argument. Dkt. 100, 101, 104, 107, 109, 111, 114, 115, 139, 174, 198, 200, 201, 202, 203, 212, 223, 224.

Although they are not among the named plaintiffs in *Fisher-Lewis*, it bears noting that Mr.

Sharp and Mr. Vick are key players there:

- Mr. Sharp was deposed in *Fisher-Lewis* and testified that he participated in an initial meeting with class counsel in early 2005, along with Mr. Vick and other farmers, acting as a “cheerleader” for the case. Ex. G (Sharp Deposition) at Tr. 70-80.
- Named plaintiffs in *Fisher-Lewis* testified that Mr. Sharp and Mr. Vick asked them to sign on as a named plaintiff. Ex. H (K. Hill Deposition) at Tr. 9-10.
- Mr. Sharp and Mr. Vick sent a letter to other farmers in 2005, after *Fisher-Lewis* was filed, to explain the purpose of the lawsuit and to collect signatures. Ex. G (Sharp Deposition) at Tr. 115-25.

Class counsel in *Fisher-Lewis*, acting as Mr. Sharp’s counsel for his objections, also procured declarations from the Commissioners of Agriculture of three states, Dkt. 192-6, 192-13, 192-14, while simultaneously preventing Cooperative personnel from communicating with the North Carolina Commissioner, Steven Troxler, based on the State Court’s order the *Fisher-Lewis* plaintiffs obtained addressing the Cooperative’s communications with class members. *See* Dkt. 192-10 (October 13, 2017 State Court Order). While Commissioner Troxler is himself a class member and is privately represented by *Fisher-Lewis* counsel to that extent, it is worth noting that he has not objected to the settlement or opted out in his individual capacity.

G. The Instant Sharp Objection

Notably, Mr. Sharp, who is one of the ringleaders in *Fisher-Lewis* and as a lead objector in this Action, is *not even a member of the class*. His objection is submitted on behalf of himself individually and on behalf of Sharp Farms, Inc. Dkt. 192, at 1. Although our attempt to depose Mr. Sharp specifically for present purposes met with objections by the *Fisher-Lewis* counsel here appearing on his behalf, *see* Ex. I (Jan. 4, 2018 email from P. Isley to K. Forst, et al.), Mr. Sharp has testified under oath in *Fisher-Lewis* that (1) he was never individually a member of the Cooperative;¹⁶ and (2) he has never been a shareholder of Sharp Farms, Inc. and rather his father and brother have “always been the only two shareholders.” Ex. G (Sharp Deposition) at Tr. 14-15. Because the available evidence shows that Mr. Sharp is not a class member, he has no standing to object in this Action,¹⁷ and the Cooperative is respectfully requesting, as reflected in a separate motion to strike, that the Court strike his objections and deny his request to appear at the final fairness hearing. Dkt. 92, 192. Nevertheless, while reserving its rights and incorporating by reference its relevant motion to strike as filed in parallel, the Cooperative herein responds to Mr. Sharp’s objections in full.

H. The Cooperative’s Successful Defense In *Rigby*

In addition to the North Carolina litigation in federal and state court, the Cooperative also faced five identical actions in Georgia Superior Court (each joined by a series of individual

¹⁶ Ex. G (Sharp Deposition) at Tr. 17 (Q: “Have you ever individually been a member of [the Cooperative]? A: “Not individually.”).

¹⁷ *See* Dkt. 63 (Preliminary Approval Order) at 8 (stating that “[a]ny **Settlement Class Member** who has not submitted a timely request for exclusion from the Settlement Class and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement may, but need not, submit comments or objections regarding the proposed Settlement”) (emphasis added).

plaintiffs), including the lead case captioned *Rigby v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 236 (Ga. Super. Ct.) (“*Rigby*”).¹⁸

Just like the Plaintiffs in this Action and the *Fisher-Lewis* plaintiffs, the Georgia plaintiffs alleged claims that all sought, at bottom, to either dissolve the Cooperative or obtain a significant distribution from its reserve on the theory that the Cooperative impermissibly retained funds.

Of all the lawsuits related to the Cooperative’s retention and use of its reserve, *Rigby* is the *only* one that has been litigated to final judgment. The Cooperative there won a total victory. Between 2012 and 2015, the Cooperative obtained judgments in its favor disposing of every claim brought by the *Rigby* plaintiffs.¹⁹ Among other things, the Georgia court sided with the Cooperative and rejected the *Rigby* plaintiffs’ claims that they were entitled to a judicially-mandated distribution from the Cooperative in any form or fashion—ruling, *inter alia.*, that the plaintiffs’ claims related to the Cooperative’s failure to distribute the reserve funds were time-barred. Final dismissal has been affirmed by the Georgia Court of Appeals, *Rigby v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 339 Ga. App. 558, 794 S.E.2d 413 (2016), *reconsideration denied* (Nov. 18, 2016), *cert denied* (June 5, 2017), and the Georgia Supreme Court denied

¹⁸ The other cases are *Swain v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 237 (Ga. Super. Ct.); *Altman v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 238 (Ga. Super. Ct.); *Griffis v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 240 (Ga. Super. Ct.); and *Lee v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 239 (Ga. Super. Ct.). These actions, which were filed in 2007, were not class actions but rather brought by approximately two dozen plaintiffs in total, in their individual capacities.

¹⁹ Dkt. 73-13 (June 15, 2012 Order on Motion for Summary Judgment); Dkt. 73-14 (October 18, 2012 Order on Motion to Dismiss); Dkt. 73-15 (January 3, 2013 Order on Motion to Dismiss or for Summary Judgment); Dkt. 73-16 (March 28, 2014 Georgia Court of Appeals Decision); Dkt. 73-17 (July 13, 2015 Order on Motion for Summary Judgment).

certiorari.²⁰ A series of individual suits in Georgia that were lined up behind *Rigby* have also been dismissed. Ex. J (Voluntary Dismissals).²¹

* * *

All of the objections—including Mr. Sharp’s objections (brought through class counsel in *Fisher-Lewis*), the Commissioners’ affidavits, and the *pro se* objections—recite the same arguments as to why this Settlement is not fair, reasonable, and adequate. Among their recurring themes are that (1) the Court lacks subject-matter jurisdiction; (2) this Court should defer to *Fisher-Lewis*; (3) the value of the Settlement is inadequate; (4) the outdated 2005 Settlement proves that this Settlement is unfair; (5) the Settlement was the product of collusion; (6) the distribution of funds is unfair to certain class members; (7) the claims administration process does not adequately identify class members; (8) the scope of the release is overbroad; and (9) the members have received insufficient notice. The objectors further argue—seemingly without regard for their irreconcilable support of class certification in *Fisher-Lewis*—that this class cannot be certified under Rule 23 because (1) there are intra-class conflicts; (2) a class action is not a superior method to resolve this dispute; and (3) class counsel is inadequate. Finally, certain of the named plaintiffs in *Fisher-Lewis* seek to effectuate a purported class-wide opt-out by all members of the certified class in *Fisher-Lewis*.

For the reasons set forth below, the objectors’ contentions lack merit, and this Settlement should be finally approved as fair, reasonable, and adequate.

²⁰ Dkt. 73-18 (November 3, 2016 Georgia Court of Appeals Decision); Dkt. 73-19 (June 5, 2017 Denial of Certiorari Petition by Georgia Supreme Court).

²¹ The Georgia plaintiffs filed voluntary dismissals without prejudice. On December 11, 2017, the Cooperative filed a motion to vacate the voluntary dismissals and enter dismissal with prejudice in each of the remaining cases, which motions are currently pending. *See* Ex. K.

STANDARD OF REVIEW

A class action “may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Fed. R. Civ. P. 23(e). The Court may approve a settlement binding absent class members “only after a hearing and on a finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(c); *see In Re Jiffy Lube*, 927 F.2d 155, 158-59 (4th Cir. 1991); *Scardelletti v. Debarr*, 43 Fed.Appx. 525, 528 (4th Cir. 2002). To determine the proposed settlement’s adequacy, the Court must consider “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *In re Jiffy Lube*, 927 F. 2d at 159. To determine the settlement’s fairness, the Court must consider “(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery already completed; (3) the circumstances surrounding the settlement negotiations; and (4) the experience of counsel” in the substantive legal area to which the litigation pertains. *Id.*; *Scardelletti*, 43 Fed. Appx. at 528.

“The most important factor in evaluating the adequacy of a class action settlement is the relative strengths of plaintiffs’ case and the existence of any defense or difficulties of proof.” *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 831 (E.D.N.C. 1994) (emphasis added); *see also Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975) (similar). Indeed, the proposed terms of a class action settlement “can be inadequate only in light of the

strength of the case presented by the plaintiffs.” *Flinn*, 528 F.2d at 1173 (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974)).²²

The fairness hearing provides an opportunity for the court to hear from objectors, develop the record, and render a fully informed decision as to the settlement. The fairness hearing should not, however, become a “trial or a rehearsal of the trial” on the merits of the underlying claims. *Flinn*, 528 F.2d at 1173 (quoting *Levin v. Miss. River Corp.*, 59 F.R.D. 353, 361 (S.D.N.Y. 1973)). Transforming the fairness hearing from a consideration of the proposed settlement to a mini-trial “would defeat the very purpose of the compromise to avoid a determination of the sharply contested issues and to dispense with expensive and wasteful litigation.” *Id.* (quoting *Levin*, 59 F.R.D. at 361). Thus, in determining that a settlement is “fair, reasonable, and adequate,” the court need not “reach any dispositive conclusions on the . . . unsettled legal issues in the case.” *Id.* While objectors should be granted “leave to be heard, to examine witnesses and to submit evidence on the fairness of the settlement to objectors, it is entirely in order for the trial court to limit its proceedings to whatever is necessary to aid it in reaching an informed, intelligent, and reasonable decision.” *Id.*

²² The Fourth Circuit reviews the final approval of a class action settlement for abuse of discretion, *see Scardelletti*, 43 Fed. Appx. at 528, and will not “substitute [its] ideas of fairness for those of the district judge,” *Flinn*, 528 F.2d at 1173. In reviewing for abuse of discretion, the Fourth Circuit has explained that the “most important” factor for review is “whether the trial court gave proper consideration to the strength of the plaintiffs’ claims on the merits.” *Id.* (citing *Grinnell*, 495 F.2d at 455).

ARGUMENT

I. THIS COURT HAS SUBJECT-MATTER JURISDICTION

Mr. Sharp argues that this Court lacks jurisdiction to hear this dispute. Dkt. 192, at 1-5. But this Court has both federal-question jurisdiction and diversity jurisdiction, and none of Mr. Sharp's other quasi-jurisdictional arguments has merit.

A. This Court Has Federal Question Jurisdiction (28 U.S.C. § 1331)

To begin with, this Court has federal-question jurisdiction under 28 U.S.C. § 1331 and Mr. Sharp does not even argue to the contrary. The Sixth Circuit has held that federal subject-matter jurisdiction exists under these precise circumstances in *Lay v. Burley Stabilization Corp.*, 312 F. App'x 752, 755-56 (6th Cir. 2009). There, members of a burley tobacco cooperative brought suit alleging that they were entitled to funds the cooperative acquired during the No Net Cost Act era and "the proceeds [the cooperative] received or will receive when it sells the tobacco CCC released to it under FETRA." *Id.* at 755. The district court in *Lay* explained that, as here, "plaintiffs effectively [sought] to liquidate and distribute all [of the cooperative's] assets and to dissolve the cooperative." *Lay v. Burley Stabilization Corp.*, No. 3:07-cv-259, 2007 WL 3120800, at *3 (E.D. Tenn. Oct. 23, 2007). On appeal, the Sixth Circuit flatly rejected plaintiffs' argument that the court "lack[ed] jurisdiction on the basis that their claims do not rest on federal law," 312 F. App'x at 755, reasoning that the claim of entitlement "to the proceeds from the sale of loan pool tobacco 'pursuant to FETRA' . . . present[ed] a *substantial question of federal law*" sufficient to vest the Court with jurisdiction, *id.* (citing *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164 (1997) (emphasis added); *see also id.* ("the [No Net Cost Act] and FETRA created members' claims, which require resolution of substantial issues under federal law.")). This conclusion followed even though the members "had cast their claims as state law causes of action." *Id.*

Just as in *Lay*, Plaintiffs seek funds derived at least in large part from the No Net Cost Act and FETRA, Dkt. 64 (Am. Compl.), ¶¶ 14-15, 29, 95, and seek distribution of assets along with the Cooperative’s dissolution, *id.* ¶¶ 86-102. As *Lay* recognizes, resolution of this dispute necessarily requires the Court to determine whether 7 U.S.C. § 519(b) requires or prevents a distribution of funds. Consequently, this case present “a substantial question of federal law” and necessarily falls within this Court’s jurisdiction, irrespective of whether the complaint formulates its counts under state law.²³

B. This Court Also Has Diversity Jurisdiction Pursuant To CAFA (28 U.S.C. § 1332(d))

Mr. Sharp’s contention that this Court lacks diversity jurisdiction is also wrong. In fact, this case would readily fall within this Court’s diversity jurisdiction under the Class Action Fairness Act (“CAFA”), even if it did not pose a federal question, which it in fact does.

Mr. Sharp questions that straightforward conclusion only by invoking the “internal affairs” exception to diversity jurisdiction under CAFA, but that limited exception does not apply. Dkt. 192 at 1-2; *see* 28 U.S.C. § 1332(d)(9)(B). Congress enacted CAFA to expand federal jurisdiction over class actions. Because “CAFA’s language favors federal jurisdiction,” the circuits have held that, once the party seeking federal jurisdiction shows the existence of *prima facie* jurisdiction under CAFA, the party challenging the federal court’s exercise of jurisdiction bears the burden of demonstrating that an exception applies. *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th

²³ This Court clearly and undisputedly has supplemental jurisdiction over the remaining claims in the Amended Complaint. 28 U.S.C. § 1367(a); *see Bullard v. Snipes*, No. 3:16-cv-61-FDW, 2017 WL 5759942, at *5 (W.D.N.C. Nov. 28, 2017) (“The district courts have supplemental jurisdiction over claims that are so related to the claims over which the court has original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”).

Cir. 2006).²⁴ Here, the *prima facie* case for CAFA jurisdiction is undisputed—the class includes countless members who are not citizens of North Carolina and the amount in dispute well exceeds \$5,000,000, as reflected in the Settlement. *See* 28 U.S.C. § 1332(d)(2). Because Mr. Sharp challenges jurisdiction based only on the internal-affairs exception, he bears the burden of showing that the exception applies. But he has not come close to carrying that burden.

The internal-affairs exception provides that original jurisdiction under CAFA “shall not apply to any class action that *solely involves a claim* . . . that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized.” 28 U.S.C. § 1332(d)(9)(B) (emphasis added). “Congress did not define ‘internal affairs’ but neither did it signal a departure from that term’s ordinary meaning” as defined by the Supreme Court. *LaPlant v. Nw. Mut. Lif. Ins. Co.*, 701 F.3d 1137, 1139-40 (7th Cir. 2012); *see also* S. Rep. 109-14, at *45 (CAFA internal affairs exception “intended to refer” to Supreme Court’s definition). The Supreme Court has defined “internal affairs” as “matters peculiar to the relationships among or between the corporation and its *current* officers, directors, and *shareholders*.” *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982) (emphasis added). Further, Congress intended that the internal affairs exception “be narrowly construed.” S. Rep. 109-14, at *45 (“[T]he Committee intends that [the internal affairs] exemption be narrowly construed.”).

This suit cannot possibly fall within the internal-affairs exception because it does not “solely involve[]” a claim relating to the “internal affairs” of the Cooperative. Most obviously, it

²⁴ *See also* *Greenwich Fin. Servs. Mortg. Fund 3 LLC v. Countrywide Fin. Corp.*, 603 F.3d 23, 26 (2d Cir. 2010); *Kaufman v. Allstate New Jersey Ins. Co.*, 561 F.3d 144, 153 (3d Cir. 2009); *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1024 (9th Cir. 2007); *Hart v. FedEx Ground Package Sys. Inc.*, 457 F.3d 675, 680 (7th Cir. 2006); *Frazier v. Pioneers Americas LLC*, 455 F.3d 542, 546 (5th Cir. 2006).

goes well beyond “*current* officers, directors and shareholders,” *Edgar*, 457 U.S. at 645, by questioning *prior decades* of conduct and authority and by seeking recovery on behalf of former members who ceased patronizing the Cooperative decades ago, as well as on behalf of heirs and assigns around the country who never had anything to do with the Cooperative yet invoke alleged rights and entitlements external to it. Indeed, Plaintiffs’ case encompasses a breach-of-contract theory—whereby the Cooperative allegedly violated its contractual obligations by failing to distribute funds, including as to former members and as to heirs and assigns who were never members of the Cooperative and have had nothing to do with the Cooperative for decades yet assert rights under the auspices of external contracts and obligations. The Complaint specifically alleges that, upon joining the Cooperative, members “entered into a contract appointing [the Cooperative] as . . . agent with respect to the sale of tobacco.” Dkt. 64 (Am. Compl.) ¶ 21. Plaintiffs further allege that the Cooperative “is required . . . to properly and equitably allocate their capital equity credits to its members on an annualized basis” pursuant to this contract. *Id.* ¶ 26. And they expressly fault the Cooperative’s conduct specifically relative to former members who had long ago ceased patronizing the Cooperative. *E.g., id.* ¶ 32. In these respects, Plaintiffs’ case rests upon **external** contracts and commitments relative to which the Cooperative supposedly violated its obligations by failing to distribute funds. *Id.* ¶ 72(c) (common questions include “[w]hether [the Cooperative], by and through its corporate officers and agents, have intentionally and/or negligently breached the Plaintiffs’ contractual rights and interest . . .”). Only by asserting rights under the auspices of external relationships that allegedly have vitality **outside** of the

Cooperative as *currently* constituted and managed do the Plaintiffs’ class and claims extend to former members as well as heirs and assigns who were never members of the Cooperative.²⁵

Were the above not itself dispositive, this Action also necessarily implicates and requires resolution of distinct questions of federal law that do not govern the “relationships” between and among the Cooperative, its Board, and its members. *Cf. Edgar*, 457 U.S. at 645. As discussed, the suit seeks to adjudge the Cooperative’s right, *e.g.*, to retain funds that Congress granted to it through FETRA. This determination quite obviously *calls for an interpretation of federal law*—including, whether 7 U.S.C. § 519(b) (the statutory section under which the CCC entrusted the ceded tobacco to the Cooperative) enables the Cooperative’s members to demand distribution of FETRA’s fruits. *Lay*, 312 F. App’x at 755. So too does Plaintiffs’ declaratory-judgment claim, which asks this court to adjudicate, among other things, whether class members are “entitled to an allocation and distribution of any funds presently held by [the Cooperative] beyond those reasonably necessary to fund [its] current activities.” Dkt. 64 (Am. Compl.) ¶ 82. Plaintiffs’ class allegations confirm that their suit raises this question of “federal . . . statutes.” *Id.* ¶ 72(c) (common questions include “[w]hether [the Cooperative], by and through its corporate officers and agents, have intentionally and/or negligently breached the Plaintiffs’ contractual rights and interest and property rights in violation of . . . *federal and state statutes*”) (emphasis added). Mr. Sharp cannot credibly deny the important role that FETRA, No Net Cost Assessments, and federal law play in this case, for his own objection teems with invocations of those and, in particular, with legal authority that he cites as construing and applying them. *See* Dkt. 92 ¶ 1 (discussing the end of the

²⁵ In fact, Mr. Sharp’s counsel have argued that the claims in the parallel, duplicative *Fisher-Lewis* case are not barred by the business-judgment rule precisely because they involve contract claims—a position that is facially inconsistent with Mr. Sharp’s argument that this suit falls outside federal jurisdiction because it is strictly confined to internal affairs of the corporation itself. *See* Dkt. 123-4 (Nov. 28, 2017 Plaintiffs’ Memorandum of Law) at 2-3.

Tobacco Price Support Program (*e.g.*, FETRA) and the Federal No Net Cost program); Dkt. 192 at 17 (claiming a dispute concerning the “proceeds of the Fair and Equitable Tobacco Reform Act” and No Net Cost “monies”); *id.* at 11 (alleging intra-class conflict on basis of No Net Cost payments); *id.* at 15 (citing Kentucky state court case, *Congleton v. Burley Tobacco Growers Coop*, for its analysis and application of FETRA). Because this suit implicates federal law as well as external contracts and relationships that well transcend the “matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders,” *Edgar*, 457 U.S. at 645, the internal-affairs exception—confined to cases *solely* involving such affairs—cannot apply.

Courts have carefully limited application of the internal-affairs exception by evaluating whether state corporate governance law (that is, the law of a corporations internal affairs) is the “sole” body of law implicated by claims in a class action suit. In *LaPlant*, for example, Judge Easterbrook rejected plaintiffs’ claims that a class action should be remanded to state court under the exception in a case that required the “interpretation of contracts” to determine plaintiffs’ rights. *LaPlant*, 701 F.3d at 1140. Even though the contract at issue—an annuity contract—provided a quasi-“ownership” interest in the defendant, the court reasoned that the disputes would “be resolved under insurance law, rather than the [state] Corporations Act.” *Id.* Similarly, in *Krueger v. Northwestern Mut. Life Ins. Co.*, No. 1:10–CV–00128–SPM, 2010 WL 4677382 (N.D. Fla Nov. 9, 2010), the district court sustained its jurisdiction over a removed class action in which holders of annuities sought to compel dividend payments from the defendant. The court rejected plaintiffs’ internal-affairs exception challenge to CAFA because it was “not clear that *solely* Wisconsin law would apply to the claims asserted by Plaintiff on behalf of putative class members.” *Id.* at *2 (emphasis added). Here too, as described above, Plaintiffs’ claims will be resolved, at least in

significant part, by operation of contract law (not just corporate law) and also by federal law (*e.g.*, FETRA).²⁶

Mr. Sharp's authorities are not to the contrary. In *Mansfield v. Edisto Electric Cooperative, Inc.*, the court held only that a federal law arguably impacting a cooperative's ability to pay patronage in certain circumstances did not completely preempt state corporate causes of action, and that the existence of conflict preemption solely as a federal defense to the state corporate claim did not pull the suit outside the internal-affairs exception. 2010 WL 11531441, at *7 (D.S.C. Mar. 30, 2010). That case differs from this one, however, in fundamental respects: this Complaint facially, directly, and necessarily implicates federal law and federal allocations to the Cooperative; it also runs into a direct, complete preemption defense insomuch as the United States Government expressly vested discretion over FETRA funds in the Cooperative, as against any competing private claim, *see infra* Part V.A.1(c), and it necessarily goes beyond "matters peculiar to the relationships among or between the corporation and its *current* officers, directors, and shareholders," *Mansfield* at *7 (quoting *In re Textainer P'ship Sec. Litig.*, No. C 05-0969 MMC, 2005 WL 1791559, at *4 (N.D. Cal. July 27, 2005)), particularly by questioning prior eras and seeking recovery on behalf of former shareholders as well as persons who were never themselves shareholders. *See supra* Procedural Background § D. Indeed, by reaching back decades (rather than confining itself to the Cooperative's *current* composition, operations and affairs), this case (like *Fisher-Lewis*) very clearly calls for consideration of such things as timeliness and statutes of

²⁶ *See also Johnson v W2007 Grace Acq. I, Inc.*, No. 13-2777, 2014 WL 12514892, at *4 (W.D. Tenn. July 28, 2014) (internal affairs exception did not apply because complaint included claim under home state securities law rather than just corporate law); *Genton v. Vestin Realty Mortg. II, Inc.*, No. 06cv2517-BEN (WMC), 2007 WL 951838, at *2 (S.D. Cal. Mar. 9, 2007) (internal affairs exception did not apply because suit involved interpretation of foreign state's law).

limitations well removed from corporate internal affairs. *See* Procedural Background § D; *see infra* Part V.A, Mr. Sharp’s other cases fail to address the internal-affairs exception entirely,²⁷ fail to address CAFA at all,²⁸ and are otherwise unpersuasive.²⁹

In sum, the critical role federal legislation plays in this litigation combined with the equally critical role played by external and past parties, conduct and relationships should forestall any doubt as to diversity jurisdiction. This class action is not the rare one that “*solely* involve[s] a claim” of the Cooperative’s internal corporate governance as it exists today. Accordingly, Mr. Sharp cannot demonstrate that the internal-affairs exception to CAFA applies.

C. This Court Should Not Relinquish Its Jurisdiction Under *Colorado River* Abstention

Mr. Sharp’s abstention argument is similarly unpersuasive: the Court should *not* abstain from exercising jurisdiction in favor of *Fisher-Lewis* under the *Colorado River* doctrine. Dkt. 192 at 3-4.

²⁷ *See Brady v. Denton County Elec. Co-op, Inc.*, No. 4:09-CV-130, 2009 WL 3151177, at *4-6 (E.D. Tex. Sept. 28, 2009) (local controversy exception); *Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 707 (4th Cir. 2010) (absence of minimal diversity).

²⁸ *See Guaranty Trust Co. v. N.Y.*, 288 U.S. 123 (1933); *Heine v. Streamline Foods Inc.*, 805 F. Supp. 2d 383, 390 (N.D. Ohio 2011); *Classic Coffee Concepts, Inc. v. Anderson*, No. 06 CVS 2941, 2006 WL 3476598 (N.C. Super. Dec. 1, 2006).

²⁹ *Classic Coffee Concepts, Inc.*, No. 06 CVS 2941, 2006 WL 3476598 (N.C. Super. Dec. 1, 2006), and *Heine v. Streamline Foods Inc.*, 805 F. Supp. 2d 383, 390 (N.D. Ohio 2011), held only that that under local state law, the internal-affairs doctrine prohibited the Court from dissolving a Delaware corporation. *Rogers v. Guaranty Trust Co. v. N.Y.*, 288 U.S. 123 (1933) affirmed a New York district court’s decision declining to exercise jurisdiction to dissolve a New Jersey corporation—not that it lacked power to do so. None of that speaks to federal jurisdiction under CAFA. In any event, to the extent Plaintiffs in this case ask this Court to order dissolution of a North Carolina entity, that is a power that federal courts possess over corporations incorporated in the state where they sit. *Cf. Delco Store No. 152, Inc. v. Woodward*, 175 F.3d 1014 (Table) (evaluating on the merits whether plaintiff was entitled to dissolution under North Carolina law).

“[T]he general rule [is] that our dual system of federal and state governments allows parallel actions to proceed to judgment until one becomes preclusive of the other.” *Chase Brexton Health Servs., Inc. v. Maryland*, 411 F.3d 457, 462 (4th Cir. 2005). Although *Colorado River* permits a court to abstain from exercising jurisdiction over a “duplicative” suit, courts “must apply *Colorado River* abstention ‘parsimoniously.’” *vonRosenberg v. Lawrence*, 849 F.3d 163, 167 (4th Cir. 2017). The Court’s “task is not ‘to find some substantial reason for the exercise of federal jurisdiction . . . ; rather, the task is to ascertain whether there exist exceptional circumstances, the ‘clearest of justifications,’ that can suffice under *Colorado River* to justify the **surrender** of that jurisdiction.’” *Id.* (quoting *Moses H. Cone Memorial Hosp. v. Mercury Cosntr. Corp.*, 460 U.S. 1, 25-26 (1983)).

A six-factor test informs a federal court’s decision whether to abstain from exercising jurisdiction due to the presence of a duplicative state-court suit. *Id.* at 168 (quoting *Chase Brexton*, 411 F.3d at 463-64.) “A court must look at these factors holistically, **‘with the balance heavily weighted in favor of the exercise of jurisdiction.’**” *Id.* (quoting *Moses H. Cone*, 460 U.S. at 16) (emphasis added). “The *Colorado River* doctrine does not give federal courts *carte blanche* to decline to hear cases merely because issues or factual disputes in those cases may be addressed in past or pending proceedings before state tribunals.” *Chase Brexton*, 411 F.3d at 465 (quoting *New Beckley Min. Corp. v. Int’l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1074 (4th Cir. 1991)).

Here, Mr. Sharp—who essentially argues that abstention is appropriate because this case overlaps with *Fisher-Lewis* and involves state law claims—has not carried this heavy burden. Indeed, Mr. Sharp has done little more than repeat the arguments Mr. Lewis made (through the same counsel) in failing to ward off preliminary approval. The case for abstention has only

weakened now that this Court has stood by its preliminary approval, Dkt. 82, notice has been funded and effectuated, and the date for a final judgment has dawned. To the extent that Mr. Sharp or anyone else wanted to urge a stay, on grounds of abstention or otherwise, they should have been doing so long before now, as this Court previously noted. At this point, the advanced stage of this litigation combined with the heavy expenditure of resources on preliminary approval counsel dispositively against eleventh-hour abstention.

Nor does any of the established factors support abstention. To begin with, Mr. Sharp does not even attempt to argue that the subject matter of the state litigation involves a *res* or that this forum is inconvenient. Thus, “[c]onsideration of the first and second factors . . . does not provide any support for abstention.” *Chase Brexton*, 411 F.3d at 465. Mr. Sharp asserts that the third factor—the “desirability of avoiding piecemeal litigation”—counsels in favor of abstention because the “[s]tate court is set to determine the matter finally by trial in 2018,” and the “inevitabl[e] appeal” of a decision from this Court will “create questions of jurisdiction and full faith and credit.” Dkt. 192 at 4. But there is in fact no prospect of “piecemeal litigation” because resolution of this suit will preclude *Fisher-Lewis*. Especially considering that a precondition of *Colorado River* abstention is that the suits are duplicative—with “substantially the same parties litigat[ing] substantially the same issues in different forums”—the *res judicata* effect of a final judgment here should be beyond serious contest. Viewed properly, this factor weighs ***against*** abstention.³⁰

³⁰ If accepted, Mr. Sharp’s argument would permit *Colorado River* abstention any time a defendant faces both state and federal class actions. This is inconsistent with both the purpose of CAFA and “basic principles of federalism and comity, [which] permit multi-forum litigation to proceed without inference from courts supervising parallel litigation.” McLaughlin on Class Actions § 6.29 (13th ed. 2016).

Mr. Sharp next argues that the fourth factor—the “relevant order in which the courts obtained jurisdiction and the progress achieved in each action”—supports abstention. This is incorrect. Although *Fisher-Lewis* was filed first, it has proceeded only through class-certification, not even through merits discovery, and is not approaching a final judgment; indeed, discovery disputes are currently pending while the *Fisher-Lewis* plaintiffs appear to be reinventing their case and their claims in ways that go back on their prior representations in *Fisher-Lewis*. *E.g.*, Ex. L (Nov. 27, 2017 email from M. VanderBrink) (refusing to make plaintiffs available for depositions); Dkt. 123-4 (*Fisher-Lewis* Motion for Partial Summary Judgment conceding that “this direct action will seek no relief for mismanagement of [C]ooperative assets” to avoid dismissal as a derivative action). Lest there be any doubt, Mr. Sharp’s putative expert Dr. Harrison (borrowed from *Fisher-Lewis*), has confirmed that case has at best been frozen in stasis, if not moving backwards: Despite being retained years ago in *Fisher-Lewis*, Dr. Harrison attests that he *still* has not “undertaken any analysis to determine what portion of the cooperative's quote/unquote reserve is reasonable,” such that plaintiffs there might claim recovery of the remainder pursuant to any operative theory. Ex. CC (Harrison Deposition) at Tr. 102:20-23. In this case, by contrast, all that remains for this Court is final approval of a settlement entitling claimants to be paid, following comprehensive notice, ventilation of the proposed terms, and construction of an appropriate factual record.

Mr. Sharp also asserts that the fifth factor—“whether state law or federal law provides the rule of decision”—provides support for abstention because state law provides the rule of decision. As discussed, however, this suit poses important questions of federal law, including the impact of FETRA and the operation of the Tobacco Price Support Program. *See supra* Part I. This case also involves a sweeping federal declaratory-judgment claim and express invocation of federal law. Dkt. 64 (Am. Compl.) ¶ 82. Mr. Sharp should appreciate these points, for his objection provides

ample proof of them— repeatedly relying upon his account of No Net Cost assessments as handled by federal law. *See* Dkt. 92 ¶ 1; Dkt. 192 at 11, 17.

Finally, Mr. Sharp asserts that “the adequacy of the state proceeding to protect the parties’ rights” counsels in favor of abstention. His sole argument in support is the State Court has certified a class. But that is not a touchstone for *Colorado River* abstention. Indeed, established law and practice permit class actions to proceed in parallel ***until final judgment*** is reached in one of the cases. *See Adkins v. Nestle Purina PetCare Co.*, 779 F.3d 481, 484 (7th Cir. 2015), 779 F.3d at 484 (parallel suits are “free to proceed . . . without reference to proceedings in the other court”). Mere certification of a class does not vest the State Court with exclusive jurisdiction, nor does not make this Court less competent to decide the issues now before it. Were that not enough, Mr. Sharp’s invocation of this factor obliges the Cooperative to note a constitutional defect that has been pressed in *Fisher-Lewis* but left unaddressed: The notice attending class certification and inviting opt-outs ostensibly did not come close to satisfying established demands of due process under the U.S. Constitution. After the Cooperative detailed as much at length, Dkt. 73-10 (April 14, 2017 Response and Objection to Notice Plan); Dkt. 73-11 (June 16, 2017 Reply to Responses and Objection); Dkt. 73-12 (June 22, 2017 Sur-Reply to Notice Plan), the State Court in *Fisher-Lewis* summarily affirmed the proposed notice plan without holding a hearing, demanding meaningful specifics from plaintiffs’ counsel, or offering anything beyond rote approval of a barebones notice plan. Dkt. 70-3 (July 7, 2017 Order Approving Notice Plan). As a result, absent class members are right now facing notice deprivations and corresponding prejudice in the state-court proceedings, just as the Cooperative faces real, persisting risk that any judgment in its favor may later be challenged on due-process grounds by class members absent there. This persisting constitutional problem should itself foreclose abstention.

For all of these reasons, *Colorado River* abstention is inappropriate here—indeed, even less appropriate here than it is in the standard context parallel class-action litigation in which continuing exercise of federal jurisdiction is the established norm.³¹

D. Plaintiffs In This Proceeding Are Not Barred From Prosecuting This Class Action By Virtue Of Opting-Out Of The State Court Class

Objectors assert without authority that “[i]ndividuals who opt-out of an existing certified class action may not pursue a class action covering the same or similar issues but are instead limited to litigating individually.” Dkt. 192 at 3. That is wrong. As a threshold matter, Plaintiffs filed this lawsuit *before* opting-out of the class in *Fisher-Lewis*. Moreover, a plaintiff who opts out of a class action is barred from pursuing a parallel class action only after the original action has been *litigated to final judgment*. See *Wai Hoe Lieu v. Cohen & Slamowitz, LLP*, 265 F. Supp.

³¹ For the same reason that this Court should not relinquish jurisdiction under *Colorado River*, it should not elect to “decline to exercise jurisdiction” pursuant to the “Permissive Home State” exception in CAFA—28 U.S.C. § 1332(d)(3). See *Laws v. Priority Trustee Servs. of N.C., L.L.C.*, No. 3:08-CV-103, 2008 WL 3539512, at *6 (W.D.N.C. Aug. 11, 2008). First, this statutory exception (even when applicable) is entirely discretionary, stating that a “district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction” under CAFA. 28 U.S.C. § 1332(d)(3) (emphasis added). Second, it applies only to a “class action in which greater than one-third but less than two-thirds” of the class members and the defendant “are citizens of the State in which the action was originally filed.” *Id.* This action does not so qualify. The class here is nationwide, extending across multiple generations, and no objector has put forth any evidence so much as suggesting that the requisite percentage of *class members* (inclusive of heirs and assigns, and former members who long ago moved on from farming)—today well afield from historical data concerning initial tobacco producers—might be citizens of North Carolina. Mr. Sharp’s expert, Dr. Harrison, states that the Cooperative’s “1982-2004 records” indicate that “64.7% of the growers resided in North Carolina,” Dkt. 192-7, but entirely fails to evaluate the current composition of the class, which, through the inclusion of “heirs” and “assigns” necessarily extends beyond the original geographic location of the Cooperative’s historical members. Indeed, that is why the Notice Program in this case was designedly nationwide in reach. See *infra* Part VI.F. Objectors have not come close to making the requisite showing to establish this exception applies. Last, as just assessed under the *Colorado River* framework, none of the six factors that must be assessed under the exception (28 U.S.C. § 1332(d)(3)(A)-(F)) counsels in favor of discretionary surrender of jurisdiction.

3d 260, 271-79 (E.D.N.Y. 2017) (barring opt-out plaintiffs in state court action from proceeding with parallel federal class action because federal action was commenced after the state court action achieved a preclusive settlement); *see also Harper v. Trans Union, LLC*, No. CIV.A. 04-3510, 2005 WL 697490, at *1 n.3 (E.D. Pa. Mar. 24, 2005) (“Rule 23 does not explicitly bar opt-outs in one class action from bringing a subsequent class action and it may be that allowing the opt-outs [in the subsequent action] to proceed as a class will further the purposes of Rule 23 (*i.e.*, to provide for judicial economy in the litigation of similar claims.”)). Indeed, adopting Mr. Sharp’s position—that one who opts out of a class action in a state court cannot file a parallel class action in federal court (or *vice versa*)—would defy widespread recognition that class actions can and should proceed in parallel. *See, e.g., Adkins*, 779 F.3d at 484 (“Parallel state and federal litigation is common.”); *see also infra* Part II. Because this suit was filed before any class was certified in *Fisher-Lewis*, let alone before there were any “opt-outs” or any “final judgment,” continued prosecution of it should be unassailable. *See Newberg on Class Actions* § 10:33 (5th ed. 2017) (“Newberg”) (“Class certification alone . . . has no formal effect on litigation elsewhere, which means that multiple courts could, in theory, certify class actions concerning the same events.”).

II. FISHER-LEWIS DOES NOT BAR OR OTHERWISE INHIBIT THIS SETTLEMENT OR THE COURT’S JURISDICTION

The Objectors further suggest that this lawsuit should in various respects yield to *Fisher-Lewis*. Indeed, several objectors request that this Court reject the proposed Settlement here in favor of an undefined (and nonexistent) settlement in *Fisher-Lewis*.³² As the Cooperative has explained in previous submissions, and for the reasons described below, the existence of a parallel suit involving a certified class should pose no impediment to this Court exercising its jurisdiction

³² *See infra* Part VI.A.

and approving the Settlement before it. *See* Dkt 73 at 27-30 (Opposition to Motion to Intervene); Dkt. 123 at 5-7 (Response to Miles Objections).

First and foremost, parallel litigation in the state and federal courts, including in the class-action context, is common and proper. This case and *Fisher-Lewis* have proceeded in parallel since the original Complaint was filed on October 31, 2012. Dkt. 1. This circumstance is not unusual. It does not limit this Court's exercise of its jurisdiction and authority, or the rights and obligations of the Parties, including the right to mediate and settle pending litigation. Because "[p]arallel state and federal litigation is common," "[e]ach court is free to proceed in its own way and in its own time, without reference to proceedings in the other court." *Adkins*, 779 F.3d at 484 (quoting *Kline v. Burke Constr. Co.*, 260 U.S. 226, 230 (1922)). In particular, "the pendency of an action in the state court is no bar to proceedings **concerning the same matter** in the Federal court having jurisdiction." *Alliance Int'l Inc. v. Todd*, No. 5:08-CV-214-BR, 2008 WL 2859095, at *4 (E.D.N.C. July 22, 2008).³³

These principles of federalism apply with no less force to class actions. *See* McLaughlin on Class Actions § 6.29 (13th ed. 2016) ("McLaughlin") ("It is not uncommon for the same transaction or events giving rise to a legal claim to spawn multiple class actions in different jurisdictions, in both federal and state court forums. Absent extraordinary circumstances, basic principles of federalism and comity permit multi-forum litigation to proceed **without interference from courts supervising parallel litigation.**") (emphasis added). Those rules do not change when a class is certified—in fact, it would be a "misunderstanding" to conclude that the mere

³³ *See also Gannett Co. v. Clark Const. Grp., Inc.*, 286 F.3d 737, 741 (4th Cir. 2002) ("As has been reiterated time and again, the federal courts have a virtually unflagging obligation to exercise the jurisdiction given them."); *New Beckley Mining Corp. v. Int'l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991) ("[T]he existence of proceedings in state court does not by itself preclude parallel proceedings in federal court.").

“certification of a class in one suit somehow forestalls other related cases.” Newberg § 10:33. And a “court supervising a class action settlement has the power to approve a release that extinguishes not only the claims alleged in the complaint, but also all claims arising out of the same transaction or factual predicate underlying the claims in the settled action.” McLaughlin § 6:29 (citing *Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367, 379 (1996)); *see also infra* Part VI.E.

Objectors cite no authority for their errant proposition that federal courts must defer to a state court’s resolution of a parallel class action litigation because the state court case was the first filed, or the first to be certified. Mere certification of a class in one parallel proceeding does not foreclose other proceedings. To the contrary, “[a] common misunderstanding is that certification of a class in one suit somehow forestalls other related cases; in fact, ***only the preclusive effect of a final judgment can formally achieve that end and a decision simply certifying a class is not itself a final judgment.***” Newberg § 10:33 (emphasis added). The principles governing final judgments are such that “multiple courts could, in theory, certify class actions concerning the same events.” *Id.*

The proceedings in this case and *Fisher-Lewis* are in harmony with these legal principles. As such, the Objectors’ preference for *Fisher-Lewis*—coordinated by counsel there—adds nothing to Mr. Lewis’s unsuccessful, untimely bid to undo preliminary approval and affords no good ground for denying final approval.

III. THE *FISHER-LEWIS* PLAINTIFFS' CLASS-WIDE OPT-OUTS ARE INVALID AS A MATTER OF LAW

Several individuals—named Plaintiffs in *Fisher-Lewis*³⁴—purport to exclude *all* class members in the class certified in the State Court from this Settlement. Even looking beyond the fact that more than 2,300 of those class members have already filed claims in *this* Settlement, the *Fisher-Lewis* objectors have no legal right and no legal authority to speak for anyone other than themselves. Black-letter law and this Court's preliminary approval order preclude their instant maneuver, which threatens to render moot this Court's grant of preliminary approval and its rejection of the prior bid by Mr. Lewis and his counsel to intervene for the sake of disabling class-wide approval. Dkt. 192, at 19-20.

A. Group Opt-Outs Are Prohibited As A Matter of Due Process

Courts in the Fourth Circuit and around the country have uniformly held that class members cannot opt out on behalf of other putative class members. *See, e.g., Sloan v. Winn Dixie Raleigh, Inc.*, 25 F. App'x 197, 198 (4th Cir. 2002) ("Class representatives cannot opt out on behalf of other putative class members."). The right to opt-out of class action "is an individual one and should not be made by the class representative or the class counsel." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1024 (9th Cir. 1998); *Berry Petroleum Co. v. Adams & Peck*, 518 F.2d 402, 412 (2d Cir. 1975) ("[O]pting out of a class action, like the decision to participate in it, must be an individual decision."); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810-13 (1985) ("[W]e hold that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove *himself* from the class by executing and returning an "opt out" or "request for exclusion"

³⁴ Linwood Scott, Jr., Dkt. 132, Cray Milligan, Dkt. 133, Orville Wiggins, Dkt. 160, Alford James Worley Jr., Dkt. 176, Whitney King, Dkt. 179, Kyle Cox, Dkt. 183, Daniel Lewis, Dkt. 184, Ralph Renegar, Dkt. 188, Richard Renegar, Dkt. 188-1, and Harold Wright, Dkt. 199.

form to the court.”) (emphasis added); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (discussing due process requirements in the context of class notice, and stressing that “each class member shall be advised that he has the right to exclude **himself** from the action”) (emphasis added).

Objectors attempt to distinguish the litany of cases holding that class opt-outs are prohibited by arguing that the rule bars group opt-outs only when a parallel class has *not* already been certified. *See* Dkts. 132, 133, 160 at 1; Dkt. 192 at 20. Plaintiffs cite no authority for this proposition because there is none. Rather, as the Ninth Circuit wrote in *Hanlon*:

“There is no class action rule, statute, or case that allows a putative class plaintiff or counsel to exercise class rights *en masse*, either by making a class-wide objection or by attempting to effect a **group-wide** exclusion from an existing class. Indeed, to do so would infringe on the due process rights of the individual class members, who have the right to intelligently and individually choose whether to continue in a suit as class members. **Additionally, to allow representatives in variously asserted class actions to opt a class out without the permission of individual class members ‘would lead to chaos in the management of class actions.’**”

Hanlon, 150 F.3d at 1024 (citation omitted)) (emphasis added). As the Second Circuit also noted, “[t]he only way to avoid such chaos is to require that opting out of a class action, like the decision to participate in it, must be an individual decision.” *Berry Petroleum Co.*, 518 F.2d at 412. Precisely because chaos, confusion and violation of individual due process rights threaten to result from any class-wide opt-out, *Hanlon* and other courts have held that group opt-outs have all agreed that such opt-outs cannot be effective.

The problems resulting from any group opt-out are starkly illustrated here. The individuals who are purporting to opt-out the entire *Fisher-Lewis* class are doing so **notwithstanding** that five of the **named representatives** from *Fisher-Lewis* have made their **own** contrary election to remain part of **this** class, as demonstrated by their decision **not** to file opt-outs. Specifically, Archie Hill, C. Monroe Enzor, Jr., George Abbot, Robert C. Boyette, and Kendall Hill—each named plaintiffs

in *Fisher-Lewis*—have evidenced their own decision (despite obvious, concerted efforts by *Fisher-Lewis* counsel to round up opt-outs) to remain in this class and to embrace the terms of the potential settlement. In other words, *certain* named representatives in *Fisher-Lewis* are effectively purporting to opt-*out* on behalf of *other* named representative in *Fisher-Lewis* who have made their own contrary decisions to opt-*in*. Any such theory of group opt-outs is not only invalid, but incoherent.

As evidenced by the more than 2,300 claims filed as of this date, the many more expected during the post-settlement claims administration period and the comparatively low numbers of opt-outs and objections, the vast majority of the class members consider the Settlement to be fair, reasonable, and adequate. If the purported group opt-outs here were given effect, this would elevate their judgment and decision over the individual due process rights of other class members and would deprive this Court of its ability to determine the fairness, adequacy, and reasonableness of this Settlement. No statute, case, local rule, or order of this Court supports these attempts to execute an end-run around the final judgment rule and to deny thousands of Class Members their opportunity to recover from this Settlement. Any class-wide opt-out has been and remains prohibited.

B. Group Opt-Outs Are Expressly Prohibited By This Court's Preliminary Approval Order

Lest there be any doubt, Paragraph 18 of this Court's Preliminary Approval Order, Dkt. No. 63, expressly forecloses the group or class-wide opt out that Scott Linwood, Dkt. 132, Cray Milligan, Dkt. 133, Orville Wiggins, Dkt. 160, Alford James Worley Jr., Dkt. 176, Whitney King Dkt. 179), Kyle Cox, Dkt. 183, Daniel Lewis, Dkt. 184, Ralph Renegar, Dkt. 188, Richard Renegar, Dkt. 188-1, and Harold Wright, Dkt. 199, have claimed to exercise.

“Exclusions shall be exercised individually by a Settlement Class Member, not as or on behalf of a group, class, or subclass, not by any appointees, assignees, claims brokers, claims filing services, claims consultants, or third-party claims organizations; except that an exclusion request may be submitted by a Settlement Class Member’s attorney on an individual basis.” Dkt. 63, ¶ 18. “Any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the action.” *Id.* ¶ 19.

These former Class Members attempt to do what this Court has expressly forbidden. *See, e.g.* Dkt. 132 at 1 (Linwood Opt-Out) (“[W]ith respect for his Court’s filings but in furtherance of his fiduciary duty to the class, as a class representative deemed adequate by the North Carolina Supreme Court, I elect to opt-out of this settlement on behalf of the certified class.”). By doing so, they would effectively defy, or at least negate, this Court’s denial of Mr. Lewis’s effort to intervene. The Court will recall that Mr. Lewis tried to use his status in *Fisher-Lewis* to prevent class-wide notice from issuing and individual recipients from making their own decisions whether to opt out. The Objectors are transgressing established bounds inasmuch as they are using their status before the State Court as though it specially enables them now to contravene this Court’s rules and to speak for class members in this federal proceeding. Perhaps worst of all, the Objectors are trying after-the-fact to contravene the clear contrary instruction that has already been broadcast around the country to all class members, assuring everyone, in essence, that no one else could purport to opt out on an individual’s behalf. As a constitutional matter, the group opt-outs pose obvious affront to due process. Any attempt by the *Fisher-Lewis* named plaintiffs to opt-out by definition attempts to accomplish, after the fact, what the notices in this case have forbidden all along and to encroach upon the due-process rights of absent class members to have made their

own elections. Indeed, these “group” objectors from *Fisher-Lewis* have gone so far as to contravene the expressed intent of their *fellos* named representative in *Fisher-Lewis*.

Finally, these submissions were not even signed by class counsel in *Fisher-Lewis* and instead were executed by each former Class Member in an individual capacity. To be clear, class counsel in *Fisher-Lewis* could not have properly executed a class-wide opt-out for the reasons already explained. But it follows *a fortiori* that these former Class Members—none of whom is licensed to practice law, much less to represent a class—cannot possibly effectuate a class-wide opt-out on their own accord. Their overreach in this respect further underscores the impropriety of their attempt to represent absent class members.³⁵

IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED AS FINAL

While challenging the substantive fairness of the Settlement Agreement, objectors generally claim that the proposed settlement class should not be certified pursuant to Rule 23. The only objector to present *specific* challenges is Mr. Sharp, represented by counsel from *Fisher-Lewis* who, ironically, sought and secured class certification for a class that is indistinguishable in all material respects. Dkt. 192 at 5-6.

A. There Are No Intra-Class Conflicts That Bar Certification Of The Class

Mr. Sharp asserts that this settlement class cannot be certified because “the scope of the *Speaks* putative class definition creates inherent conflicts among class members.” Dkt. 192 at 5-

³⁵ Several objectors purport to exclude themselves from the class in their objection filings. See Dkt. 103 (E. Jerome Vick) (“I would like to object . . . and opt out of this settlement.”); Dkt. 106 (similar); Dkt. 119 (similar). These objectors have withdrawn their requests for exclusion in subsequent filings, thereby correcting this inconsistency. Dkt. 162; Dkt. 187. For purposes of the fairness hearing and considering objections, however, it is worth noting that individuals and organizations excluding themselves from the settlement class do not have standing to object and should not be heard by this Court. See *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989) (“[T]he plain language of Rule 23(e) clearly contemplates allowing only class members to object to settlement proposals.”).

6. That is not right, for the defining principle underlying this class and this Settlement is that all those who patronized the Cooperative and partook of membership in it should share in any available funds that persist post-FETRA, as acknowledgement and reward for their historical involvement. That principle unites the class and drives the Settlement, without admitting of any discernible merits theory that would entitle one portion of the class to recover at the expense of another. *See infra* page 56. As for questions of how to fairly and equitably allocate the available settlement funds among the class, those have been conscientiously addressed here just as they must be when distributing any class-action settlement among class members.³⁶

Mr. Sharp's objection is irreconcilable with his—and his counsel's—avowed preference for continuing with *Fisher-Lewis*, which involves a certified class that is, in all material respects, ***identical to the one proposed here***. It is disingenuous for Mr. Sharp to contend that the *Fisher-Lewis* class definition is “focused” as compared to this proposed class. Subsection (a) of the *Fisher-Lewis* class definition encompasses all individuals and organizations, or the heirs, who were “members/shareholders of the [Cooperative] at any time from its inception through the end of crop year 2004” who “had not requested cancellation of their membership and whose membership was cancelled by [the Cooperative] without a hearing[.]” Dkt. 192 at 6. According to the allegations in *Fisher-Lewis*, that brings into their class virtually all of the Cooperative's

³⁶ This argument entirely ignores key principles of law regarding propriety of a certifying a class for ***purposes of settlement***, including the “strong judicial policy in favor of settlement” that applies with particular force in class action cases. *Velezquez*, 2016 WL 917320, at *1. Consistent with this policy, when considering “a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . ***for the proposal is that there be no trial.***” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (emphasis added); *see also In re A.H. Robins Co., Inc.*, 880 F.2d 709, 740 (4th Cir. 1989) (“If not a ground for certification per se, certainly settlement should be a factor, and an important factor, to be considered when determining certification.”).

historical membership of 800,000 growers. After all, according to the *Fisher-Lewis* plaintiffs, there are no members who “requested cancellation”: they allege that the Cooperative “purged” all of its members without a hearing, except for approximately 800 (0.1%) of members. *See* Ex. BB at ¶¶ aaa.-bbb. (*Fisher-Lewis* Complaint).³⁷ In point of fact, the Motion to Intervene by Daniel Lewis—a named plaintiff in *Fisher-Lewis*—rightly conceded that the “certified class action is on behalf of a class ***covered by the class definition in this putative federal class action.***” Dkt. 70-1 at 1 (emphasis added). Mr. Sharp does not even purport to identify one person—much less a substantial portion of the class—who falls within the class definition here but outside that in *Fisher-Lewis*.

Given that the class definitions are materially identical, Mr. Sharp cannot credibly claim that the proposed class definition here is invalid. Were he correct, it would follow that the class definition in *Fisher-Lewis* is likewise invalid. *See Beroth Oil Co. v. N. Carolina Dep’t of Transp.*, 367 N.C. 333, 342 n.4 (2014) (“Although North Carolina’s Rule 23 differs from Federal Rule 23, this Court has relied upon federal cases interpreting the federal rule for guidance.”). Of course, the very same counsel now representing Mr. Sharp have filed numerous briefs in the North Carolina courts successfully defending that class as appropriate and free of internal conflicts. *See, e.g.*, Dkt. 192-3 at 35-42 (Plaintiffs-Appellees Supreme Court Br., Dec. 19, 2014) (arguing

³⁷ Several Objectors, mirroring Mr. Sharp’s first objections, Dkt. 92, state that the “target years of the lawsuit are too broad” and that the “most important years are 1982-2004 when the tobacco industry operated under the Federal No Net Cost Tobacco Program.” Dkt. 92 at 1; *see also* Dkt. 127, 137, 144, 145, 149, 156, 163, 175, 186, 196. None of these objectors, or Mr. Sharp in objections filed by his counsel, Dkt 192, indicates how the inclusion of the years 2004 through the present in the proposed class definition creates a “conflict” that serves to preclude settlement class certification. That is because there is no conflict—the permissibility and availability of any excess in the Cooperative’s reserve remains the central question driving each class member’s stake in this suit.

successfully to the North Carolina Supreme Court that the class definition was without internal conflict and should be certified).³⁸ It is clear that this objection amounts to yet another contrived stab to derail this Settlement.³⁹

Furthermore, Mr. Sharp concedes that the proposed settlement class meets the “commonality” test of Rule 23(a). Dkt. 192 at 5 n.1 (“Numerosity and commonality are not at issue.”).⁴⁰ Every member of this proposed class has the same common interest in a determination whether they have a shared legal right to funds held by the Cooperative as a “reserve.” For this reason, Dr. Glenn Harrison’s conclusion that the proposed “class creates conflicts” among

³⁸ Mr. Sharp cites a class certification decision from the Kentucky *Congleton* case for the proposition that the proposed settlement class cannot be certified based on alleged intra-class conflicts. Dkt. 192 at 7 (citing Exhibit E, Dkt. 192-5). Again, Mr. Sharp’s counsel directly contradict the position they have maintained throughout *Fisher-Lewis*. See Dkt. 123-5 at 32 (Pls.’ Mem. in support of Class Cert., July 9, 2012) (distinguishing *Congleton* and asking trial court for an order of class certification); Dkt. 192-3 (Pls.’ Opp. Br., Dec. 19, 2014) (distinguishing *Congleton* and asking North Carolina Supreme Court to affirm class certification order). In any event, the class proposed here is materially coextensive with the class affirmed by the North Carolina Supreme Court such that, any infirmity shown by *Congleton* would equally doom the *Fisher-Lewis* class.

³⁹ On December 21, 2016 the North Carolina Supreme Court affirmed the class certification in *Fisher-Lewis* as within the trial court’s discretion. Dkt. 73-8. In reaching this conclusion, the North Carolina Supreme Court overruled the Cooperative’s contention that the trial court “erred as a matter of law by disregarding fundamental conflicts that divide the class.” Ex. M at 15-16 (Def’s Nov. 14, 2014 N.C. Supreme Ct. Br. Opp. Class Cert.) Having prevailed on that point in the state courts, counsel for Mr. Sharp should not be permitted to take the other side out of opportunism. The existence of a certified class in *Fisher-Lewis* is properly considered by this Court as a factor favoring class certification. See *Foster v. CEVA Freight, LLC*, 272 F.R.D. 171 (W.D.N.C. 2011) (certifying class in part on the grounds that several other district courts have granted class certification in cases alleging similar claims); *Scholes v. Douglas*, No. 90 C 1292, 1992 WL 329310, at *2 (N.D. Ill. Nov. 4, 1992) (certifying class based, in part, on the fact that the court had certified a similar class in a related case).

⁴⁰ A question is common among class members when a “determination of [the question’s] truth or falsity will resolve an issue that is central to the validity of each of one of the claims in one stroke.” *Ealy v. Pinkerton Gov. Servs., Inc.*, 514 Fed.Appx. 299, 304, (4th Cir. 2013) (quoting *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338, 349 (2011)).

different groups of potential claimants in the class misses the mark. Dkt. 192-7 at 7. Dr. Harrison claims that there are conflicts among “those who were patrons in years when there were no gain and those who were member-patrons in years of gain,” and “those whose patronage interest derives from the 1982-2004 period [and] those that did not pay No Net Cost fees, or who did, but whose interests vary because of a difference in assessments paid.” Dkt. 192-7 at 7. Bizarrely, however, Dr. Harrison does not even purport to connect those observations to any particular theory of liability and potential recovery on the merits that would differentiate one class member he posits from another for any relevant purpose.

What is more, Dr. Harrison fails to appreciate that the Settlement is **not** distributing one or another **historical source** of the reserve among current and former members; rather, it serves only to distribute settlement funds made available from the **entire** reserve, as derived from the Cooperative’s **entire** history, as consideration for ending this litigation.⁴¹ For the class or the settlement to favor one or another contribution to the Cooperative, at one or another point in time, would be arbitrary at best, considering that no one merits theory provides a coherent, let alone convincing, path to ultimate legal recovery. *See infra* Part V.A. To the extent there may be moral or equitable force, or litigation leverage, to be derived from the relevant claims, that comes from sheer gestalt. Simply stated, all of the growers who patronized the Cooperative (per their marketing forms and certificates as issued over a span of decades throughout federal price support) are here pressing claim to what they see as the resulting fruit of their collective labors, as translating to whatever financial cushion the Cooperative allegedly found at the end of federal price supports.

⁴¹ Notably, Dr. Harrison’s preferred approach would give “zero dollars” to any class member who patronized the Cooperative in the years without any net earnings.” Ex. CC (Harrison Deposition) at Tr. 189:4-19. The current plan for distributing settlement funds avoids any such disenfranchisement, and Dr. Harrison concedes that others “could consider” this distribution plan to be “an appropriate way to disburse funds.” *Id.* at Tr. 230:1-11.

Accordingly, it only makes sense now for the entire collective—all former and current members of the Cooperative—to share together in any recovery, and to do so according to the extent (measured by poundage and also by tenure) to which individual claimants patronized their agricultural Cooperative. Dr. Harrison’s observations do nothing to question the propriety of class certification under the terms of Rule 23.⁴² Rather, these observations—which are, in any event, beside the point, *see infra* Part IV.C,—go at most to the fairness and structure of the distribution plan for settlement funds. As explained elsewhere, the distribution plan proposed here is absolutely fair. *See infra* Part VI.B.

B. This Class Action Settlement Is A Superior Mechanism For Resolving This Massive Litigation

Rule 23(b) requires the court to find that “a class action is *superior to other available methods* for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3) (emphasis added). Mr. Sharp claims that this class should not be certified on this basis, without offering any appreciable warrant for his claim. Dkt. 192 at 7. Indeed, Mr. Sharp does not actually argue against “superiority” as defined for Rule 23’s purposes, but asserts that this Court is not a “superior” forum for this case as compared to the State Court. Dkt. 192 at 7-10. But that is not the test under Rule 23(b); as the Cooperative has explained, the pendency of *Fisher-Lewis* should not prevent these proceedings from reaching their natural conclusion in this Court. Mr. Sharp’s

⁴² To be clear, Dr. Harrison testified that he does not offer an opinion as to whether “the class defined in *Speaks* [this proceeding] should be a certified class action.” Ex. CC (Harrison Deposition) at Tr. 14:20-15:1. Moreover, while opining that the “proposed settlement does not represent a fair, reasonable, and adequate resolution,” Dkt. 192, ¶ 8, Dr. Harrison by his own account did not “speak to actual class members to get his take on whether they agreed” with his views of the settlement. Ex. CC at Tr. 21:11-16.

misplaced “superiority” arguments fail because they lack merit (as discussed at length herein), and class action proceedings are permitted to proceed in parallel until one reaches final judgment.⁴³

There should be no doubt that this case is appropriate for class action treatment. Under Rule 23, “there is a strong presumption in favor of a finding of superiority [because] the alternative to a class action is likely to be no action at all for the majority of class members.” *Cavin v. Home Loan Ctr., Inc.*, 236 F.R.D. 387, 396 (N.D. Ill. 2006). Moreover, this litigation spans hundreds of thousands of potential class members and a range of more than 70 years. It is unclear how counsel for Mr. Sharp—actively contradicting their pro-certification positions from *Fisher-Lewis*—can credibly oppose class action treatment for this parallel case that Mr. Sharp openly concedes is “*duplicative of the Lewis/Fisher state case.*” Dkt. 192 at 4 (emphasis added). No reasonable argument remains that this case is not ripe for class-wide treatment.

C. Class Members Are Adequately Represented In This Proceeding By Class Representatives and Counsel

Hard pressed to challenge the fundamental fairness of the Settlement’s terms, Mr. Sharp, through class counsel in *Fisher-Lewis*, turns to attacking the adequacy of both the class representatives and class counsel in this proceeding. Dkt. 192 at 10-13. Those arguments, too, are errant.

⁴³ Mr. Sharp points to the geographical concentration of tobacco farms in North Carolina, South Carolina, and Virginia, but that by no means counsels in favor of finding the North Carolina courts “superior,” even if that were the appropriate test under Rule 23(b), which it is not. (Cf. Dkt. 192 at 9-10.) The proposed settlement class here, like the *Fisher-Lewis* class, is ***nationwide*** in scope, extending to hundreds of thousands of long-since retired growers as well as their “heirs” and “assigns.” Neither the Objectors nor the Commissioners of Agriculture purport to explain why the historical location of certain tobacco farmers counsels against the exercise of *federal* jurisdiction in this case. Even crediting Mr. Sharp’s argument at face value, the population of ***three*** states are disproportionately represented in this case—which, if anything, commends a neutral, federal forum over that of any one state. In any event, it suffices to note that this case is squarely within federal jurisdiction in multiple respects, for the reasons stated in Part I.

1. Class Representatives Adequately Represent The Interests Of The Class

Mr. Sharp asserts that the interests of class members here “are not adequately represented by the class representatives.” Dkt. 192 at 10. He bases this claim on the mere existence of differences between class members with respect to years of membership in the Cooperative, when tobacco was produced, and what profit (if any) was derived during the crop years in which tobacco was produced. *Id.* at 10-11. This is much the same argument Mr. Sharp makes concerning alleged intra-class conflicts, *id.* at 6-7, and it fails for much the same reasons. All class members, like all named representatives, share the same common question in this litigation: that is, whether they have a shared legal right to funds retained by the Cooperative post-FETRA. *See supra* Part IV.A. Indeed, the *Fisher-Lewis* plaintiffs sought class certification on the ground that “all class members” have a common legal interest in determining “whether [the Cooperative] may only retain reasonable reserves and whether the amounts retained are reasonable.” Dkt. 123-5 at 29-30 (July 9, 2012 Motion for Class Certification).

Dr. Harrison similarly fails to establish that the class representatives do not adequately represent the interests of the class—even assuming *arguendo* that an academic economist specializing in risk management, Dkt. 192-7 at 12 (Curricula Vitae of Glenn W. Harrison), is remotely competent to opine on this issue. Indeed, Dr. Harrison applies entirely incorrect legal principles to guide a **statistical** analysis of the class representatives, determining whether “[a]s a group the named plaintiffs” could “serve as a representative sample of the class as a whole.” Dkt. 192-7, ¶ 18. Dr. Harrison focuses on the named plaintiffs’ residence in “only 5 counties in North Carolina” and concludes, by undisclosed methodology, that “67%” of tobacco sold through the Cooperative between 1982 and 2004 was produced in North Carolina. That is not the correct legal test, nor are those the relevant factors. Rule 23’s “adequacy” requirement asks “whether the absent

class members, who will be bound by the result, are protected by a vigorous and competent prosecution of the case by *someone who shares their interest*.” *Mitchell-Tracey v. United Gen. Title Ins.*, 237 F.R.D. 551, 558 (D. Md. 2006) (emphasis added). Courts in this judicial district have distilled this issue: “the representative plaintiffs *must not have interests antagonistic to those of the class*.” *In re Red Hat, Inc. Sec. Litig.*, 261 F.R.D. 83, 88 (E.D.N.C. 2009) (emphasis added). Plainly, the focus is not whether the named representatives are—as a matter of quantitative calculation—a representative sample of the class at large in some abstract sense, but whether the representatives can serve the interests of the absentees. Indeed, questions can always be raised as to whether a particular set of named representatives are representative of the class—whether in terms of hair color, height, geographic origin, or income level. But those questions have no bearing unless the differences matter to the underling *interests* at play in a given case.⁴⁴

Here, the class representatives have the same interests as all other class members and no one has even purported to show the contrary. Objectors have not offered a “scintilla of evidence” that would “indicate that the named plaintiffs have any claim or interest that conflicts with those of the proposed” class members. *Mitchell-Tracy*, 237 F.R.D. at 558. The facts are to the contrary. Each named plaintiff is a current or former member of the Cooperative and, as such possesses a real and substantial interest in the suit. *See* Dkt. 64 (Am. Compl.) ¶ 2. Each signed the same marketing agreement with the Cooperative, held a similar stock certificate, and patronized the Cooperative within the relevant period. *Id.* ¶¶ 21-23. Moreover, since filing suit, these representatives have committed to vigorous prosecution. As the declarations submitted by each of

⁴⁴ When pressed to defend his view that the named plaintiffs’ geographic location is a pertinent consideration, Dr. Harrison admitted that “it makes no difference geographically where they’re located,” and that he is “not aware of any disparate treatment in the proposed settlement between people based on” geography. Ex. CC (Harrison Deposition) at Tr. 257:18-258:6.

the named plaintiffs make clear, they, *inter alia*, reviewed the Complaint, participated in numerous meetings and conference calls with their counsel, provided documents, and personally participated in the two-day mediation in May 2017.⁴⁵

Last, Mr. Sharp is wrong to argue that the representatives here cannot be adequate because the “*Lewis* class representatives have been found adequate by the [North Carolina courts].” Dkt. 192 at 12. Again, Mr. Sharp—under guidance of counsel in *Fisher-Lewis*—attaches talismanic significance to the certification of class in that case, treating it as though it excludes all others. In so doing, he engages the “common misunderstanding[] that certification of a class in one suit somehow forestalls other related cases.” Newberg § 10:33. Nothing about the certification of a class in *Fisher-Lewis* speaks to the adequacy of the class representatives in this proceeding or forecloses the ability of this Court to evaluate and certify a class. *See supra* Part II.

2. Class Counsel Are Adequate

Mr. Sharp asserts that class counsel in this proceeding are not “adequate” to represent the interests of the proposed settlement class. Dkt. 192 at 10-12. To satisfy Rule 23’s “adequacy” standard, “counsel must be qualified, experienced, and generally able to conduct the proposed litigation.” *In re Red Hat, Inc. Sec. Litig.*, 261 F.R.D. 83, 88 (E.D.N.C. 2009). Here, class counsel amply meets that standard, having successfully brought, litigated, or settled many class action claims and demonstrating intimate familiarity with and command of the policies and procedures specific to class action suits. *See* Dkt. 58 at 28-29 (Mem. in Supp. of Mot. for Prelim. Approval).⁴⁶

⁴⁵ *See* Dkt. 86-7 (Decls. Of Alex Shugart, Daniel Lee Nelson, H. Randle Wood, Mike Mitchell, Robert Poindexter, Roy L. Cook, Stanley Smith, Teresa M. Speaks, Toby Speaks; Dkt. 87 (Decl. of Robin Rogers); Dkt. 88 (Decl. of Eddie Brown).

⁴⁶ These cases include *Ruff, et al. v. Parex, Inc., et al.*, New Hanover County Superior Court, NC, Civ. No. 96-CVS-0059; *Coleman, et al. v. Lincoln Wood Products, Inc.*, New Hanover County Superior Court, N.C., Civ. No. 99-CVS-1362; *Talalai v. Cooper Tire and Rubber*

Mr. Sharp also asserts that class counsel was not permitted to engage in the pre-settlement mediation and “lacked the authority at the time of the negotiation, execution of the term sheet and execution of the settlement agreement to represent the legal interests of the *Lewis* class members.” Dkt. 192 at 13. That is meritless. As the Cooperative has explained, “the pendency of an action in the state court is ***no bar to proceedings concerning the same matter*** in the Federal court having jurisdiction,” *Alliance Int’l*, No. 5:08-CV-214-BR, 2008 WL 2859095, at *3, and it would be a “misunderstanding” of the law to conclude that “mere certification of a class in one suit somehow forestalls other related cases.” Newberg § 10:33. To the extent that Mr. Sharp and his counsel continue to maintain that the mere existence of a “certified” class in *Fisher-Lewis* disables this Court’s authority or strips the litigants in this case of their rights and obligations, their position is untenable. *See supra* Part II. In any event, the Local Rules of this Court ultimately required mediation of this dispute, which was designated as “160-Breach of Contract on the Civil Cover Sheet.” *See* Local Rule 101.1(a)(b) (designating certain categories of civil cases as “automatically selected for mediated settlement conferences.”).

V. PLAINTIFFS’ CLAIMS LACK MERIT, AND THE SETTLEMENT PROVIDES FAIR, REASONABLE, AND ADEQUATE COMPENSATION

The main reason Objectors ask this Court to deny final approval to the Settlement is that they consider \$24 million too low. Objectors’ essential premise is that this case—and *Fisher-Lewis*—should proceed through litigation because a pot of tens of millions more, or maybe even hundreds of millions more, awaits at the end of the litigation rainbow. But they are mistaken.

Company, Middlesex County, N.J., L-008839-MT; *Wroebel v. Sears Roebuck and Company*, Cook County Circuit Court, Ill., 02 CH 23058; *Nye v. Triton PCS Holdings Co.*, New Hanover County Superior Court, N.C. Civ. No. 05-CVS-0548; *Owens v. Hendricks Automotive, et al.*, Union County Superior Court, NC, No. 04-CVS-2301; *Owens v. Sonic Automotive, Inc.*, Craven County Superior Court, NC, No. 12-CVS-576; *Rodriguez v. Sallie Mae, Inc., et al.*, D. Conn., No. 3:07-cv-01866-WWE.

Their various submissions together betray an ill-informed, and, indeed, irrational view of the litigation. If the claims in this case (or related claims in related cases) proceed to final judgment, as they have in *Rigby*, the established law and facts overwhelmingly point to the Cooperative achieving a complete victory, and leaving all Class Members, including the Objectors, with ***no recovery at all***. Nor can a similarly generous settlement be anticipated further down the road—as legal expenses mount, the Cooperative’s willingness and ability to devote precious cash resources to class members dwindles.

As noted, “the most important factor in evaluating the adequacy of a class action settlement is the relative strengths of plaintiffs’ case and the existence of any defense or difficulties of proof.” *Horton*, 855 F. Supp. at 831. Not a single Objector—***not one***—explains how the Settlement is unfair inasmuch as Plaintiffs will succeed on the merits. Tellingly, not even counsel for the Sharp Objectors—class counsel in *Fisher-Lewis*—or Mr. Sharp’s purported expert, Dr. Harrison, can substantiate the underlying claims.⁴⁷ *Cf.* Dkt. 192. Instead, the objections simply assert that \$24 million is too low. Once measured against “the relative strength of the plaintiffs’ case on the merits,” *Horton*, 855 F. Supp. at 828, however, the Settlement proposed here provides resolution that is more than fair and adequate for class members themselves.

⁴⁷ In his affidavit, Dr. Harrison opines that the settlement suffers from “[a]ggregate [i]nadequacy” merely because \$22 million is less than the Cooperative’s net worth (which he overstates). *See* Dkt. 192-7, ¶¶ 9-10; *cf. infra* Part V.C. Yet Dr. Harrison testified that he “did not undertake any . . . analysis to assess the strengths or weaknesses of the [C]ooperative’s . . . defenses in th[is] lawsuit,” Ex. CC (Harrison Deposition) at Tr. 24:2-7, and that he did not think “it was important to understand the circumstances surrounding the negotiation that was had to reach the settlement,” *id.* at Tr. 27:16-21. In these respects and more, Dr. Harrison’s conclusions about the settlement’s adequacy are out of touch with the applicable standard and undeserving of any weight.

A. Plaintiffs Cannot Prevail On Any Cause Of Action As Matter of Law

Although this Court need not “reach any dispositive conclusions” on the “legal issues in this case,” *Flinn*, 528 F.2d at 1172-73, review of the facts and law demonstrates that the claims in this case rest on shaky ground and most likely would yield zero recovery for class members.

1. The Cooperative Is Expressly Authorized To Designate, Maintain, And Control Its Reserve

The Amended Complaint, like *Fisher-Lewis*, seeks, through a variety of causes of action, to force distribution of the Cooperative’s reserve. No matter how the legal claims are styled, they all fail as a matter of law because the Cooperative has express, unassailable powers to establish, maintain, and control its reserves.

(a) North Carolina Law Authorizes The Cooperative’s Reserve

First, the Cooperative is organized and incorporated “under the Cooperative Marketing Act of the State of North Carolina.” *See* Dkt. 123-8 (Articles of Incorporation, dated June 1, 1949) Preamble (SC 16253). The Cooperative Marketing Act, N.C.G.S. § 54-129 et seq., was enacted “to promote, foster, and encourage the intelligent and orderly producing and marketing of agricultural products through cooperation....” In support of this stated policy, the Legislature specifically vested “each association incorporated under [the Cooperative Marketing Act]” with the power to “*establish reserves* and to invest the funds thereof in bonds or such other property *as may be provided in the bylaws*.” *Id.* § 54-151(5) (emphases added).

(b) The Cooperative’s Articles Of Incorporation And By-Laws Authorize The Reserve

Second, the Cooperative’s governing documents have always permitted it to maintain a reserve at the Board’s discretion. Article XI of the Articles of Incorporation states that the Cooperative “*shall have the right to establish and maintain a capital reserve for the future conduct of its business*.” Dkt. 123-8 (Articles of Incorporation, June 19, 1979 amendment) at Art.

XI (SC 16274). Prior to 1979, the Cooperative’s Articles permitted it to “have and exercise . . . all powers, privileges and rights conferred on ordinary corporations and cooperative marketing associations by the law of this State[.]” *Id.* (Articles of Incorporation, dated Jun. 1, 1946) at Art. VII(g) (SC 16257-58). These powers include the right to establish reserves. *See* N.C.G.S. § 54-151(5). Likewise, the by-laws establish that the Cooperative “may *set aside and retain as capital* for use in the business of the association the net earnings . . . derived by the association....” Dkt. 73-3 (By-laws dated December 9, 2010) at Art. XI, § 4 (SC 16023) (emphasis added). The by-laws have authorized the Cooperative’s Board to create and maintain a reserve, in its sole discretion, dating to the first years of the Cooperative’s existence. For instance, the 1947 by-laws provided that “[w]henever *in the discretion of the board* of directors the capital reserves are found to be in excess of the amount deemed reasonably necessary for the sound financial operations of the association, such excess shall be applied to paying off” earlier capital contributions. Ex. A (By-laws dated June 3, 1947) at Art. XVI (SC-GA 10780) (emphasis added).⁴⁸

(c) Funds Received From The Sale Of Tobacco Under FETRA Are An Authorized Part Of The Reserve

Plaintiffs in this case—like those in *Rigby* and *Fisher-Lewis*—specifically seek the forced distribution of the Cooperative’s “reserv[e],” including “approximately \$125 million” in funds derived from the sale of tobacco ceded to the Cooperative pursuant to FETRA. Dkt. 64, Am.

⁴⁸ This authority has been in the Cooperative’s by-laws since its inception. *See* Ex. O (By-laws dated July 20, 1967), at Art. XVI (SC 13215) (committing capital reserves to the board’s discretion); Ex. P (By-laws dated August 12, 1983) at Art. XVII, § 4 (SC 13248) (permitting the Cooperative to “set aside and retain as capital” non-patronage net earnings and establishing that “[a]mounts so set aside and retained may be used for such purposes of the association as shall be determined by the board of directors.”); Ex. Q (By-laws dated May 10, 2002) at Art. XVII, § 4 (FCTSC 000264) (same); Ex. R (By-laws dated November 14, 2003) at Art. XVII, § 4 (SC 009) (same).

Compl. at ¶ 29. In addition to its broad, general power to create reserves, as vested by North Carolina law and its governing documents, the Cooperative was *specifically authorized* to retain the FETRA funds by controlling operation of federal law, which is of course supreme. To the extent Plaintiffs suggest that the FETRA funds must be distributed, they fail to recognize that (1) FETRA expressly grants control of the funds to the Cooperative; and (2) their state-law claims cannot be used to contradict the Congressional decision to cede federal monies for the Cooperative to use as it sees fit.⁴⁹

First, in 7 U.S.C. § 519(b), Congress returned “to the association [*i.e.*, the Cooperative] for disposal” an allotment of tobacco crop (as calculated by a statutory formula), specifying “*the association shall be responsible for the disposal*” of it. That resulted in the CCC ceding to the Cooperative millions of pounds of tobacco, which the Cooperative disposed of via sale, proceeds from which remain reflected in its reserve. Where Congress intended to compel distribution of FETRA funds directly to growers, it said so. *See id.* § 519(d) (stating that funds “shall be transferred to the association for distribution to producers,” as then occurred for those funds). The language in subsection (d), by its terms, requires distribution to the “producers,” whereas the language in subsection (b) vests responsibility for the disposal of ceded tobacco in “the association.” That difference in language is meaningful and dispositive. When Congress uses different language in a statute, it is presumed to have a different meaning and effect. *See Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1723 (2017) (“[W]hen we’re engaged in the

⁴⁹ Plaintiffs also cannot assert a cause of action under FETRA because Congress did not confer a privately enforceable right. *Lay v. Burley Stabilization Corp.*, 312 F. App’x 752, 757 (6th Cir. Feb. 12, 2009) (Moore, J., concurring) (“The Fair and Equitable Tobacco Reform Act of 2004 (‘FETRA’) does not include a civil-suit provision, nor do the parties suggest that it implies a private right of action.”); *accord Alexander v. Sandoval*, 532 U.S. 275, 286-88 (2001) (refusing to recognize implied private rights of action absent affirmative act of Congress).

business of interpreting statutes we presume differences in language like this convey differences in meaning.”). The USDA confirmed FETRA’s clear intent, writing that the Cooperative was free to use the tobacco “*in any manner that it desires*.”⁵⁰

Second, once federal law allocates property to a specified entity, as FETRA did to the Cooperative, state-law claims by anyone else to that property are preempted. *See, e.g., Hillman v. Maretta*, 569 U.S. 483, 490 (2013) (quoting *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000)) (“State law is pre-empted to the extent of any conflict with federal statute.”).⁵¹ Even setting aside all of their other problems, Plaintiffs’ claims clearly threaten to trespass upon Congress’s decision to vest discretion with the Cooperative and its Board. Therefore, federal law completely preempts any effort by Plaintiffs to call upon state law as requiring that the funds conferred by the federal government instead be rerouted as Plaintiffs prefer (*e.g.*, distribution).

(d) The Cooperative’s Authority To Establish And Maintain A Reserve Has Been Long Known To Class Members

The Cooperative’s authority to create and maintain a reserve is not only clear from its charter and federal authorization, but was known to class members throughout the Cooperative’s

⁵⁰ Dkt. 123-16 (Mar. 21, 2005 Letter to Lioniel Edwards) at SC 07578 (emphasis added).

⁵¹ State law claims are “pre-empted to the extent of *any conflict with a federal statute*.” *Hillman v. Maretta*, 133 S. Ct. 1943, 1949 (2013) (quoting *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000)) (emphasis added). The United States Supreme Court has invalidated judgments wherein a state law remedy intruded on the distribution of property rights, as envisioned by a federal statutory scheme. *See Wissner v. Wissner*, 338 U.S. 655, 658-61 (1950) (holding that the federal National Service Life Insurance Act of 1940, permitting insured to designate a beneficiary, preempted California state intestacy law calling for disbursement of benefits to widow as community property because “Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other”); *see also Egelhoff v. Egelhoff*, 532 U.S. 141 (2001) (state-law claim to ERISA funds pre-empted by federal statutory scheme); *Boggs v. Boggs*, 520 U.S. 833 (1997) (similar); *Mansell v. Mansell*, 490 U.S. 581 (1989) (state-law claim to military pay in a divorce proceeding preempted by federal statutory scheme). Here, Plaintiffs attempt to force distribution of property under state law—in contravention of the FETRA statute—must meet the same result.

history. Indeed, this authorization was featured on the Cooperative's marketing agreements with its members, which stated that any discretionary distributions first permitted, without qualification, for "a reasonable deduction for reserves *as determined by the Board of Directors.*" Ex. DD (Marketing Agreement) at SMF29057. Lest there be any doubt, depositions of the *named representatives* in *Fisher-Lewis* and of plaintiffs in *Rigby* confirm that they understood the broad scope of the Cooperative's authority. Kay Fisher testified that, having read the articles of incorporation, she was "aware" that "the articles authorize [the Cooperative] to retain a reserve[.]" Ex. S (Fisher Deposition) at Tr. 138:5-11. Pender Sharp himself testified that he "would suspect [it]'s true" that the Cooperative's "articles and bylaws authorize the board of directors to retain money as reserves for the operation of the cooperative[.]" Ex. G (Sharp Deposition) at Tr. 61:10-14.⁵² Similarly, Daniel Lewis—who attempted to intervene to prevent this Settlement, but has not filed any objection to it, electing instead to remove himself from the class, Dkt. 184—testified that the Cooperative's directors "could hold the money and do as they saw fit," including by using it "for the purposes of continuing operations of the cooperative[.]" Ex. T (Lewis Deposition) at Tr. 94:6-12.

The Board's discretionary authority with respect to maintaining the reserves and withholding distributions was likewise known to Whitney King, who testified that she was "quite

⁵² This view is endorsed by Dr. Harrison, who not only agrees that the Cooperative's by-laws provide "discretion [to] the board of directors to establish and retain capital reserve[s][,]" Ex. CC (Harrison Deposition) at Tr. 118:25-119:6, but testified that there "should be" permission for directors to establish reserves "in bylaws for a cooperative association or any—any corporation actually." *Id.* at Tr. 119:5-9. Dr. Harrison further testified that "in fact, *it's proper risk management practices to construct reserves.*" *Id.* at Tr. 120:21-22 (emphasis added). Beyond acknowledging that cooperatives should be authorized to accumulate reserves, Dr. Harrison conceded that the North Carolina Cooperative Marketing Act in fact "explicitly allows . . . for a cooperative to engage in manufacturing activity" and "to establish reserves" *Id.* at Tr. 116:25-117:21. Dr. Harrison likewise agreed that the Cooperative's Articles of Incorporation, by-laws, and marketing agreements equally convey this power. *Id.* at Tr. 118:14-17, 120:9-15.

aware” that “the board of directors has discretion regarding whether it keeps money or whether it distributes it[.]” and would “absolutely” agree that “reasonable people can disagree about the decisions that have been made[.]” Ex. U (King Deposition) at Tr. 150:15-23.

This recognition comports with longstanding disclosures and understandings throughout decades in which the Cooperative’s reserve was openly and forthrightly disclosed to members, *see* Dkt. 73-4 (December 1975 Newsletter); Dkt. 123-18 (July 1990 Newsletter)—all without any challenge being raised, much less a class-action lawsuit being filed. Indeed, Julian Rigby testified that he “would assume that [he] did” receive the December 1975 Newsletter, Ex. V (2015 Rigby Deposition) at Tr. 128:22-24, and understood that the Cooperative’s announcement contemplated that “the [C]ooperative not only might but should be able to carry on without external federal financing.” *Id.* at Tr. 130:10-14. David Lee, another named plaintiff in the *Rigby* case, similarly agreed that, upon review of the December 1975 Newsletter, the Cooperative “should retain some earnings,” Ex. W (Lee Deposition) at Tr. 76:3-11, and further agreed that no board member from the Cooperative ever informed him that the Cooperative’s “way of seeing things” regarding the reserve had “changed from what [was] report[ed] in [the December 1975 newsletter]” *id.* at Tr. 78:6-13.⁵³

2. The Business-Judgment Rule Protects The Cooperative’s Good Faith Decision to Establish And Maintain Reserves

To the extent Plaintiffs nevertheless purport to challenge, somehow, the Cooperative’s duly authorized reserve, the most they can hope to do is to fault the discretionary decision-making

⁵³ By contrast, it appears to be mere personal belief that the Cooperative was required to distribute funds, or that the board of directors should taken another course of action, that animates these claims. Thomas Rhoad, a plaintiff in *Fisher-Lewis*, typifies this view, testifying that it was “*just my belief* that . . . when [the Cooperative] was organized...it was stipulated in there that a portion of the profits would go back to the farmer,” while admitting that “I do not” have “any facts or information to support [his] understanding.” *See* Ex. X (Rhoad Deposition) at Tr. 28:5-18.

currently animating the Cooperative's reserve. But any such line of challenge is similarly unavailing—by no stretch of the imagination can anyone prove that the Cooperative's continuing use of its reserve is *irrational*. To the contrary, the reserve is what funds the Cooperative's efforts to sustain tobacco farmers who face tougher and tougher challenges, without a federally-mandated safety net, from the modern (and generally declining) market for tobacco and tobacco products. *Supra* Statement of Facts, Sections B-D; *infra* Section V.B. North Carolina's business-judgment rule "protects corporate directors from being judicially second-guessed when they exercise reasonable care and business judgment." *Hammonds v. Lumbee River Elec. Memb. Corp.*, 178 N.C. App. 1, 21, 631 S.E.2d 1, 13-14 (2006).⁵⁴ And, even if Plaintiffs or some objector would somehow try to prove that the reserve is unreasonable (they cite no evidence on this critical point), they cannot realistically overcome the "*powerful substantive presumption* that a decision by a loyal and informed board will not be overturned by a court *unless it cannot be attributed to any rational business purpose*." *Ehrenhaus v. Baker*, 216 N.C. App. 59, 83, 717 S.E.2d 9, 25 (2011) (citations omitted) (emphases added).⁵⁵

⁵⁴ *Hammonds* confirms that the business-judgment rule applies to agricultural cooperatives in North Carolina. There, plaintiffs (members of a North Carolina rural electric cooperative) alleged that certain actions by the board were discriminatory. 178 N.C. App. at 3. In affirming dismissal, the Court of Appeals found that the board's decisions were protected by the business-judgment rule, consistent with the North Carolina statute under which the cooperative was incorporated. *Id.* at 14. The powers conveyed by the Cooperative Marketing Act to the Cooperative are no different. See N.C.G.S. § 54-146 (placing control of the Cooperative under a board of directors).

⁵⁵ North Carolina joins other states in applying the business-judgment rule to avoid undue encroachment upon board decisions specifically concerning the size and use of capital reserves. See *Happ v. Creek Pointe Homeowner's Assoc.*, 215 N.C. App. 96, 102, 717 S.E.2d 401, 404-05 (2011) (finding business-judgment rule protected board's decision to distribute remaining funds from a litigation fund at a "pro rata rate to members" notwithstanding plaintiff's claim that proceeds should have been used for other projects in the community); *Gaines v. Long Mfg. Co.*, 234 N.C. 331, 336-39, 67 S.E.2d 355, 359-61 (1951) (applying business-judgment rule principles in refusing to force declaration of a dividend); *Lake Region Packing Ass'n, Inc. v. Furze*, 327 So.2d

The Cooperative would respectfully argue that the business-judgment rule should yield dismissal as a matter of law. A complaint challenging business judgment must be dismissed unless it alleges “in other than conclusory terms, that the board was inattentive or uninformed, acted in bad faith or that the board’s decision was unreasonable.” *Winters v. First Union Corp.*, No. 01-CVS-5362, 2001 WL 34000144, at *3 (N.C. Super. Ct. July 12, 2001). At most, Plaintiffs allege, in conclusory fashion, that the Cooperative’s “fail[ure]” to “allocate and distribute” funds to members comprises a failure “to follow sound business judgment.” Dkt. 64, Am. Compl. at ¶ 94; *see also id.* at ¶¶ 1, 82(h), 95. These are precisely the type of conclusory allegations that the business-judgment rule protects against.

Even setting that aside, however, the business-judgment rule should translate to an ultimate judgment for the Cooperative on the merits because there is no serious prospect of any challenger proving, as they must, that the Cooperative’s decisions “cannot be attributed to any rational business purpose.” *Ehrenhaus*, 216 N.C. App. at 83, 717 S.E.2d at 25 (quoting *Hammonds*, 178 N.C. App. at 20-21, 631 S.E.2d at 13-14). Here, Plaintiffs’ case, at best (setting aside all other defects), boils down to the mere personal disagreement some members have with the Cooperative’s decisions to maintain the reserve—a disagreement that the expert retained by the *Rigby* plaintiffs (a Certified Public Accountant with over 40 years of experience auditing agricultural cooperatives, who had additionally served as a board member for two agricultural

212, 214-17 (Fla. 1976) (relying on business-judgment rule in refusing to force distribution of funds held by agricultural cooperative in a reserve account because “directors generally have wide discretion in the performance of their duties and a court of equity will not attempt to pass upon questions of the mere exercise of business judgment[.]”); *Claassen v. Farmers Grain Coop.*, 490 P.2d 376, 381 (Kan. 1971) (refusing, in suit seeking to compel payment of patronage ledger credits, to “substitute [its] judgment for the board of directors” and noting there is “no logical ground upon which a member should be permitted to withdraw his interest at the expense of disturbing the financial condition or the life of the association.”).

cooperatives)⁵⁶ was obliged to abandon once placed under oath. As the *Rigby* plaintiffs' expert attested, "it would be prudent" for the Cooperative today to retain its reserve "in its total amount" in order to continue "buying tobacco, processing it and marketing it themselves." *See* Ex. Y (Roberts Deposition at Tr. 70:14-71:9.) Nor have Plaintiffs or anyone else ever so much as suggested that the Cooperative undertook an ill-considered or deficient decisional process when establishing its reserve as it did ***back in 1975***, with notice to all members. Dkt. 73-4, December 1975 Newsletter. Over the past decade-plus, justification for the reserve has only grown as the Cooperative reinvented and sustained itself as a modern market participant, without benefit of the federal subsidies that kept growers afloat for the previous fifty years. *Supra* Statement of Facts; *Infra* Section V.B.

3. Distribution Is Not Mandatory Pursuant To North Carolina Law

Plaintiffs' specific causes of action are further riddled with other legal defects that stand between them and any success on the merits. Plaintiffs seek to force distribution of the Cooperative's reserves pursuant to the North Carolina Nonprofit Corporation Act. Yet the Act upon which they rely specially states that a "corporation ***may*** pay reasonable amounts," and "***may*** confer benefits upon its members in conformity with its purposes." N.C.G.S. § 55A-13-02(a) (emphases added). Nothing in this statute requires or mandates distributions. To the contrary, the legislature's selection of the word "may" forecloses any misnomer that there is an affirmative,

⁵⁶ *See* Ex. Y (Roberts Deposition) at 14:2-8 ("I audited GFA Peanut Association from 1960 to probably 2001. I've done the Central Georgia Cooperative for approximately 15 or 20 years, the Chickasha Quality Cotton Seed Cooperative for seven or eight years, and I also sat—and then later sat on the—as a board of directors of that, and that was about it."); *id.* at 32:24-33:2 ("A: Yes. I was on the board of directors and also—of Quality Cotton Seed Co-op and Chickasha Cotton Oil Company of Tifton, Georgia.").

enforceable “duty to distribute.”⁵⁷ The distribution statute thus confirms that the Cooperative is vested with discretion over its corporate capital and reserve. As for the claim for distribution specifically of FETRA funds, that is foreclosed by the statute’s text and preemptive force. *See supra* at Section V.A.1(c).

Mr. Sharp cites a Kentucky case involving a tobacco cooperative’s reserve funds—*Congleton*—as the sole support for the proposition that this Cooperative is required to distribute its reserve. Dkt. 192 at 15 (citing Attachment L, Dkt. 192-12). Rather than looking at the claims in *Rigby* (which the Cooperative defeated in full), the other Georgia cases (which have each been dismissed), or *Fisher-Lewis* (in which the plaintiffs are continually revising and narrowing their theory of the case), Mr. Sharp resorts to a case against a *different* defendant, under *different* law, with fundamentally *different* facts. Far from supporting the Objectors, however, *Congleton* illuminates still more problems with their claims.

Congleton concerned claims for distribution of funds held by a burley tobacco cooperative that were derived from the No Net Cost program and also FETRA. Dkt. 192-12 at 1. Plaintiffs in *Congleton* demanded that the defendant-cooperative distribute funds that had been received from the CCC and USDA, also pursuant to FETRA, asserting that the failure to do so amounted to a breach of contract. *Id.* at 1-2. In the order initially submitted by Mr. Sharp, the *Congleton* court flatly disagreed, holding that the “relationship between the [defendant] and grower-members” was “primarily governed” by “the Articles and Bylaws of the Association . . . [none of which] contained an absolute requirement of immediate distribution of all alleged net profits from the sale of loan pool tobacco.” *Id.* at 6. Indeed, the order initially submitted by Mr. Sharp rules that the

⁵⁷ See *Correll v. Division of Social Servcs.*, 332 N.C. 141, 144, 418 S.E. 2d 232, 235 (1992) (“When the language of a statute is clear and unambiguous . . . the courts must give it its plain and definite meaning.”) (internal quotations and citations omitted).

defendant’s “board of directors has always had the ability to determine the date and amount of any distributions . . . according to its present financial needs and future plans and requirements” , and that the defendant-cooperative’s decisions with respect to funds from the CCC and USDA were exercises of its “business judgment[.]” *Id.* at 7. On this basis, the *Congleton* court ***granted summary judgment to the defendant-cooperative***, establishing that it had discretion and control over the funds at issue. *Id.* at 8. The same result should and most likely would obtain here in the Cooperative’s favor.

In a separate opinion and order in *Congleton* issued on March 15, 2007—late submitted by Mr. Sharp—the court held that the defendant-cooperative was required to distribute funds received from FETRA. Dkt. 219 (replacement exhibit). To be clear, that order—which was never appealed—erred in the Cooperative’s respectful view. Mr. Sharp’s belated submission of that order is substantively unavailing, because it has no persuasive or precedential value on the facts of this case. In the March 15, 2007 order, the *Congleton* court held that distribution of the FETRA funds was required by the terms of the federal statute. *Id.* at 12-15. That reflected an obvious misreading of the statute, however.⁵⁸ In any event, the *Congleton* court did not confront an on-point letter such as that the Cooperative received from the U.S. Government, expressly confirming

⁵⁸ To the extent the *Congleton* court’s March 15, 2017 Order concludes that the FETRA legislation compelled distribution of funds directly to members, it is unpersuasive. As set forth above, *see* Section V.A.1(c), the plain text of the statute vests the FETRA tobacco “to the association for disposal.” 7 U.S.C. § 519(b). That does not admit of any ambiguity, especially when read in conjunction with the differentiated text of 7 U.S.C. § 719(d), which requires in express terms distribution to members. Notwithstanding the plain meaning of the statute, the *Congleton* court wandered astray from the plain statutory text, relying instead on legislative history and its own conclusions about legislative intent. *See* Dkt. 219 at 7-8, 12-13. *Cf. Ayes v. U.S. Dep’t of Veterans Affairs*, 473 F.3d 104, 108 (4th Cir. 2006) (“In interpreting a statute, a court should always turn first to one, cardinal canon of construction before all others: the plain meaning rule.”) (internal citations and alterations omitted).

that the Cooperative may “utilize these lots of tobacco in any manner that it desires.” Dkt. 73-28 (March 2005 Letter from USDA) at SC 16058.

Having erred in determining that FETRA required distribution of funds to members, the *Congleton* court ordered distribution of FETRA funds based on the *specific terms of contracts* entered into by the defendant-cooperative and each of its members.⁵⁹ Dkt. 219 at 12. Those contracts precisely and specifically established that the defendant-cooperative was entitled to deduct from the sale of tobacco proceeds received “*one percent of the gross re-sale value thereof as a reserve* for credits and other general corporate uses of the Association,” and thereafter set forth a specific order of operations and formula for distributing remaining net gains to members. See Dkt. 192-12 at 2-3, incorporated by reference in Dkt. 219 at 3. No such contracts are present here—there are no such analogous terms in any of the Cooperative’s Stock Certificates or Marketing Agreements with its members—and no one is even contending otherwise. Unlike the contracts in *Congleton*, the Cooperative’s marketing agreements with members did not limit the amount of funds that could be retained as a reserve (*e.g.*, 1%), but allowed without qualification for “a reasonable deduction for reserves *as determined by the Board of Directors.*” Ex. DD (Sample Marketing Agreement). Especially considering the discretion suffusing the member

⁵⁹ Dkt. 219 at 12 (“Pursuant to the Participation Certificates [contracts] . . . the Association has a contractual obligation to distribute the proceeds from the sale of FETRA Tobacco . . . as previously set forth in the Marketing Agreement contained in the Participation Certificates.”) (emphasis added); *id.* at 13 (“Once the Association determined to dispose of the FETRA Tobacco through a sale, it was *contractually obligated* to distribute the sales proceeds in accordance with said contractual obligations.”) (emphasis added); *id.* at 16 (“Pursuant to its contractual obligations, the Association continued to serve as agent for the produce-members in the “disposal” of the FETRA Tobacco”) (emphasis added); *id.* (“The Association must now distribute to the rightful owners of the FETRA Tobacco the proceeds thereon in accordance with the terms and conditions of the Marketing Agreement in the Participation Certificates. The Association breached its contractual obligations”) (emphasis added).

contracts here as well as the specific instruction from the U.S. Government that the Cooperative could use the ceded tobacco as it saw fit, *Congleton* affords no support on the merits of this case.

4. There Are Not Grounds Permitting Judicial Dissolution

Plaintiffs' alternate cause of action for judicial dissolution, Dkt. 64 (Am. Compl.) ¶¶ 97-102, brought pursuant to the North Carolina Nonprofit Corporation Act, N.C.G.S. § 55A-14-30, is also flawed. As noted, Plaintiffs cannot show—and have not even alleged—that the Cooperative has undertaken actions that would bring it within the scope of any of the dissolution statute's relevant enumerated requirements. Plaintiffs cannot show that “the directors . . . have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent,” N.C.G.S. § 55A-14-30(a)(2)(b);⁶⁰ that the Cooperative's “assets are being misapplied or wasted,”⁶¹ N.C.G.S. § 55A-

⁶⁰ As described above, the Cooperative's establishment, maintenance and use of its reserve has been, at all times, consistent with the mandates of North Carolina law and its governing documents. *See supra* Part V.A.1.

⁶¹ Plaintiffs in *Fisher-Lewis* recently dropped their longstanding claims for mismanagement of assets in their Motion for Partial Summary Judgment, submitting that “[t]o the extent that these matters were ever mentioned in pleadings, the Plaintiffs in this action no longer pursue such claims. To put it plainly, this direct action will seek no relief for mismanagement of cooperative assets.” *See* Dkt. 123-4 (Mem. Law Supp. Mot. Partial Summ. J.) at 11, Nov. 28, 2017.

14-30(a)(2)(d);⁶² or that the Cooperative “is no longer able to carry out its purposes,” N.C.G.S. § 55A-14-30(a)(2)(e).⁶³

More fundamentally, North Carolina strongly disfavors dissolution. The dissolution statute specifically requires that, “[p]rior to dissolving a corporation, the court shall consider” the existence of “reasonable alternatives to dissolution,” and whether “dissolution is reasonably necessary for the protection of the rights or the interests of the members,” N.C.G.S. § 55A-14-30(b)(1)-(3) (emphasis added). In light of these statutory considerations, there is no plausible basis for any other court to order dismantling of the Cooperative, especially considering that the Cooperative is undisputedly engaged in active, ongoing, productive business for the continuing benefit of the tobacco growers it serves.⁶⁴

⁶² North Carolina courts look to Delaware law for guidance on the doctrine of waste and define it as the “exchange of corporate assets for consideration so disproportionately small as to lie beyond the range at which any reasonable person might be willing to trade,” and have established that, if “there is **any substantial** consideration received by the corporation, and if there is a **good faith judgment** that the circumstances of the transaction are worthwhile, there should be no finding of waste.” *Kreiger v. Johnson*, No. 12 CVS 13727, 2014 WL 1759054, at *7 (N.C. Super. Ct. Apr. 30, 2014) (quoting *Lewis v. Vogelstein*, 699 A.2d 327, 336 (Del. Ch. 1997)) (emphasis in original). There are no factual or legal allegations of waste and, if there were, Plaintiffs could not prevail upon them. To the extent Plaintiffs attempt reliance on the Cooperative’s purchase of the Timberlake facility to support a waste claim, Dkt. 64 (Am. Compl.) ¶¶ 35, 44, that attempt fails because the Cooperative clearly received “any substantial” consideration for its funds—the facility itself.

⁶³ The Cooperative’s purposes are broad. The Articles of Incorporation permit the Cooperative to “engage in **any activity** involving or relating to the business of . . . financing, marketing, selling, and/or distribution, on a cooperative basis, of flue-cured tobacco.” Dkt. 123-8 (2010 Articles of Incorporation), Art. II (emphasis added). Those are the very activities in which the Cooperative currently engages on a daily basis—purchasing flue-cured tobacco leaf from its members and conducting business, including the operation of the Timberlake facility, to continue building market demand for flue-cured tobacco products. *See Kacsuta Decl.* ¶ 51.

⁶⁴ The presence of an express cause of action for dissolution in this case though meritless, establishes that it poses a greater threat to the Cooperative than *Fisher-Lewis*. In theory, it could cause the Cooperative to fold up shop. Accordingly, Mr. Sharp’s objection that the presence of a dissolution claim in this case makes it a weaker case is difficult to comprehend. *See Dkt.* 192 at 15. It also bears noting that *Fisher-Lewis* is also effectively seeking dissolution—although they

5. Plaintiffs Are Not Entitled To Declaratory Judgment

Plaintiffs' expansive claim for declaratory judgment likewise fails. Plaintiffs seek a judicial declaration that (1) North Carolina law, or the Cooperative's by-laws, require distributing the reserves; (2) the Cooperative has acted unreasonably in failing to distribute its reserves; and (3) the Cooperative's "primary function" ceased to exist with the enactment of FETRA.⁶⁵ Plaintiffs are not entitled to declaratory judgment on the first and second points because control of the reserves is vested in the Cooperative's discretion, as further protected by the business-judgment rule and hard evidence of sound deliberations. *See supra* Part V.A.2. On the third point, there is no legal or factual basis to conclude that the Cooperative's "primary function" ceased with the enactment of FETRA. *Cf.* Dkt. 64 (Am. Compl.) ¶ 82(a); *see also id.* ¶ 10. To the contrary, the opposite is true: growers' need for the Cooperative *surged*, as did the Cooperative's need for a reserve, *precisely when* FETRA was enacted and the federal government withdrew longstanding federal price support for tobacco growers; in other words, FETRA made the Cooperative and its reserve more essential than ever before.⁶⁶ Nor is there any doubt that the Cooperative's stated

couch their claims as seeking "distribution," plaintiffs there have recently resorted to suggesting distribution of *all* of the Cooperative's assets. *See* Dkt. 123-4 (Mem. Law Supp. Mot. Partial Summ. J.) at 3, Nov. 28, 2017 ("The gravamen of the lawsuit is simply that the property held by the cooperative is not the property of the cooperative. The class asks this court to take the funds from the cooperative and give the funds to the proper owners, the class members.") Because the parallel proceedings bring claims that implicate common facts, allegations, and legal theories and analyses, resolution of one should fully preclude the other. *See infra* Part VI.F.

⁶⁵ The cause of action for declaratory relief is sprawling, containing eight requests for judicial declaration. *See* Dkt. 64 (Am. Compl.) ¶ 82. The requests are here organized into three categories for brevity.

⁶⁶ *See* Dkt. 123-17 (2004 Annual Report) at 3 (explaining that the industry was at a "crossroads" and noting the need for strategic responses to forthcoming legislation); Dkt. 123-13 (2005 Annual Report) at 1 (noting that the "United States Department of Agriculture has developed the rules, regulations and methods for carrying out provisions of the Act" and delineating the Cooperative's 2005 season plans to support flue-cured tobacco growers).

legal mission has remained live: The Cooperative’s Articles permit it to “engage in *any activity involving or relating to* the business of . . . financing, marketing, selling, and/or distribution, on a cooperative basis, of flue-cured tobacco.” Dkt. 123-8. Tellingly, no one—neither an Objector, nor a Plaintiff, nor a putative *amicus*—has identified any authority suggesting that the Cooperative’s purpose is or was narrowly confined to administering the programs that ended under FETRA.⁶⁷ The law as well as the facts should foreclose any such contention.

6. Virtually All Allegations Are Time Barred

Even if Plaintiffs otherwise had valid claims on the merits, they are untimely under the statute of limitations. The Amended Complaint—like that in *Fisher-Lewis* and the failed *Rigby* litigation—primarily concerns reserve funds derived from the 1967-1973 and 1982-1984 crop years. Dkt. 64 (Am. Compl.) ¶¶ 11-15. The Cooperative told the whole membership about its decisions to create and increase the size of its capital reserve shortly after it acquired the funds, announcing that it was withholding distribution of same. *See* Dkt. 73-4 & 123-18 (1975 and 1990 newsletters). North Carolina law imposes a general limitations period of **10 years** from the date a cause of action accrues. N.C.G.S. § 1-56 (“An action for relief not otherwise limited by this subchapter may not be commenced more than 10 years after the cause of action has accrued.”). Accordingly, this suit should have been filed as to the relevant funds, at the latest, in 2002 (10

⁶⁷ Neither Plaintiffs nor any Objectors, despite claiming that FETRA somehow ended the Cooperative’s “primary purpose,” assert that FETRA required the Cooperative to shut down (dissolution) or to distribute its capital reserves (distribution). That is because nothing in the legislation suggests as much. To the contrary, FETRA confirms Congress’s understanding and desire that associations, such as the Cooperative, would continue to operate after the end of the federal price support programs. After all, FETRA—in the same piece of legislation—both ended price support *and* gave the association additional resources while stating that “*the association shall be responsible for the disposal*” of tobacco ceded thereunder. 7 U.S.C. § 519(d) (emphasis added).

years after the CCC released the last crop of tobacco to the Cooperative). Yet *Fisher-Lewis* was not filed until 2005, and this suit was not filed until 2012. Accordingly, any claim to funds derived from actions taken in the 1960s-1980s should be categorically out of play. As Mr. Sharp himself put it in his sworn testimony back in 2006, the funds from the 1967-1973 crop years “should have been sent out 30 years ago.” Ex. G (Sharp Deposition) at Tr. 39:14-17.⁶⁸ The *only* allegations that might arguably fall within any limitations period are those relating to the FETRA funds—and those allegations independently fail for the multiple reasons already specified. See *supra* Part V.A.1. The statute of limitations proved insurmountable for the individual claims in *Rigby*,⁶⁹ and would be no more readily surmounted here (or in *Fisher-Lewis*).

7. Any Damages Would Be Limited to \$5 Per Member

Even if Plaintiffs could somehow establish liability (a highly remote and improbable prospect), any class member would, at most, be entitled to a maximum of **five dollars (\$5.00)** in damages. Each Class Member, in exchange for paying \$5 to join the Cooperative, obtained a share of common stock that had “*Common Stock at \$5 Per Share*” printed prominently atop it, along with

⁶⁸ Like other class members, Mr. Sharp misunderstands the source of the \$110 million Additional Paid-In Capital, believing mistakenly that those funds are comprised of No Net Cost assessments. See also *infra* Part V.C. Those funds in fact comprise the proceeds from the sale of tobacco grown in the 1982-1984 crop years that the CCC released to the Cooperative in the early 1990s. Even if he were right, however, the claim would still be untimely. Mr. Sharp stated under oath that it “was common knowledge throughout the industry and—and through the printed press at the time back during the – the late ‘80s and early ‘90s”—that there “was supposed to be certificates issued” for the funds from the 1982-1984 crop years. Ex. G (Sharp Deposition) at Tr. 31:1-9.

⁶⁹ See Dkt. 73-15 (January 3, 2013 Order on Motion to Dismiss or for Summary Judgment) (dismissing claim related to 1967-1973 reserve funds as time-barred); Dkt. 73-16 (March 28, 2014 Georgia Court of Appeals Decision) (affirming dismissal); see also Ex. Z (Peterson Deposition) at Tr. 65:6-15 (Q: “In your view, basically, to the extent that the Cooperative had cash reserves that it was accumulating from the 1970s, 1980s and 1990s on forward, all that money was owed to the members during those years, during that period of time?” A: “Yes.” Q: “And the Cooperative basically wronged the members by not paying them in those years in the 1970s, 1980s and 1990s?” A: “Yes.”).

specific terms specifying that a member's maximum claim upon the Cooperative, by virtue of mere membership interest, would be limited to "the *par* or book *value* of such stock, *whichever is less*." Dkt. 73-3 (2010 By-laws), Art. VII; Dkt. 73-29 (Sample Stock Certificate). This same language was also in the Cooperative's governing by-laws and Articles of Incorporation. *E.g.*, Ex. A (1947 By-laws) & Dkt. 123-8 (Articles of Incorporation).

* * *

Chief among the reasons that this \$24 million Settlement should be approved under Rule 23 is that the class claims—like those in *Rigby* and *Fisher-Lewis*—simply are not viable. Absent this Settlement, Class Members are likeliest to receive nothing at the conclusion of trial, judgment, and any appeal.⁷⁰

B. Plaintiffs Cannot Prevail Because The Cooperative's Use Of The "Reserve" Has Been Reasonable

Mr. Sharp contends that "North Carolina law does not allow [the Cooperative] to make a profit, but it may maintain a *reasonable reserve*." Dkt. 192 at 18 (emphasis added). Mr. Sharp thus admits that the Cooperative is legally permitted to establish a reserve, disputing only its *reasonableness*. But Mr. Sharp's understanding of the size of the Cooperative's reserve—like that of his fellow objectors and the Plaintiffs—is factually misinformed. The "reserves available for distribution are" most definitely *not* the "\$350,000,000" Mr. Sharp claims. *Id.* As described

⁷⁰ Dr. Harrison acknowledges that, if "there exists a small enough probability of victory" on the merits of this suit, the settlement "would be reasonable in that sense." Ex. CC (Harrison Deposition) at Tr. 100:1-101:3. He added that the reasonableness of the settlement is "*not a judgment for me to make*," but rather one "for the lawyers bringing the case to make and it's a judgment for the plaintiffs – for defendants to make[,] and it's a judgment specifically for the court[.]" *Id.* at Tr. 101:3-8 (emphasis added). According to Dr. Harrison, the only analysis behind his view that the settlement value was *too low* was this: he determined the "upper bound" for the settlement via "mere arithmetic," specifically by calculating "assets minus liabilities." *Id.* at Tr. 107:3-108:8.

below and in the Declaration of the Cooperative's Chief Financial Officer Ed Kacsuta, the Cooperative holds approximately \$11.5 million in cash, with another \$129.5 million in short- and long-term investments in interest-bearing obligation. Kacsuta Decl. ¶ 71. And, as described in the expert declaration filed by Dr. Randal Rucker, an agricultural economist at Montana State University, the vast majority of the Cooperative's assets are currently deployed to support activities sustaining growers of flue-cured tobacco—members and non-members alike. Rucker Decl. ¶¶ 53-54. These activities go well beyond contracting with growers—who generally want to sell the Cooperative more than it can afford to buy each year. Kacsuta Decl. ¶ 52. They extend to operating marketing centers where the Cooperative purchases tobacco from growers (tobacco that then takes years to in turn sell to manufacturers), as well as the operation of its cigarette manufacturing, processing, and distribution business and the Cooperative's ceaseless push to market its flue-cured tobacco around the world. Depleting the Cooperative's "reserve" at Plaintiffs' behest would necessarily undermine the Cooperative's current operations, thereby disrupting the Cooperative's business strategy and harming the Cooperative's members, who rely on the Cooperative to purchase their tobacco at a fair price and to cultivate a receptive market for it. Therefore, even if Plaintiffs had a viable cause of action, any claim would still fail because the Cooperative's use of funds and the size of its current "reserve" is reasonable, by any fair measure.⁷¹

⁷¹ Objectors have proffered no evidence whatsoever to support their assertion that some unspecified portion of the Cooperative's reserve is unreasonable. Tellingly, during his January 10, 2018 deposition, Dr. Harrison responded "no" when asked if he had "a sense of what the reserve is currently." Ex. CC at Tr. 105:16-19. That is because Dr. Harrison had not "under taken any analysis to determine what portion of the [C]ooperative's quote/unquote reserve is reasonable." *Id.* at Tr. 102:20-23. Dr. Harrison could not say whether the Cooperative's reserve was "below \$22 million or above it," because he "had not looked at it" prior to opining on the adequacy of this proposed settlement. *Id.* at Tr. 105:20-22. Indeed, he did not "know how the \$22 million proposed settlement compared to the size of the reserve," *id.* at Tr. 120-120:3, and was "not in a position to present opinions" on the reserve's reasonableness because he did not "have the facts before me," *id.* at Tr. 89:10-22.

What the Plaintiffs and Mr. Sharp mistakenly call the “reserve” originally derived from three sources: \$26.8 million from the sale of tobacco from 1967-1973 (the Capital Equity Credits); \$110 million that the Cooperative acquired by selling tobacco ceded to it by the CCC in the early 1990s (the Additional Paid-In Capital); and \$81 million that the Cooperative acquired by selling tobacco ceded to it under FETRA in 2004 (the Contributed Capital). *See* Kacsuta Decl. ¶¶ 12-30; *see also* Dkt. 64 (Am. Compl.) ¶¶ 14, 35, 38, 40. But the balance sheet does not reflect these amounts, or anything close to it, as cash reserves held by the Cooperative. As noted, the only cash the Cooperative currently possesses—approximately \$ 11.5 million as of May 2017—is the “cash and cash equivalents” line item on the asset side of the balance sheet. Kacsuta Decl. ¶ 71.

As it became increasingly clear that Congress would soon terminate the Tobacco Price Support Program, the Board determined that serving its members (including future members) would require accumulating “reserve” funds so that it might purchase tobacco from its growers, expand its operations, and generate a consumer-facing business in order to prop up the leaf business. Accordingly, the Cooperative’s first move was to acquire the tobacco manufacturing facility at Timberlake to enhance its capacity to manufacture tobacco products, *id.* ¶ 34; it also expanded into foreign markets to increase demand for members’ tobacco, *id.* ¶ 35; it acquired cigarette brands to increase sales of consumer products, *id.* ¶ 36; it acquired distribution subsidiaries to reach a greater geographic area, *id.* ¶ 38; and, most recently, it constructed a new storage facility to increase yield, *id.* ¶ 40.

Similarly, in order to continue purchasing members’ tobacco without the Tobacco Price Support Program, the Cooperative obtained a line of credit from a private bank, the favorable terms of which require the remainder of the “reserve” to be maintained as collateral. *Id.* ¶ 43-44. The

Board directed each of these activities in the exercise of its collective business judgment. *See id.* ¶ 45.

The Cooperative's use of these funds has been remarkably, demonstrably successful. Through its decisions, the Cooperative has built a thriving consumer-products business that now successfully competes in the modern marketplace and effectively subsidizes its efforts to purchase tobacco from growers, providing an essential means of market support. *Id.* ¶ 48. Indeed, after conducting an analysis of the Cooperative's financial performance, Dr. Rucker has confirmed that the Cooperative's post-Tobacco Price Support Program decisions were sufficiently *profitable* to compensate for the Cooperative's *unprofitable* bulk-leaf business, through which the Cooperative effectively sustains growers much as federal subsidies once did. Rucker Decl. ¶¶ 46-47.

In sum, the Cooperative's use of "reserve" funds is eminently reasonable according to multiple metrics, as the record shows.

C. Objectors Misunderstand And Mischaracterize The Source And Size Of The Cooperative's Reserve

Many Objectors—including Mr. Sharp, in his *pro se* objection, Dkt. 92—complain that the Settlement provides an unfairly small amount of funds, based on their misconception that the Cooperative's "reserve" consists of the *assessments* they paid under the No Net Cost program (1982-2004).⁷² For example, Mr. Burt complains that the Cooperative's funds comprise "monies

⁷² *See, e.g.*, Dkt. 90 ¶ 6(b) (complaining about the 25 cent a pound assessment that growers had to pay); Dkt. 91 at 1; Dkt. 92 ¶ 1; Dkt. 109 ¶ E; Dkt. 112; Dkt. 139. Strikingly, Mr. Sharp's objection to the settlement has changed substantially since counsel from *Fisher-Lewis* entered appearances on his behalf. In his first Objection, Mr. Sharp contended that "the Cooperative had assets in excess of \$700 million and that [e]very dime of that money came from the sweat and sacrifice of tobacco farmers." Dkt. No. 92 at 1; *see also* Ex. G (Sharp Deposition) at Tr. 145:12-156:5 ("[A]ssessments like to have broke my back, and those assessments went into the No-Net Cost Fund that are in [the Cooperative] today . . . [e]very dollar that [the Cooperative's] got . . . either came through profits of sale of farmers' tobacco under loan or through assessments."). Mr. Sharp abandoned this argument, however, in his second objection. *See* Dkt. 192. It appears that

that were retained by the Cooperative as ‘capital reserve’ and then as assessments under the ‘No Net Cost’ program.” Dkt. 112. Once this misconception is corrected, the case against the Cooperative further collapses.

In 1982, “Congress enacted legislation requiring the [Federal] Tobacco Program to be self-supporting by charging annual assessments to growers on each pound of tobacco marketed.” *Strickland v. Flue-Cured Tobacco Co-op. Stabilization Corp.* 643 F. Supp. 310, 313 (D.S.C. 1986). For the majority of the No Net Cost era, the Cooperative operated as an agent of the government collecting those assessments—and collecting them from purchasers and importers of tobacco, alongside growers. *See* Batten Decl. ¶ 6. It did not then retain those assessments for its own use; rather, it held them in a fund that was **controlled by the CCC**. *See id.* When growers sold tobacco to the Cooperative, they received the full quota price, reduced by the assessment charged by the No Net Cost Act. *See* Hill Decl. ¶¶ 17-19. Even when growers did not sell tobacco under quota to the Cooperative, they paid assessments on it. *See id.* And purchasers and importers of tobacco were paying their own assessments without ever selling tobacco to the Cooperative. Kacsuta Decl. ¶ 29. All the Cooperative did was collect and remit assessments as a conduit for the CCC. *See* Batten Decl. ¶ 6. Indeed, after Congress enacted FETRA, the CCC took possession of the money in the No Net Cost fund—*i.e.*, the assessments that the Cooperative had collected from farmers. ***That money in the No Net Cost fund was never used by the Cooperative and did not belong to the Cooperative.*** *Id.* ¶ 10.⁷³

Fisher-Lewis plaintiffs’ counsel corrected Mr. Sharp’s misunderstanding about the source of the putative “reserve” funds, whereupon Mr. Sharp proceeded to adopt an entirely new argument as to why the Court supposedly should not approve the settlement.

⁷³ Dr. Harrison does not contend otherwise, testifying that No Net Cost assessments “would be in an account kept by the government” and that the Cooperative “had no say in those fees or how they could be used.” Ex. CC (Harrison Deposition) at Tr. 65:23-66:19. Asked if the

The vast majority of the “reserve” at issue here derives from two decisions that the CCC—*i.e.*, the federal government—made with respect to the No Net Cost fund. In the early 1990s, the CCC took possession of the assessments that the Cooperative had collected from growers, and used them to pay off the remaining balance on the money that the Cooperative had borrowed from it to purchase the 1982-1984 tobacco crop. Kacsuta Decl. ¶ 24. The CCC then granted the tobacco crop to the Cooperative, which sold it for a profit (the Additional Paid-In Capital). *Id.* Second, in 2004, the CCC took possession of assessments collected throughout the No Net Cost era, used them to pay off a portion of the balance on the money that the Cooperative had borrowed, and then granted what remained of the 2001-2004 crop to the Cooperative. *Id.* ¶¶ 28-30. In both transactions, ***the CCC granted the tobacco to the Cooperative***. It did not come from the growers, who had already sold it in the crop year in which it was grown and who had been paid in full for it—indeed, had been paid for it generously, often at above-market prices guaranteed by the United States. *See id.* Neither the tobacco the CCC ceded to the Cooperative nor the proceeds therefrom came from the assessment fund that the Cooperative held on the CCC’s behalf.

Strickland confirms that the assessments collected during the No Net Cost era did not belong to growers. 643 F. Supp. 310 (D.S.C. 1986). There, the plaintiff-members challenged certain rebates that the Cooperative offered from the No Net Cost fund to purchasers of flue-cured tobacco to encourage them to purchase tobacco (as contemplated by the No Net Cost Act). *Id.* at 313.⁷⁴ The Court held that the members lacked standing to sue, explaining that the members had

Cooperative could control those funds, Dr. Harrison confirmed that “as an accounting matter, as a legal matter, they were not owned by the cooperative,” *id.* at Tr. 66:22-24, and further agreed that the No Net Cost assessments “weren’t booked on the [C]ooperative’s books as an asset,” *id.* at Tr. 67:2-5.

⁷⁴ The Court decided *Strickland* during the brief time period that the Cooperative did control the No Net Cost assessments, before it decided to move the assessments to an account held

no interest in the No Net Cost fund “because it was governed by [the Cooperative], designed to protect CCC from losses and dedicated to be used for the mutual benefit of [the Cooperative] and CCC. Consequently, at most, the rebates may have constituted an injury to [the Cooperative], not to the plaintiffs individually.” *Id.* at 315. The Court further held that the Cooperative’s members had not suffered an unconstitutional taking because the “**moneys in the [No Net Cost] Fund did not belong to plaintiffs**. The disposition of the Fund moneys could only be made through [the Cooperative] in the manner and for the purpose provided in the statute.” *Id.* at 318 (emphasis added).

Finally, some Objectors, and Mr. Sharp’s purported expert—Dr. Harrison—make unsupported claims that the Cooperative has hundreds of millions of dollars available for distribution and claim the proposed Settlement value is too low on that basis.⁷⁵ For instance, Dr. Harrison’s analysis assumes that the Cooperative’s “Net Worth” provides the “upper bound for settlement.” This is false. Because the Cooperative has used—consonant with its business judgment—the putative “reserve” to purchase valuable assets and to collateralize its line of credit, it currently holds only approximately \$11.5 million in cash. Kacsuta. Decl. ¶ 71. What is more, even if it were accurate, Dr. Harrison’s opinion about the mere size of the reserve does not illuminate any merits issue. To again take the example of Google, its many billions of dollars in

by the CCC to eliminate the tax consequences to its members. *Supra* Statement of Facts § B. The Court’s reasoning applies *a fortiori*, however, to the *ensuing* period in which the No Net Cost assessments flowed entirely to the U.S. Government and thus were that much further removed from growers and any particular patronage of the Cooperative.

⁷⁵ See, e.g., Dkt. 91 (“We had over 300 million dollars in the stabilization co-op.”); Dkt. 92 (“In the neighborhood of \$700 million is what we should be focused on distributing back to the farmers that put it there in the first place.”); Dkt. 97 (“I understand U.S. Tobacco Coop holds about \$400M.”); Dkt. 175 (stating that the Cooperative “had assets in excess of \$700 million” in 2004); Dkt. 192-7 at 5 (stating that the Cooperative has a Net Worth of \$363.6 million and Total Assets of \$514.6 million).

cash on hand may be deemed high in some abstract sense, but any such observation is meaningless absent an informed assessment of the role it plays in Google’s business operations, financing, and strategies, or how much a particular plaintiff could realistically hope to recover from it. Here, Dr. Harrison has nothing whatsoever to say about how the Cooperative is using or should use its reserve, or about what Plaintiffs should be able to claim from it in court.

VI. OTHER INDIVIDUAL OBJECTIONS TO THE SETTLEMENT ARE MISCONCEIVED AND UNPERSUASIVE

Rule 23(e) calls for final approval of a class action settlement if it is fair, reasonable, and adequate. As discussed above, none of the Objectors offers grounds under the single most important factor or offers anything to suggest that the relevant claims have merit as a matter of law. Nor do the Objectors identify any other infirmity that should stand in the way of final approval.

A. The Stale Prior Settlement Offers In *Fisher-Lewis* Are Neither Relevant Nor Reliable Indicators Of The Settlement’s Adequacy

1. The Unconsummated 2005 Settlement Proposal Is Not A Relevant Measure Of The Adequacy Of The Present Settlement

Like Mr. Lewis’s unsuccessful intervention motion, Dkt. 70-1 at 2, Mr. Sharp argues that the Settlement cannot be fair because it has a lower monetary value than the 2005 Settlement, *see* Dkt. 192 at 9, 16-17.⁷⁶ In doing so, Mr. Sharp misstates the factual record by stating that the State Court *rejected* the 2005 Settlement as unfair and unreasonable. *See* Dkt. 192 at 9. The 2005 Settlement was *not* rejected as unreasonable. Rather, the State Court order clearly stated that preliminary approval there was denied “*without prejudice*” because the State Court did not think

⁷⁶ *See also* Dkt. 162 at 2-3 (stating that the Cooperative and counsel to the *Fisher-Lewis* plaintiffs “were discussing settlement in excess of \$100,000,000, meaning that this case is worth much more than the *Speaks* settlement); Dkt. 187 at 2-3 (same); Dkt. 190 at 3 (same).

it then had (in 2005) “before it **sufficient evidence** to resolve [concerns raised by the *Fisher* plaintiffs].” *See* Dkt. 70-2 at 4-5 (emphases added). The State Court concluded that “**based upon the record to date** . . . the evidence presented does not support a finding or conclusion that the proposed Settlement is within the necessary ‘ball park’ of being fair, reasonable and adequate”; at the same time, the State Court expressly noted there “is a sufficient showing by proponents [of the settlement] to justify further fact-gathering.” *Id.* (emphases added).

In no event is the 2005 Settlement probative when measuring the adequacy of the current Settlement. As the Cooperative explained at length to Judge Bullock and Plaintiffs at the mediation, the 2005 Settlement is a historical artifact thoroughly divorced from the Cooperative’s present circumstances and decision-making, not to mention the prospect of Plaintiffs actually prevailing on the merits were this litigation to continue. Among the many intervening factors that have profoundly changed the litigation calculus in the past twelve years are the following:

- The Cooperative’s success in *Rigby* has since furnished on-point, emphatic proof of the strength on the merits of the Cooperative’s defenses to the litigation.
- The Cooperative has proved its success in transitioning into a modern, sophisticated, multi-faceted player in the tobacco industry and has correspondingly come to depend upon what was formerly a “reserve” of cash on hand to collateralize financing and to sustain its day-to-day operations. *See* Kacsuta Decl. ¶¶ 31-41.
- The Cooperative’s Board has consistently voted over the past 12 years to retain the substantial majority of the disputed funds (while opening up redemption periods for portions of the funds), based upon consideration of the Cooperative’s business operations and needs. *See* Shepherd Decl. ¶ 19; Hill Decl. ¶¶ 15-16.
- In evolving its operations and outlook, the Cooperative has enlisted the undersigned counsel to rigorously assess and defend against the pending claims on all fronts, rather than simply appeasing plaintiffs and their counsel for the sake of optics and/or politics.
- Three causes of action were dismissed from *Fisher-Lewis* in 2012, thereby changing the contours of the Cooperative’s potential exposure subsequent to the 2005 Settlement.

- The North Carolina Supreme Court’s order affirming the trial court’s discretionary certification of a class in *Fisher-Lewis* has pointedly bracketed the prospect that the claims could be dismissed as derivative. Dkt. 73-8 at 11-13 (Dec. 21, 2016 N.C. Supreme Ct. Class Certification Decision).
- Plaintiffs in *Fisher-Lewis* have recently abandoned large swaths of their case in chief, including all claims for the mismanagement of assets, which had been very much in play and the subject of prior settlement discussions. Dkt. 123-4 (Nov. 28, 2017 Mem. Law Supp. Mot. Partial Summ. J.) at 11.

In arguing that the Settlement must be unfair because it comes in below the 2005 Settlement, Objectors ignore the 12 years that have elapsed, the obvious changes in circumstances, and the peculiar, extra-legal considerations that previously led the former Cooperative (quite different from today’s Cooperative) to put a special premium on appeasing former members, above and beyond any legal merits. More fundamentally, the Objectors fail to evaluate the 2005 Settlement in its proper context: As explained herein and demonstrated by *Rigby*, Plaintiffs’ claims have proved to be without merit and do not form the basis for *any* recovery. *See supra* Part V. The Cooperative’s prior settlement offer—dated 12 years ago and based on very different considerations and circumstances—cannot change the present, operative realities. For much the same reason, Mr. Sharp is wrong to contend that a proposal by a Board member 13 years ago should bear upon the adequacy of this Settlement. Dkt. 192 at 18. Mr. Hill’s proposal was not, even then, driven by his perception of the relative strengths and weaknesses of the lawsuits facing the Cooperative. It was made largely as a matter of policy, at a different time, in a different context, and was rejected by the Board as imprudent in any event. *See Hill Decl.* ¶¶ 31-35. Notably, Mr. Hill participated in the mediation that led to the instant Settlement and attests that it is fair. *Id.* ¶¶ 4, 7.

As already noted, contrary to Mr. Sharp’s mischaracterization, the State Court never ruled that the financial compensation contemplated by the 2005 Settlement was substantively unfair or inadequate at that time; instead, it simply denied approval without prejudice pending further

development of the merits. It follows *a fortiori* that the 2005 Settlement raises no serious question of fairness or adequacy today.

2. Subsequent Offers Of Settlement In *Fisher-Lewis* Are Inadmissible And Irrelevant

Mr. Sharp further asserts that there are other “prior offers extended” during two mediations in *Fisher-Lewis* after the 2005 Settlement, going so far as to fault the Cooperative for not informing the Court of these offers. *See* Dkt. 192 at 16-17. He further argues that “through an *in camera* review of these prior offers,” this Court could achieve a “better understanding of the value Stabilization has placed on” *Fisher-Lewis* that will “significantly impact” the Court’s determination regarding the reasonableness of the Settlement. *Id.* at 17. Notably, reliance by Mr. Sharp and his counsel on these prior settlement offers flouts Rule 408 of the Federal Rules of Civil Procedure. Any settlement terms that were floated in *private negotiations* between the parties are “irrelevant, since the offer may be motivated by a desire for peace rather than from any concession of weakness in position.” *Emcor Grp., Inc. v. Great Am. Ins. Co.*, No. ELH-12-0142, 2013 WL 1315029, at *25 (D. Md. Mar. 27, 2013) (quoting 1972 Advisory Committee Note to Rule 408). Even if they were admissible, however, the prior offers are wholly irrelevant for the same reasons stated above as to the 2005 Settlement.

B. The Distribution Scheme For The Settlement Funds—Paying Under Two Groups—Ensures Fairness To Class Members

Mr. Sharp, and his purported expert, Dr. Harrison, fundamentally misunderstand the nature of the Settlement Fund and fund distribution scheme, and provide no basis for their conclusory objections that the distribution of funds as contemplated is “arbitrary,” “inequitable,” and ambiguous. *See* Dkt. 192 at 19; Dkt. 192-7 (Harrison Aff.) ¶¶ 14, 17. The funds distribution scheme is fair, reasonable, and adequate—ensuring that the Settlement Fund (and what it distributes) provides reasonable, equitable compensation to claimants.

First, Objectors reveal several misperceptions about the distribution plan that should be corrected at the outset. It is not the case that the Settlement “allow[s] those that sign up first to get the lion’s share of the funds.” *Cf.* Dkt. 92 (First Sharp Objection) ¶ 3. There are no provisions in the Settlement Agreement suggesting that those who sign-up (*e.g.*, file a claim) first get more; rather, the Claims Administrator will divide the Settlement Fund into two Groups and pay out verified claims on a *pro rata* basis regardless of when they were filed, so long as they are timely. Nor is it the case, as Mr. Sharp suggests, that there is a \$15,000 cap on *all* claims. Dkt. 92 ¶ 3.⁷⁷ Rather, funds allocation for Group 1 claims *only* is capped at \$15,000 so that, as described further below, large farms cannot recover an inordinate share of the Settlement Fund.

Similarly, Mr. Sharp’s concern that “[t]here will not be enough money to compensate all class members,” is ill-founded. Upon this Court’s final approval of the Settlement, the Cooperative will pay into the Settlement Fund the sum of \$24 million. Once paid into the Settlement Fund, the Cooperative will no longer have control over those funds and will have foregone any right to reclaim them provided all preconditions are met. *See* Dkt. 60-1 at 9 (Settlement Funds are to be “held in escrow on behalf of the Plaintiffs”). Claims will be paid on a *pro rata* basis (or divided proportionally) based on the total pounds of flue-cured tobacco sold by members submitting claims (for Group 1) and based on the total number of crop years a member marketed and sold flue-cured tobacco relative to the total number of crop years of all members submitting claims (for Group 2).

Dr. Harrison likewise argues, incorrectly, that “the first 1,467 claimants could exhaust all the funds, since $1,467 \times \$15,000 = \22 million, leaving the vast majority of the 100,000+ member class uncompensated.” Dkt. 192-7 at 6. Dr. Harrison initially ignores that ***at least 25%*** of the total Settlement Fund available to claimants (*i.e.*, \$5.5 million) will be set aside to pay Group 2 claims:

⁷⁷ *See also* Dkt. 127, 137, 144, 145, 149, 156, 163, 175, 186, 196.

the Settlement clearly states that “Twenty-Five percent (25%) of the Settlement Fund [will] be paid into an account from which Group 2 Claims will be paid.” Dkt. 60-1 at 12. Therefore, the entire \$22 million Settlement Fund cannot possibly be swallowed by Group 1 claims alone. Dr. Harrison also overlooks the fact that Group 1 claims are distributed *pro rata* based on the total pounds of flue-cured tobacco sold by members submitting claims—this is not the same as every Group 1 claimant receiving \$15,000, as Dr. Harrison seems to suggest. \$15,000 is *the most* a claimant can receive for submitting a Group 1 claim only, and any funds leftover after the administration of all Group 1 Claims shall be distributed to all Class Members per their Group 2 claims.⁷⁸

Finally, the so-called ambiguity noted by Dr. Harrison with respect to whether claimants can file both Group 1 and Group 2 claims is not in fact ambiguous; the Motion to Certify clearly states that Settlement Class Members may complete and submit claim forms “certifying to the best of their knowledge and belief that they qualify for distribution under Group 1 *and/or* Group 2.” Dkt. 60-1 at 13 (emphasis added). Likewise, the Claim Form states that claimants may submit their claim as “Group 1 *and/or* Group 2” and allows claimants to check boxes for *both* a Group 1 claim and a Group 2 claim. *See* Dkt. 60-7. Similarly, the Settlement Website’s “Commonly Asked

⁷⁸ While criticizing the proposed distribution as creating “inequities,” Dkt. 192-7 ¶ 8, Dr. Harrison acknowledged that his own proposed method poses a problem that is much worse—his could result in “a substantial part of this class . . . receiv[ing] zero dollars.” Ex. CC (Harrison Deposition), at Tr. 188:15-24, Jan. 10, 2018. Because his approach is keyed to individual member’s contributions, *see* Dkt. 192-17 ¶ 6 (2012 affidavit proposing to ascertain “the financial interests of each member”), Dr. Harrison concedes that, for a class member who patronized the Cooperative only in the years without any net earnings, “that person would get zero dollars.” Ex. CC (Harrison Deposition) at Tr. 189:4-19. The current plan for distributing settlement funds avoids any such disenfranchisement of an entire segment of the class, and Dr. Harrison thus conceded that others “could consider” this distribution plan to be “an appropriate way to disburse funds.” *Id.* at 230:1-11.

Questions” page includes the question, “*Question*: Can I submit both a Group 1 and a Group 2 Claim? *Answer*: Yes, you can file both a Group 1 and a Group 2 claim, whether at the same time or separately. You may be eligible to receive a payment from both Group 1 and Group 2 if the claims administrator determines that your claim for each Group is valid.”⁷⁹ Furthermore, as explained in Exhibit 5 (“Claims Validation Plan”) to the Supplemental Declaration of Jason M. Stinehart on the Settlement Administration Components and Claims Verification Process (“Supplemental Stinehart Declaration”), Rust “will attempt to validate all claims as both Group 1 **and** Group 2 claims, regardless of the Group selected by the claimant on the claim form. This ensures that each claimant receives the benefit of any and all information and records maintained by the Cooperative.” Dkt. 217-6 at 17.⁸⁰

Second, Objectors should not be “concern[ed]” that the \$15,000 cap for Group 1 claims may be unduly limiting inasmuch as “farmers have paid into the co-op in excess of that amount in just a single year.” *See, e.g.*, Dkt. 192-6 (Troxler Aff.) ¶ 18; Dkt. 192-7 (Harrison Aff.) ¶ 14; Dkt. 192-14 (Weathers Aff.) ¶ 16. Because claimants can ***file claims and recover under both Groups***, a particular claimant can in fact recover more than \$15,000. Moreover, as described above in Part V.C., Objectors misunderstand the source of the funds that are the subject of this dispute; the Cooperative’s reserve is not comprised of the assessments that growers paid, but rather ***net proceeds from the sale of tobacco that the CCC gave to the Cooperative***. Thus, the cap enhances

⁷⁹ Despite opining that the “Motion to Certify Settlement does not specify if individual claimants can only file for claims under one group or both groups,” Dkt. 192-7 ¶ 16, Dr. Harrison admits that the publicly-available information on the website in fact “addresses the very question” whether claimants may file in both groups. Ex. CC (Harrison Deposition), at Tr. 193:8-22. Notably, Dr. Harrison failed to “ask[] anybody about whether or not they [were] confused” by the group structure and nobody “actually told [him] they’re confused by it. *Id.* at 176:9-15.

⁸⁰ For the same reason, there is no basis to the arguments of some Objectors that the Settlement requires a claimant to choose either Group 1 or Group 2 at the outset. *See, e.g.*, Dkt. 99 at 2; Dkt. 102 at 2.

the overall fairness of the distribution scheme, as it ensures that all who participated in the Cooperative over its life span can participate in this special distribution and that no individual class member will recover an outsized windfall. *See, e.g., In re Lupron Marketing and Sales Practices Litigation*, 677 F.3d 21, 35 (1st Cir. 2012) (approving *cy pres* distribution rather than awarding enhanced payments to claimants in order that they not receive a windfall).

Last, this distribution scheme is perfectly reasonable in recognizing the varying circumstances of farmers both by volume of tobacco sold (Group 1) and longevity of tobacco farming (Group 2). *See In re The Mills Corp. Secs. Litig.*, 265 F.R.D. 246, 258 (E.D. Va. 2009) (holding that “[i]n evaluating a plan of allocation, the opinion of qualified counsel is entitled to significant respect,” and that “***the allocation need only have a reasonable and rational basis***”) (emphasis added).⁸¹ Here, the division of the Settlement Fund into two Groups reflects extensive consideration and deliberation to ensure the Settlement is fair to small and large farmers alike. The grouped distribution scheme protects small farmers by enabling recovery on the basis of their longevity, while providing that the majority of the Settlement Fund be distributed based on poundage. Moreover, the existence of Group 2 eligibility allows all Class Members to recover even if there are no records regarding the amounts of flue-cured tobacco marketed and sold. In sum, the funds distribution scheme treats all Class Members fairly, according to the nature of their respective interests, and does not give undue preferential treatment to small or large farmers. It is

⁸¹ *See also Phillips v. The Triad Guaranty Inc.*, No. 1:09-CV-71, 2016 WL 1175152 (M.D.N.C. Mar. 23, 2016) (similar); *see also In re MicroStrategy, Inc. Secs. Litig.*, 148 F. Supp. 2d 654, 669 (E.D. Va. 2001) (approving claims allocation plan that included sensible “interclass distinctions”); *In re Global Crossing Secs. and ERISA Litig.*, 225 F.R.D. 436, 462 n. 14 (S.D.N.Y. 2004) (approving allocation plan for pro rata distribution with sub-allocations for different types of securities holders).

difficult to envision a plan that is likelier to satisfy and deal fairly with a class such as this; indeed, no objective improvement is discernible from the objections.

C. The Claims Filing And Administration Processes Are Fair And Reasonable, Ensuring Maximum Payment To Claimants

The claims filing and administration processes of the Settlement are designed to encourage potential Class Members to file claims and to ensure that each claimant receives the benefit of any and all information and records maintained by the Cooperative.

1. The Cooperative and the Claims Administrator Will Verify Claimants' Eligibility and Other Data Upon Receipt of All Claims—Documents Are Not Necessary

As described in the Supplemental Stinehart Declaration, the Claims Administrator will be responsible for reviewing and evaluating claims, determining whether claimants are Settlement Class Members, determining whether Settlement Class Members are entitled to a distribution under either Group 1 and/or Group 2 Claims (“Authorized Claimants”), determining the amount of the distribution for each Authorized Claimant, and mailing checks to the Authorized Claimants. Dkt. 217-6 ¶ 36. Claims will be validated based on the responses claimants provided with their claim, along with supporting documentation, including the Cooperative’s documents and records. *Id.* ¶ 41.

The Cooperative provided to the Claims Administrator all available supporting data to aid in the verification of claims, including (1) the Cooperative’s membership list, which includes the name, membership number, address, and date of registration of all members according to the Cooperative’s records; (2) data recording the amount of tobacco marketed and sold and the years in which it was marketed and sold by individual Cooperative members from 1982 to the present; and (3) certificate of interest data regarding the amount of patronage dividends issued between 1967 and 1973, as well as data regarding the value of certificates of interest that were issued to

individual Cooperative members who marketed and sold flue-cured tobacco to the Cooperative during these years.

Mr. Sharp argues that the “settlement procedure makes class members *prove* what Stabilization is already able to prove but which *Speaks* counsel, inadequately, did not appreciate or did not negotiate: total pounds of tobacco marketed and total crop years.” Dkt. 192 at 19 (emphasis added). This is incorrect—claimants do not have to “prove” anything to submit claims or to participate in the Settlement. The claim form and Settlement website are clear in explaining that a potential Class Member may still submit a claim and potentially participate in the Settlement *even if* he or she does not have documentation to upload.⁸²

Commissioner Troxler submits that “it appears that it is very difficult for class members to obtain the necessary information they need to substantiate their claim,” that “[t]he information required to file either a Group 1 or Group 2 claim is not readily available to class members,” and that claimants are “required to submit documents” with their claims.⁸³ Dkt. 192-6

⁸² See Claim Form, available at <https://fluecuredtobaccosettlement.com/> (“You may still submit your claim even if you do not have your (or the former member’s) U.S. Tobacco or Stabilization membership number, or if you do not have documentation verifying the amount of flue-cured tobacco you (or the former member) sold, the years during which it was sold, or the crop years in which you (or the former member) sold and marketed flue-cured tobacco through U.S. Tobacco.”); see also “Commonly Asked Questions,” available at <https://fluecuredtobaccosettlement.com/> (“[E]ven if you do not have documentation to upload, you may still submit your claim, and it is possible that you may still be able to participate in the Settlement based on U.S. Tobacco’s documents and records.”).

⁸³ As previously addressed in the Cooperative’s Responses to the Miles Objections to Settlement, Dkt. 123 at 20-21, the Cooperative is doing all it can to facilitate the filing of claims in the face of an order issued by the court in *Fisher-Lewis* barring the Cooperative from communicating with Class Members and providing information to assist with claims filing. Despite fielding dozens of phone calls and website inquiries from potential Class Members requesting basic information such as their Membership Number or inquiring as to whether relatives were at one time members of the Cooperative and appear on the Cooperative’s membership list, the Cooperative has been forced to refer all inquiries to the Claims Administrator so as not to violate the State Court’s order. The Claims Administrator has, in turn, informed potential Class

¶ 15. Commissioner Troxler, however, ignores that, as discussed above and further explained in the “Claims Validation Plan,” a claim will not be invalid merely because the claimant has not provided pounds (for Group 1 claims) or years (for Group 2 claims), or because the claimant did not submit documentary evidence supporting the claim. Dkt. 217-6, Ex. 5 at 16. Rather, even if the claimant provides *no data at all* regarding the amount of flue-cured tobacco marketed and sold or the years in which the grower marketed and sold flue-cured tobacco, the Claims Administrator will still attempt to validate the claim, as both a Group 1 and Group 2 claim, using the Cooperative’s records. *Id.*

D. The Proposed Settlement Results From Fair, Good-Faith Bargaining And Is Not A Product Of Collusion

Several of the objectors make the false, baseless accusation that the proposed Settlement is the product of collusion between the Cooperative and counsel for Plaintiffs.⁸⁴ For instance, Mr. Sharp alleges that various “circumstances” (*e.g.*, “5-year consent delay in prosecution”; the “rush to settle”; the “gross inadequacy of the settlement amount”) “support the collusion of [the Cooperative] and Speaks counsel to secure the most favorable result for [the Cooperative].” Dkt. 192 at 14. These statements misstate and mischaracterize the record and procedural history, which in fact refute the accusations made by Mr. Sharp and certain other objectors: the Cooperative and Plaintiffs negotiated at arm’s length, with the assistance of an experienced, impartial mediator, to

Members that they need do nothing more than provide basic identifying information on the Claim Form to qualify for a payout.

⁸⁴ See Dkt. 92; Dkt. 100 (“I question whether Gary Shipman is working with [the Cooperative] to help them save a lot of money”); Dkt. 107 (“Has Mr. Gary Shipman colluded with the Cooperative lawyers to settle the case for so little money to the farmers??”); Dkt. 127; Dkt. 137; Dkt. 144; Dkt. 145; Dkt. 149; Dkt. 162 (“We believe that final approval of the proposed Settlement . . . may . . . reward plaintiffs’ counsel for withdrawing from *Fisher* and making a sweetheart deal with [the Cooperative] at the expense of North Carolina farmers and their legitimate claims.”); Dkt. 163; Dkt. 187; and Dkt. 190.

agree upon the Settlement, and were open and transparent at every turn with the *Fisher-Lewis* plaintiffs, their class counsel, and the State Court.

Rule 23(e)'s "fairness" requirement requires that the Court evaluate whether the Settlement was the product of "good-faith bargaining at arm's length, without collusion." *Berry v. Schulman*, 807 F.3d 600, 614 (4th Cir. 2015) (quotation and citation omitted). In determining whether a settlement is tainted by collusion, courts consider a number of factors, including the posture of the case at the time of settlement, the circumstances surrounding the negotiations, and the experience of counsel. *See, e.g., id.* at 614; *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975). Absent "concrete evidence of collusion," courts may presume that a settlement was reached without collusion. *See, e.g., Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1189 (10th Cir. 2002). Moreover, courts throughout the Fourth Circuit recognize that settlement negotiations conducted by a neutral mediator, as here, are presumptively not collusive. *See In re Red Hat, Inc. Securities Litigation*, No. 5:04-CV-372-BR (3), 2010 WL 2710517, at *2 (E.D.N.C. June 11, 2010) (finding settlement agreement reflected "arms-length negotiations" where parties engaged an "experienced mediator"); *US Airline Pilots Ass'n*, No. 3:14-cv-00577-RJC-DCK, 2016 WL 8722883, at *4 (finding "no signs of collusion" where parties "hired an independent mediator"); *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 572 (E.D. Va. 2016) (finding settlement reached "after an informed negotiation before a professional mediator" to be "informed, thorough, and at arm's length").

1. There Is No Evidence Of Collusion

There is no evidence supporting the Objectors' claims of collusion here. To the contrary, the Parties engaged in an arm's length negotiation and mediation, which was overseen by a neutral and experienced mediator—a former federal judge. The mediation took place over two full days, and was preceded by voluntary document productions and the submission of pre-mediation briefs.

The two-day mediation was attended by named Plaintiffs and their counsel, several senior executives and Board members of the Cooperative, and the Cooperative's counsel.⁸⁵

Nor is there evidence that the Settlement was the product of a “reverse auction”—*i.e.*, the Cooperative did not look for the “lowest” bid among competing sets of plaintiffs’ counsel and settle with that set of lawyers. *See* Manual for Complex Litigation (Fourth) § 21.271 (defining a “reverse auction” as a situation where a defendant seeks to settle with counsel willing to accept the lowest offer). Although courts have held that they should be wary where there are multiple competing class actions and settlement with one will preclude the others, courts have also held that the mere existence of parallel class actions does not mean that a settlement was by default the result of a reverse auction. Indeed, such a rule would be absurd given the prevalence of parallel class action litigation. *See supra* Part II; *see also Gallucci v. Gonzales*, 603 Fed. Appx. 533 (9th Cir. 2015) (affirming district court’s decision to approve settlement despite the “theoretical possibility” that a reverse auction was possible and noting that “if the mere existence of multiple potential classes were sufficient to prove collusion, the reverse auction argument would lead to the conclusion that no settlement could ever occur in the circumstances of parallel or multiple class actions”) (quoting *Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1099-1100 (9th Cir. 2008)).

Here, there is no evidence that the Cooperative shopped around for the “lowest bid” to settle the case. Rather, once the stay in this Action was to be lifted, the Parties had to move forward with this Action—an Action that expands beyond *Fisher-Lewis* in significant respects that are

⁸⁵ Notably, counsel to the *Fisher-Lewis* plaintiffs—who represent Mr. Sharp, the primary objector here—received copies of all correspondence between counsel to the Cooperative and the Plaintiffs here, per an October 13, 2017 order from the State Court. Dkt. 192-10. They then argued to the State Court that the Parties here have colluded, but only by ignoring and distorting the public record. *See* Ex. AA (Def’s Rule 23(c) Resp., Jan. 5, 2018).

conspicuous from the Complaint, including its request for dissolution. The Parties decided to proceed with a mediation, and eventually participated in one overseen by a skilled and impartial mediator, that involved vigorous, arm's length negotiations. Judge Bullock's central role in overseeing the negotiations that led to the Settlement should eliminate any concerns about the possibility of a "reverse auction." *See, e.g., Faught v. Am. Home Shield Corp.*, No. 2:07-CV-1928-RDP, 2010 WL 10959223 (N.D. Ala. Apr. 27, 2010) (finding that the settlement was fair and rejecting arguments that it was "tainted by a potential reverse auction" where the settlement negotiations were supervised by "a highly experienced mediator"). Were that not enough, the record before this Court should be conclusive: The \$24-million settlement negotiated by the Plaintiffs in this case has not been matched by any amount that Mr. Sharp, Mr. Lewis, or anyone else has indicated could actually be won in court, upon accounting for the controlling facts and law. The most they have done is point to outdated settlement numbers that have neither force nor relevance today, and that would not yield a penny of recovery for Plaintiffs if offered in court today. For all of these reasons, the Court was right to rule—as it did in denying Mr. Lewis's intervention request and standing by preliminary approval—that the same stated concerns were without "merit." Dkt. 82 at 4. No further evidence of collusion or anything like it has been offered, and there is no basis to rule any differently at this stage.

2. The Status Of The Action At The Time Of Settlement Does Not Indicate Collusion—The Extent Of Discovery Was Sufficient To Support The Settlement

Although some courts have held that settlement at an early phase might be indicative of collusion, the fact that the Settlement here was reached without formal discovery in *this* case and at an early stage of *this* case is especially inconsequential. *See, e.g., In re Jiffy Lube Secs. Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991) (finding that, although settlement was reached prior to formal

discovery, other factors such as “informal discovery” and “substantial concessions made by both sides” offset any inference of collusion).

Here, Plaintiffs have taken all the discovery necessary to determine that the likelihood of success on the merits is low and that a good, efficient settlement is the best thing for class members. It is true that this Action was less far along procedurally than *Fisher-Lewis*. But that is of no consequence in and of itself. Plaintiffs’ counsel here were especially well versed in the underlying facts and the strengths and weaknesses of their legal claims, given their prior experience as class counsel in *Fisher-Lewis* and their observation of the final outcome of similar claims asserted by individual plaintiffs against the Cooperative in *Rigby*. From there, they requested pre-mediation discovery in order to ensure they were up to date and advised in the premises. By no means can the *Fisher-Lewis* plaintiffs claim superior substantive command. To the contrary, the *Fisher-Lewis* plaintiffs have just recently (1) disavowed any contention that the Cooperative has been mismanaged in recent years and (2) insisted that the same prior discovery attending class certification, in which Shipman & Wright participated, should now suffice and should obviate any new discovery into their case for purposes of the merits. *See* Dkt. 123-4 (Mem. Law Supp. Mot. Partial Summ. J.) at 11, Nov. 28, 2017 (“To put it plainly, this direct action will seek no relief for mismanagement of cooperative assets.”); Ex. L (Nov. 27, 2017 email from M. VanderBrink to K. Forst) (refusing to make named plaintiffs available for depositions).

In ascertaining whether a proposed settlement is fair, reasonable, and adequate, courts in the Fourth Circuit “consider the extent of discovery that has taken place,” as one of many factors influencing its analysis of the proposed agreement pursuant to Rule 23(3). *See Flinn*, 528 F.3d at 1173; *Truesdale v. Nationwide Affinity Ins. Co. of Am*, No. 1:11CV 467, 2013 WL 12136588, at *4 (M.D.N.C. Apr. 4, 2013). At the same time, “formal discovery is not a necessary ticket to the

bargaining table’ where the parties have sufficient information to make an informed decision about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998) (quoting *In re Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th Cir. 1982)). In fact, courts have approved class action settlements even where “no formal discovery had taken place.” *D’Amato v. Deutsche Bank*, 236 F.3d 78, 87 (2d Cir. 2001) (affirming district court final approval of class action settlement where, despite no formal discovery, “the parties had engaged in an extensive exchange of documents and other information”).

Here, the Cooperative’s defenses in this litigation are largely legal, not factual, in nature. *See supra* Part V.A. For this reason, taken together with the zero-recovery result of the litigation in *Rigby*, extensive fact discovery is not necessary for Plaintiffs to determine that their causes of action have legal deficiencies and face daunting hurdles such that settlement is in their best interests. *See* Newberg § 13:50 (stating that the fundamental purpose of assessing the extent of discovery is to determine whether “the parties have a good understanding of the strengths and weaknesses of their respective cases and . . . that the settlement’s value is based upon such adequate information.”). Where, as here, the “strengths and weaknesses” of the parties’ respective cases are predominantly legal in nature, the volume of factual discovery is not a useful proxy for determining the parties’ understanding of the likelihood of success prior to reaching a proposed settlement.

In addition, the Cooperative has provided Plaintiffs’ counsel with a wealth of factual information regarding this case. Prior to the mediation, Plaintiffs’ counsel requested and received numerous documents from the Cooperative, including annual reports, audited financial statements, and bylaws.⁸⁶ Moreover, Plaintiffs’ counsel here were already thoroughly familiar with the facts

⁸⁶ Additionally, after the mediation and subsequent to this Court’s Preliminary Approval Order, and consistent with the role of class counsel continuing to investigate the final fairness of

and claims at issue, having served as counsel for the putative class in the parallel *Lewis* class which was originally filed more than **12** years ago.⁸⁷ Again, it bears emphasizing that the *Fisher-Lewis* plaintiffs themselves are standing upon the same prior discovery as fully covering the merits and disavowing any reliance upon allegations or suggestions of any subsequent mismanagement of the Cooperative. Dkt. 123-4 (November 28, 2017 Mem. Law Supp. Mot. Partial Summ. J.) at 11; Ex. L (Nov. 27, 2017 email from M. VanderBrink to K. Forst) (refusing to make plaintiffs available for depositions).

In circumstances such as this, a relatively small volume of formal discovery does not indicate insufficient knowledge of the case to make an informed settlement decision. A “***fair and reasonable settlement may be negotiated where the plaintiffs had access to discovery in other cases . . . prior to agreeing to the class settlement.***” *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 162 (S.D. Ohio 1992) (emphasis added); see *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195,

the Settlement, Plaintiffs’ counsel requested and received a copy of each and every discovery document the Cooperative had produced to plaintiffs in *Fisher-Lewis*. Furthermore, Plaintiffs’ counsel also took the deposition of the Cooperative’s Chief Financial Officer, Edward W. Kacsuta, which took place on December 14, 2017 for approximately three hours and involved 12 documentary exhibits.

⁸⁷ The original Complaint filed in this Action, Dkt. 1, clearly set forth the extent of Plaintiffs’ counsel’s investigation of the facts and legal claims at issue before this Action was even filed: “[A] thorough and comprehensive investigation relating to the claims and the underlying events and transactions alleged in the litigation was undertaken by counsel for the Lewis plaintiffs, ***including Shipman & Wright LLP.*** Evidence adduced through the public record, pre-trial discovery, voluntary document and information exchanges with Stabilization, Stabilization’s responses to the Lewis plaintiffs’ initial written discovery, meeting with Stabilization’s counsel and General Manager, and ongoing meetings and discussions with members of the Settlement Class occurred during this investigation. In addition ***there were extensive consultations with experts*** and authorities in the field of agricultural cooperatives generally, economics and the tobacco industry in particular, and extensive research was undertaken with respect to the claims against Stabilization and the potential defenses thereto.” Dkt. 1 ¶ 48 (emphases added); see also Dkt. 64 ¶ 49 (same).

211 (5th Cir. 1981) (“[N]otwithstanding the status of discovery, plaintiffs’ negotiators had access to a plethora of information regarding the facts of their case”).

3. The Parties Were Open And Transparent

Equally telling is the fact that the Parties have been so open and transparent at all times about this Action and resulting Settlement with the public, the *Fisher-Lewis* plaintiffs, *Fisher-Lewis* counsel, and the State Court, which is itself incompatible with the instant allegations of collusion. Among other things, the public record reflects the following:

- The initial complaint in this Action was filed in 2012 and clearly explained the parallel relationship of this putative class with the putative class in *Fisher-Lewis*, as well as the role Shipman & Wright specifically played in both. Dkt. 1;
- This Action persisted publicly for several years following the grant of class certification by the State Court;
- The Parties in this Action voluntarily and specially apprised the *Fisher-Lewis* plaintiffs in April that they would be proceeding to mediate this Action;
- The Parties went to even further lengths in May, prior to the mediation, to ensure Judge Bullock was apprised of the *Fisher-Lewis* plaintiffs’ stated concerns about the mediation in this Action and was satisfied those had been addressed; and
- The Cooperative reported publicly in this Court, joined by Plaintiffs’ counsel, on the success of the *Speaks* mediation, Dkt. 53 (June 5, 2017 Status Conference Order), and also separately and specifically apprised the State Court and *Fisher-Lewis* plaintiffs as well, including by confirming the preclusive effects that should be expected to attend any final approval in this Action, Dkt. 73-22 (Def.’s Report Regarding Status of Parallel Litigation).

To be clear, all of that happened in public view. Far from hiding it, the Cooperative and its counsel, at their own initiative, brought pertinent developments to the attention of the *Fisher-Lewis* plaintiffs and the State Court and explicitly spelled out the preclusive effect this Action would have months before specific terms crystallized. In light of this public record, the propriety of this proceeding should be beyond reproach and any accusations of collusion should be rejected as baseless.

E. The Scope Of Released Claims In The Settlement Is Properly Tailored And Fair

Some of the Objectors claim that the scope of the Release is too broad such that the Settlement is not fair, reasonable, and adequate.⁸⁸ For instance, Mr. Sharp contends that the “Settlement release is broader than necessary” insofar as it releases claims that “are not part of” this Action and “releases individuals and entities who have not contributed to the settlement and who are not parties.” Dkt. 192 at 19. Similarly, without challenging the “release” precisely, several Objectors suggest that the Court should reject this Settlement in favor of a settlement they mistakenly believe exists in *Fisher-Lewis*, or so that *Fisher-Lewis* can move forward.⁸⁹

Established principles surrounding class actions permit “the release of claims that are even outside the court’s subject matter jurisdiction, *so long as they are transactionally related to those at the heart of the case.*” Newberg § 18:21 (emphasis added); *see also In re MI Windows and Doors, Inc., Products Liability Litigation*, 860 F.3d 218, 225 (4th Cir. 2017) (“[I]t is clear that a judgment approving a settlement agreement may involve the release of not only the claims presented in the class action, *but also claims arising out of the identical factual predicate.*”) (internal citations and quotations omitted) (emphasis added); *In re Prudential Ins. Co. of America Sales Practice Litigation*, 261 F.3d 355, 366 (3d Cir. 2001) (approving of broad release of claims that were based on the same facts underlying the settled claims).

⁸⁸ *See, e.g.*, Dkt. 162 (“We believe that final approval of the proposed Settlement, and its included releases, may interfere with the *Fisher* lawsuit.”); Dkt. 187 (same); Dkt. 190 (same).

⁸⁹ Dkt. 91 (“Please do not dismiss the Lewis-Fisher Lawsuit. It is the true settlement we should get.”); Dkt. 92; Dkt. 96 (“My family supports the Lewis settlement.”); Dkt. 99 (“[The Settlement] will (1) likely negatively impact tobacco growers/farmers/landowners’ ability to make claims in the future in the up to \$400 million dollar Lewis et al. v. U.S. Tobacco case. Furthermore, the Speaks case settlement may (2) likely negatively impact the class category status of the Lewis case and (3) may likely severely impact overall the up to \$400 million dollar Lewis case’s success in court.”); Dkt. 102 (same); Dkt. 144 (settlement is a “decoy meant to derail a more equitable settlement that would be fair to all farmers”); Dkt. 149 (same).

Courts have explained that, like other negotiated settlement terms, a release is a benefit given to the defendant in exchange for consideration given to the plaintiffs. For instance, in *In re General American Life Ins. Co. Sales Practices Litigation*, 357 F.3d 800, 805 (8th Cir. 2004), the Eighth Circuit rejected an argument that the release of certain unpled claims were “given away for nothing,” and instead stated that “[t]he release of the latter category of claims was one of a series of benefits conferred on the defendant by the class as part of the settlement. On the other side, defendant conferred benefits on the plaintiff class, including a monetary settlement, from which the plaintiff in this case has benefitted”

Courts have also recognized the practical reality that broad releases are indispensable to class-action settlements because a defendant in a class action “would otherwise face nearly limitless liability from related lawsuits in jurisdictions throughout the country.” *Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 106 (2d Cir. 2005) (“Practically speaking, class action settlements simply will not occur if the parties cannot set definitive limits on defendants’ liability.”) (citations and internal quotation marks omitted); *see also In re Prudential Ins. Co. of America Sales Practice Litigation*, 261 F.3d at 366 (stating that allowing broad releases in class action settlements serves the important policy interest of judicial economy and avoiding re-litigation of settled questions). No rational defendant or competent counsel in this position would ever settle a class action such as this, only to let the same legal exposure to the same class still persist in parallel. Indeed, it would have been irresponsible for the Cooperative’s Board—and potentially legal malpractice for the Cooperative’s counsel—to recommend payment of significant sums in a class-wide settlement, as here, without ensuring that the claims at issue were resolved once and for all on a class-wide basis.

Based on these principles, “federal class action settlements containing a release of state law claims are both common and presumptively valid.” *Ass’n for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 471 (S.D. Fla 2002); *see also Williams v. General Elec. Capital Auto Lease, Inc.*, 159 F.3d 266, 274 (7th Cir. 1998) (“It is not at all uncommon for settlements to include a global release of all claims past, present, and future, that the parties might have brought against each other.”).

The negotiated release provisions contained in the Settlement comport with the law and with logic. The Settlement releases all claims “that have been or could have been asserted, either directly, derivatively or otherwise, in any forum by the Plaintiffs or the Class Members, and/or any of them, against any of the [Cooperative] which ***arise out of, are based upon, are in connection with, and/or relate in any way to:*** (i) any of the matters, things, causes, or events that are ***specifically released*** pursuant to any of the provisions of [the Settlement] or any document executed in connection [therewith]; (ii) ***any matter, thing, cause, or event whatsoever, or any series thereof, involved, set forth, and/or related to the Complaint in this Action***; and (iii) ***any action or inaction of [the Cooperative] or its Board of Directors, or any of them, whatsoever during the Class Period.***” Dkt. 60-1 at 6-7 (emphases added).

Therefore, by definition, all claims released pursuant to the Settlement are “transactionally related to those at the heart of the case” and can be released according to settled law. *See Newberg* § 18:21. As courts have recognized, a defendant in a class action will almost always require a broad release as a condition of settlement in order to avoid the otherwise inevitable result that it will be sued again for the same conduct in another forum. *Wal-Mart Stores*, 396 F.3d at 106.

To the extent Mr. Sharp and the other objectors complain that the Settlement releases claims pursued in *Fisher-Lewis*, that result is part and parcel of the prevailing principles and

precedents already cited. *In re MI Windows*, 860 F.3d at 225 (affirming injunction of California claims that were released in a federal action because “[t]he breadth of the final judgment [in the federal class action] undoubtedly captured the claims . . . which sought recovery from [the defendant] for the same allegedly defective windows”). Having already conceded that the claims alleged in *Fisher-Lewis* and in this Action involve “substantially the same issues” and are “duplicative,” Dkt. 192 at 3-4, Mr. Sharp and his counsel cannot credibly argue that the claims in *Fisher-Lewis* do not or should not fall within the scope of the release.

Nor is there any basis to Mr. Sharp’s claim that the release is too broad because it releases parties who did not contribute to the settlement. Dkt. 192 at 19. Courts judge the appropriate scope of a release according to the **conduct** underlying the released claims. *See* Newberg § 18:21; *In re MI Windows*, 860 F.3d at 225.

F. Class Members Have Received The “Best Notice Practicable” And Final Approval Of This Settlement Is Consistent With Due Process

The Notice Program provided the best practicable notice to Class Members and was “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950)). The Notice Program’s compliance with rigorous procedural and constitutional standards commends granting final approval.

The Notice Program, as designed and implemented, included three means of providing notice: (1) Direct Mail Notice by postcard; (2) Paid Media Notice through national and local publications—including internet, print, and television advertising; and (3) Earned Media coverage through a press release. Dr. Wheatman reported that the Notice Program as implemented—taking into account only Direct Notice and measurable Paid Media Notice—reached approximately

74.2% of potential Class Members (including approximately 13.7% from Direct Notice), with each potential Class Member seeing the notice an estimated 2.7 times.⁹⁰ Dkt. 217-5 (Wheatman Decl.)

¶ 34. This result falls within the best-practices noted in the Federal Judicial Center’s *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide 2010*.⁹¹

1. The Notice Program Here Was Designed to Prevent Confusion With *Fisher-Lewis*

Commissioner Troxler’s Affidavit states, in summary fashion, that “there is a lot of confusion” regarding the relationship between *Fisher-Lewis* and this case, and further asserts that “[t]he Speaks notice overlapped with the Fisher-Lewis notice and has confused many North Carolina farmers.” Dkt. 192-6 ¶ 16. *First*, the notice materials in this case were specifically designed to prevent confusion by identifying the existence of *Fisher-Lewis* involving the same claims, and discussing the potential impact of this Settlement on *Fisher-Lewis*.⁹² By contrast, none

⁹⁰ It is likely that a substantially higher percentage of potential Class Members received notice upon further accounting for the Settlement Website, trade publication advertising, targeted Internet advertising, and earned media notice, none of which are included in the calculated reach percentage.

⁹¹ The notice afforded in *Fisher-Lewis* falls far short of the Notice Program here according to any measure. The Declaration of Cameron R. Azari, Esq., on Implementation of Notice Plan, attached to Mr. Sharp’s Objection, describes the *Fisher-Lewis* notice as being exclusively local in reach—media notice was limited to Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia. Dkt. 192-1 ¶¶ 12-26. Mr. Azari offers no information regarding how many of the 279,554 Summary Notices were successfully mailed and delivered to potential class members. *See id.* ¶¶ 9-11. And Mr. Azari fails to explain how the *Fisher-Lewis* notice reached growers, heirs, and assigns no longer living in areas where they (or the members they represent) historically grew tobacco. Given the diversity and numerosity of this Class, like the *Fisher-Lewis* class, an exclusively local notice plan is unlikely to reach a considerable number of potential Class Members. Yet Mr. Azari rather remarkably (and tellingly) omits any mention of the *Fisher-Lewis* notice plan’s reach percentage as implemented.

⁹² The Short Form Notices used in this case for publication and mailing specifically provide information about *Fisher-Lewis*: “You may have seen information about the *Lewis/Fisher* Lawsuit in the North Carolina Superior Court that was certified as a class action. You can submit a claim even if you are a class member in the *Lewis/Fisher* Lawsuit. This Settlement will not become effective, and claims will not be paid, until the class claims in the *Lewis/Fisher* Lawsuit

of the notice materials in *Fisher-Lewis*, as described in the Azari Declaration, even mentioned the existence of this lawsuit.⁹³ To the extent the *Fisher-Lewis* plaintiffs were sincerely concerned about the confusion of the overlapping class actions, it is strange that they chose not to address it at all in their notices. Second, the Notice Program did not overlap with the State Court notice program which, according to the Declaration of Cameron R. Azari, Esq., began on July 26, 2017 and **ended on September 6, 2017**. Dkt. 192-1 ¶¶ 10-19. Direct Mail Notice in this case did not begin until October 13, 2017, and media notice did not start until October 28, 2017 (two days after the *Fisher-Lewis* opt-out deadline). Dkt. 73-32 (Suppl. Wheatman Decl.) ¶ 16. Accordingly, Class Members did not receive materials about the two lawsuits at the same time. Third, there was little overlap in the media outlets used to disseminate information in the two programs. As Dr. Wheatman explains, the programs only shared advertisements (though at different times) in one newspaper and four trade publications. *Id.* The Notice Program here included a national print magazine, 25 local newspapers, and local television advertisements that were **not** included in the *Fisher-Lewis* notice program. *Id.* Finally, there has been no showing of any actual confusion on the part of any particular notice recipient, much less a showing that calls into question the efficacy and adequacy of the notice plan on aggregate.

are discontinued or dismissed.” Dkt. 60-4. The Long Form Notice available on the website also addressed *Fisher-Lewis* in Questions 6 and 12, explaining that claimants may participate in this Settlement and submit claims even if they are a class member in *Fisher-Lewis*. Dkt. 60-2.

⁹³ The Cooperative notified the State Court and *Fisher-Lewis* plaintiffs on June 22, 2017, *before* the notice plan in *Fisher-Lewis* began, that the Cooperative and counsel for Plaintiffs in this case had reached a tentative settlement. *See* Dkt. 73-23 (June 22, 2017 Def.’s Report Regarding Status of Parallel Litigation).

2. The Objection Process Has Been Organized And Properly Scheduled

Commissioners Troxler, Adams, and Weathers assert that the objection process “has been rushed and unnecessarily complicated.” *See* Dkt. 192-6 ¶ 16 (Troxler Aff.); Dkt. 192-13 ¶ 14 (Adams Aff.); Dkt. 192-14 ¶ 12 (Weathers Aff.). Yet the Notice Program, as designed and implemented, provided Class Members with more than enough time to understand that their legal rights were affected and properly exercise their rights.⁹⁴ Courts have found that even 30 days between the issuance of notice and an opt-out/objection deadline suffices.⁹⁵ Here:

- The Settlement Website launched on September 28, 2017, including the Long Form Notice, Settlement Agreement, and “Commonly Asked Questions” pertaining to the Settlement, and other related documents. Dkt. 217-5 (Wheatman Decl.) ¶ 31;
- Direct mailing of postcards, the toll-free hotline with live operators, and an updated Settlement Website with an interactive claim form began on October 13, 2017. *Id.* ¶¶ 9, 30-31;
- National and local Paid Media Notice began on October 28, 2017, followed on October 30, 2017 with a press release distributed to an agriculture focused list. *Id.*;
- The Paid Media components of the Notice Program were completed by November 27, 2017. *Id.* ¶¶ 22-27)

⁹⁴ In fact, out of an abundance of caution, the Parties requested that this Court *extend* the time for notice from November 13, 2017 to December 20, 2017 to ensure that Class Members have sufficient opportunity to review and consider the notice materials prior to the exclusion deadline. Dkt. 73, 73-32. The Court entered an Order on September 29, 2017 granting that extension. Dkt. 77.

⁹⁵ *See, e.g., Alliance to End Repression v. City of Chicago*, 91 F.R.D. 182, 195 (N.D. Ill. 1981) (collecting cases that found notice timely when notice was mailed 12 days before the fairness hearing, and holding that class members had adequate notice because they were notified at least 29 days before the fairness hearing); *In re: Transpacific Passenger Air Transp. Antitrust Litig.*, No. 15-16280, 2017 WL 2772177 (9th Cir. June 26, 2017) (holding that settlement provided sufficient notice to class members under Rule 23 when potential class members were notified of the opportunity to opt-out or object to the settlements no later than thirty-five days before the final fairness hearing).

In light of the foregoing, it is clear that the Notice Program afforded Class Members adequate time following receipt of notice to contemplate their options and take action before the December 20, 2017 opt-out and objection deadline.

Other Objectors claim that there is an “unusual and very confusing structure” in this Settlement that requires Class Members to “affirmatively ‘opt-in’ if they want to receive a payment, but also affirmatively ‘opt-out’ if they want to retain their rights.” *See, e.g.*, Dkt. 162 (Vick Family Farms Partnership Objection) at 3. To be clear, nothing in this Settlement requires members to “opt-in.” Objectors seem to have misconstrued the requirement to file a claim with a requirement to “opt-in.” A claims process, however, is anything but “unusual.” Newberg confirms that settlement funds are often distributed through a claiming process, and that “[a]bsent class members who have not opted out of a class action and who wish to participate in the settlement fund typically—though not invariably—have to file a proof of claim.” Newberg §§ 12.15, 12.2.⁹⁶

3. There Were No Material Defects In the Notice Program Materials

A handful of Objectors assert that the objection process was not fair because of minor editorial inconsistencies between the notice documents and the Preliminary Approval Order, as well as an errant objection deadline date published on a single page of the Settlement Website. *See, e.g.*, Dkt. 162, 187, 190. None of these issues affect the adequacy of notice.

Commissioner Weathers objects that the “written letter and triplicate submission process” for submitting objections is “counter-intuitive and discourag[ing] class members from voicing objections.” Dkt. 192-14 (Weathers Aff.) ¶ 12. Additionally, Commissioner Troxler faults the

⁹⁶ As explained in the Cooperative’s response to the Miles Objections, the Cooperative has no incentive whatsoever to discourage claims from being filed and, as such, the Cooperative takes this opportunity to remind potential claimants that the deadline for filing claims does not expire until **May 26, 2018**.

objection process for not “providing guidance forms or options for electronic submission,” and notes that the Long Form Notice requires class members to mail objections to the Court, Class Counsel, and Defense Counsel, whereas the Court’s Order Preliminarily Approving Settlement requires Class Members to mail objections to the Court and the Claims Administrator. Dkt. 192-6 (Troxler Aff.) ¶¶ 13-14. While it is true that the Long Form Notice states that objectors are to mail their objections to the Court, Class Counsel, and Defense Counsel, the Cooperative is responding to and treating as timely all objections that were sent to the clerk of court by the deadline, even if the objector did not also mail their objection to Class Counsel, Defense Counsel, and/or the Claims Administrator.

Moreover, as described in the Supplemental Declaration of Jason M. Stinehart on the Settlement Administration Components and Claims Verification Process, Dkt. 217-6, while one page of the Settlement Website did list the wrong date for the opt-out deadline (reading December 2018 rather than 2017)—an error that was first noted via an objection that arrived on December 20, 2017 and was immediately corrected upon receipt of same—the correct deadline was published on all other pages of the Settlement Website (including the electronic Claim Form Interface, the page of “Commonly Asked Questions,” and the page of “Important Dates”), and was correct on all physical notice materials (including the Direct Mail Notice, the Long Form and Publication Notice, and the Claim Form). Even as to the one isolated typo, there has been no showing that anyone in fact misunderstood the opt-out deadline or was otherwise prejudiced.

Minor errors such as this one do not detract from the adequacy or fairness of the notice and objection process.⁹⁷

⁹⁷ See, e.g., *G.F. v. Contra Costa County*, No. 13-cv-03667-MEJ, 2015 WL 7571789, at *8 (N.D. Cal. Nov. 25, 2015) (“minor mistakes” with posting of documents on settlement website

CONCLUSION

For the foregoing reasons, the Cooperative respectfully requests that this Court overrule all objections and enter final approval of the Settlement pursuant to Rule 23(e).⁹⁸

did not detract from overall reasonableness of the notice); *Nieberding v. Barrette Outdoor Living, Inc.*, 129 F. Supp. 3d 1236, 1247 (D. Kan. 2015) (typographical error on long form notice of settlement, which incorrectly described location of settlement approval hearing, was not a material defect, and thus did not render the notice insufficient); *In re Processed Egg Prod. Antitrust Litig.*, 284 F.R.D. 278, 295, n.16 (E.D. Pa. 2012) (finding that typographical error in notice of settlement as to the end date for the class period did not require additional notice).

⁹⁸ The Cooperative respectfully objects to Pender Sharp's request to testify at the fairness hearing, Dkt. 192 at 20-21, on the grounds set forth in the Cooperative's Motion to Strike Objections Filed by Pender Sharp, filed contemporaneously herewith. The Cooperative is mindful that a Rule 23 fairness hearing is not a "trial or a rehearsal of the trial" on the merits of the underlying claims. *Flinn*, 528 F.2d at 1173. To the extent that the Court may nonetheless consider it helpful to hear live testimony, the Cooperative respectfully reserves the right to call potentially Ed Kacsuta, Jimmy Hill, Andy Shepherd, Charlie Batten, and Randal Rucker to testify regarding the Cooperative's historical and current operations, the terms of this settlement, and in rebuttal to any adverse testimony that may be offered at the hearing.

Dated: January 12, 2018

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*Counsel for Defendant U.S. Tobacco
Cooperative Inc.*

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on January 12, 2018 a copy of the foregoing document was filed electronically with the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Derek L. Shaffer
Derek L. Shaffer

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN,
ROBERT POINDEXTER, MIKE MITCHELL,
ROY L. COOK, ALEX SHUGART, H.
RANDLE WOOD, ROBIN ROGERS and
DANIEL LEE NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

INDEX OF EXHIBITS

Defendant U.S. Tobacco Cooperative Inc. respectfully submits the following exhibits in connection with its Omnibus Response to Objections to Settlement, dated January 11, 2018:

Exhibit A: Attached hereto as Exhibit A is a true and correct copy of the Cooperative's by-laws, dated June 3, 1947.

Exhibit B: Attached hereto as Exhibit B is a true and correct copy of a letter, dated February 17, 1976, from Fred. G. Bond, the Cooperative's General Manager, to members of the Cooperative concerning tobacco received from the 1967 and 1968 crop years.

Exhibit C: Attached hereto as Exhibit C is a true and correct copy of the Cooperative's Newsletter, dated December 1985.

Exhibit D: Attached hereto as Exhibit D is a true and correct copy of a letter, dated May 7, 1992, from USDA Director Dallas R. Smith to the Cooperative's General Manager Fred G.

Bond concerning the Cooperative's request to redeem the 1983 crop loan inventory of flue-cured tobacco.

Exhibit E: Attached hereto as Exhibit E is a true and correct copy of the Cooperative's Consolidated Financial Statements for April 30, 1993 and 1992.

Exhibit F: Attached hereto as Exhibit F is a true and correct copy of the Cooperative's Consolidated Financial Statements for April 30, 2017 and 2016.

Exhibit G: Attached hereto as Exhibit G is a true and correct copy of excerpts from the deposition of Pender Sharp, dated September 7, 2006, taken in *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 05-CV-1938 (N.C. Super. Ct.) ("*Fisher-Lewis*").

Exhibit H: Attached hereto as Exhibit H is a true and correct copy of excerpts from the deposition of Kendall Hill, dated August 25, 2006, taken in *Fisher-Lewis*.

Exhibit I: Attached hereto as Exhibit I is a true and correct copy of an email, dated January 4, 2018, from Philip Isley to Keith Forst concerning the Cooperative's request to depose Pender Sharp.

Exhibit J: Attached hereto as Exhibit J is are true and correct copies of voluntary dismissals, dated November 27, 2017, filed by plaintiffs in *Swain v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 237 (Ga. Super. Ct.); *Altman v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 238 (Ga. Super. Ct.); *Griffis v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 240 (Ga. Super. Ct.); and *Lee v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 239 (Ga. Super. Ct.) (collectively, the "Georgia Cases").

Exhibit K: Attached hereto as Exhibit K is a true and correct copy of the Cooperative's Motion to Vacate Voluntary Dismissal, Enter Dismissal with Prejudice, and Award Fees and Costs, dated December 11, 2017, filed in the Georgia Cases.

Exhibit L: Attached hereto as Exhibit L is a true and correct copy of an email, dated November 27, 2017, from Marie VanderBrink, on behalf of Bob Cherry, to Keith Forst, concerning depositions in *Fisher-Lewis*.

Exhibit M: Attached hereto as Exhibit M is a true and correct copy of the Cooperative's brief as Defendant-Appellant, dated November 14, 2014, before the North Carolina Supreme Court in *Fisher-Lewis*.

Exhibit N: Attached hereto as Exhibit N is a true and correct copy of cumulative amendments to the Cooperative's Articles of Incorporation.

Exhibit O: Attached hereto as Exhibit O is a true and correct copy of the Cooperative's by-laws, as amended through June 20, 1967.

Exhibit P: Attached hereto as Exhibit P is a true and correct copy of the Cooperative's by-laws, dated through September 10, 1982 and, as to particular articles, through August 12, 1983.

Exhibit Q: Attached hereto as Exhibit Q is a true and correct copy of the Cooperative's by-laws, as amended through May 10, 2002.

Exhibit R: Attached hereto as Exhibit R is a true and correct copy of the Cooperative's by-laws, as amended through November 14, 2003.

Exhibit S: Attached hereto as Exhibit S is a true and correct copy of excerpts from the deposition of Kay W. Fisher, dated September 20, 2006, taken in *Fisher-Lewis*.

Exhibit T: Attached hereto as Exhibit T is a true and correct copy of excerpts from the deposition of Daniel H. Lewis, dated September 14, 2006, taken in *Fisher-Lewis*.

Exhibit U: Attached hereto as Exhibit U is a true and correct copy of excerpts from the deposition of Whitney E. King, dated September 15, 2006, taken in *Fisher-Lewis*.

Exhibit V: Attached hereto as Exhibit V is a true and correct copy of excerpts from the deposition of Julian A. Rigby, dated March 3, 2015, taken in *Rigby v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 07 C 236 (Ga. Super. Ct.) (“*Rigby*”).

Exhibit W: Attached hereto as Exhibit W is a true and correct copy of excerpts from the deposition of David Harrell Lee, dated March 4, 2015, taken in *Rigby*.

Exhibit X: Attached hereto as Exhibit X is a true and correct copy of excerpts from the deposition of Thomas N. Rhoad, dated August 29, 2006, taken in *Fisher-Lewis*.

Exhibit Y: Attached hereto as Exhibit Y is a true and correct copy of excerpts from the deposition of Hugh Roberts, dated April 22, 2015, taken in *Rigby*.

Exhibit Z: Attached hereto as Exhibit Z is a true and correct copy of excerpts from the deposition of Adair Chambers Peterson, dated April 10, 2015, taken in *Rigby*.

Exhibit AA: Attached hereto as Exhibit AA is a true and correct copy of the Cooperative’s Response to Plaintiffs’ Supplemental Submission Concerning its Motion for Rule 23(C) Review of the *Speaks* Settlement, dated January 5, 2018, in *Fisher-Lewis*.

Exhibit BB: Attached hereto as Exhibit BB is a true and correct copy of the Third Amended Complaint, dated July 9, 2012, filed by plaintiffs in *Fisher-Lewis*.

Exhibit CC: Attached hereto as Exhibit CC is a true and correct copy of the rough transcript, as received from the stenographer, of the January 10, 2018 deposition of Dr. Glenn W. Harrison. The Cooperative may supplement the record with the final transcript upon receipt thereof.

Exhibit DD: Attached hereto as Exhibit DD is a true and correct copy of a marketing agreement issued by the Cooperative in November 1946.

EXHIBIT A

BY-LAWS *Amended 6/24/48*
of
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

* * * * *

ARTICLE I

Purposes

The purposes for which this association is formed are set forth in the articles of incorporation of the association.

ARTICLE II

Board of Directors

Section 1. The business of the association shall be controlled by a board of directors consisting of not less than five nor more than nine persons, each of whom shall be a common stockholder, hereinafter referred to as member, of this association. No person shall be eligible for the office of director if he is in competition with it or is affiliated with any enterprise that is in competition with the association; and if a majority of the Board of Directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. The directors named in the articles of incorporation shall hold office for the first term or until the election and qualification of their successors. In addition to the Directors herein provided for or hereafter appointed by the common stockholders or members of the corporation, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such Director so appointed need not be a member or stockholder of the corporation but shall have the same powers and rights as other Directors, in accordance with the provisions of the General Statutes of North Carolina, section 54-146.

Election of Directors

Section 2. (a). The directors shall be elected annually at the annual meeting of the association by its members from the membership until the Board of Directors divides the territory in which the Association operates into districts. All directors shall hold office until their successors shall have been elected and shall have qualified. The term of office of the directors so elected shall, from and after the adoption of this resolution, be as follows:- At the Annual Meeting in 1948, three directors shall be elected for a term of one year, three directors shall be elected for a term of two years, and three directors shall be elected for a term of three years. At the Annual Meeting in 1949, three directors shall be elected for a term of three years and thereafter, three directors shall be elected at each Annual Meeting for a term of three years.

At any time that the Board of Directors of the association deems it advisable the board shall divide the territory in which the association is operating or expecting to operate into districts for the election of directors. So far as practicable the territory in which the association shall operate shall be divided into such districts that the association will receive substantially the same quantity of tobacco from each district, but in forming districts counties shall not be divided.

(b) Following the formation of such districts the members in each district shall elect a director from that district, from among members actually residing and growing tobacco therein.

Annually after the formation of such districts at least twenty days prior to the district meetings, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

Vacancies

Section 3. Prior to the formation of districts, vacancies in the board of directors shall be filled by remaining members; but after the formation of districts vacancies shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of Directors as may be determined by the board of directors, but not more than ten days after said annual election, the newly elected directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in section 4, shall be mailed to each director at his last known address at least three days prior to the time of such meeting.

QUORUM

Section 7. A majority of the board of directors shall constitute a quorum of the board at all meetings.

Compensation

Section 8. (a) The directors shall receive no compensation for their services other than reimbursement for any necessary transportation and hotel expenses incurred by them in attending the meetings of the board of directors and a per diem allowance of \$5.00 for the time actually covered by attendance at meetings.

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(b) No director, during the term of his office shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting.

ARTICLE III.

Power of Directors

Section 1. The directors shall have power --

(a) To conduct, manage and control the affairs and business of the association; and to make rules and regulations for the guidance of the officers and the management of its affairs.

(b) To appoint and remove, at pleasure, all officers, agents, and employees of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary; and they must call a meeting at any time upon the written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will.

ARTICLE IV

Duties of Directors

Section 1. It shall be the duty of the board of directors --

(a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.

(b) To supervise all officers, agents and employees and see that their duties are properly performed.

(c) To cause to be issued appropriate certificates of stock.

(d) To install such a system of bookkeeping and auditing that each member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.

(e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.

(f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V.

Officers

The officers of the association shall be a president, one or more vice presidents, a secretary and a treasurer, and a General Counsel, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes.

The board may appoint assistant secretaries, in its discretion, and may delegate to them any or all of the duties of the secretary, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors.

Only the president and vice presidents are required to be members of the board of directors.

ARTICLE VI.

President

If at any time the president shall be unable to act, the vice presidents, in the order of their election, shall take his place and perform his duties; and if no vice president is able to act, the board of directors shall appoint a director to do so. The president, such vice president or director shall:

(a) Preside over all meetings of members and directors.

(b) Subject to the advice of the directors, direct the affairs of the association.

(c) Call the directors together whenever necessary.

(d) Sign, as president, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors.

(e) Report at each annual meeting of the members, the salaries of officers and department heads, and the average salary of minor employees in each department.

(f) Discharge such other duties as may be required of him by these by-laws or by the board of directors.

ARTICLE VII.

Secretary and Treasurer.

Section 1. It shall be the duty of the secretary:

- (a) To keep a record of the proceedings of the meetings of the board of directors and of members.
- (b) To keep the corporate seal.
- (c) To keep a proper stock book.
- (d) To execute and sign contracts, notes, papers and documents as authorized by the board of directors.
- (e) To act as secretary of the executive committee.
- (f) To discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 2. It shall be the duty of the treasurer:

- (a) To perform such duties with respect to the finances of the association as may be prescribed by the board of directors.
- (b) To furnish bond in such form and in such amount as the board of directors may, from time to time, require.
- (c) The secretary may be the same person as the treasurer. The treasurer need not be a natural person, but may be a corporation, preferably a banking corporation.

ARTICLE VIII.

Executive Committee.

The board of directors may appoint an executive committee of four members from among its members; determine its tenure of office and prescribe its powers and duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee, in addition to the four members herein provided for.

Copies of the minutes of the meetings of the executive committee and any reports thereof, must be mailed weekly to all directors.

ARTICLE IX.

Auditing Committee.

Section 1. The board of directors may appoint an auditing committee from among its members, determine the number thereof, its tenure of office, and the manner and form in which the committee shall function; in lieu of such action by the board, the auditing committee may prescribe rules and regulations with reference to its procedure.

Section 2. The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting.

Section 3. The audits of the association, as provided in Section 2 of this Article, shall be reported to the members at the annual meeting.

ARTICLE X.

Stock Certificates.

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find following a hearing that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing ^{any} such stock, the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

"The preferred stock evidenced hereby shall carry no voting rights and may be transferred only on the books of the association;

and may be redeemed in whole or in part on a prorata basis at par, plus any dividends declared thereon and unpaid at any time on thirty (30) days' notice by the association, provided said stock is redeemed in the same order as originally issued by years, and on the failure to deliver the certificate or certificates evidencing any such stock the association may cancel the same on its books. Stock which has been redeemed may, in the discretion of the board of directors, be reissued or retired. All such preferred stock so redeemed shall be paid for in cash at the par value thereof, plus any dividends declared thereon and unpaid; and such stock shall not bear dividends after it has been called for redemption. Noncumulative dividends of not to exceed six (6) percent per annum may be paid thereon when, if and as declared by the board of directors. This association shall have a lien on all of its issued preferred stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. At the discretion of the board of directors, all dividends or distributions of the association or any part thereof may be paid in certificates of preferred stock or credits on preferred stock, or ad interim certificates representing fractional parts thereof, subject to conversion into full shares. Upon dissolution or distribution of the assets of the association, the holders of all preferred stock shall be entitled to receive the par value of their stock, plus any dividends declared thereon and unpaid before any distribution is made on the common stock."

ARTICLE XI.

Books and Papers.

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative, duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally, and any member shall be entitled at any time to know the salary of any employee.

ARTICLE XII.

MEETINGS OF MEMBERS

Regular Meetings.

Section 1. Regular meetings of the members shall be held at the office of the association at Raleigh, North Carolina, on the last Friday in June of each year for the purpose of hearing the report from the president and for transacting such other business as may come before the meeting.

Special Meetings.

Section 2. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meet-

ing. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

Notice of Regular Meetings.

Section 3. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy thereof shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publications in newspapers circulating in the territory in which the association has members, such notices to appear in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

QUORUM

Section 4. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 persons present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws.

Election of Directors.

Section 5. Following the formation of districts the members of each district shall meet annually for the election of a director or directors to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director or directors therefrom. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

ARTICLE XIII

Members.

Section 1. Any person, firm, partnership, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of flue-cured tobacco in the territory in which the association is engaged in business may become a member of the association by acquiring a share of the common stock, signing the marketing agreement, and meeting such other conditions as may be prescribed by the board of directors.

Voting Power of Members.

Section 2. The voting power of the members of this association shall be equal and each and every member hereof shall have one vote.

Proxies.

Section 3. Any member shall be permitted to vote at any meeting in person or he may vote by mail on a ballot to be prepared by order of the board of directors, but voting by proxy is prohibited.

Board to Establish Standards and Grades

Section 4. The board of directors shall have the power to establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

ARTICLE XIV.

General Manager.

The board of directors may, in its discretion, appoint a general manager, who shall hold office at the pleasure of and on terms and conditions set by the board of directors. No director may be elected to serve as general manager.

ARTICLE XV.

Borrowing Money.

The association shall have the power by affirmative vote of a majority vote of the directors, to borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

ARTICLE XVI.

Capital Reserves.

The books and records of the association shall be kept in such a manner, by years, that the amount carried to capital reserves, which have the status of capital, accruing from patronage of each patron of the association may be ascertained at any time. Whenever in a given year the operation of the association results in a net loss, such loss, to the extent that capital reserves are available, shall be charged against the same and they shall thereby be reduced accordingly. The board of directors shall prescribe the basis on which the capital reserve contributions of patrons by years shall be reduced on account of any such loss, so that it will be borne by the patrons on as equitable a basis as the board of directors find practicable. Whenever in the discretion of the board of directors the capital reserves are found to be in excess of the amount deemed reasonably necessary for the sound financial operations of the association, such excess shall be applied to paying off ratably, by years, the oldest unexhausted capital reserve contributions of patrons. Upon the dissolution or winding up of the association in any manner, after the payment of all debts and the retirement at par of all outstanding capital stock, any balance remaining over shall be distributed ratably to the patrons on an equitable basis.

ARTICLE XVII.

These by-laws may be altered or amended by a majority vote of a quorum of the common stockholders attending a meeting of which notice of the proposed by-law or by-laws shall have been given.

ARTICLE XVIII.

In the event any producer of tobacco who is a non member of the corporation shall make delivery of any quantity of tobacco to the Flue-Cured Tobacco Cooperative Stabilization Corporation at any warehouse and shall thereby obtain the benefit of a loan thereon, there shall be deducted by the warehouse in making settlement with such producer for the tobacco so delivered the amount of five dollars (\$5.00) to cover the par value of one share of common stock of the corporation, and the amount so deducted shall be remitted by the warehouse to the corporation and there shall thereupon be issued to such producer one share of common stock in the corporation. In the event such deduction should not be made by the warehouse in settling with such non member, then such non member would not be entitled to any participation in the profits arising from such transaction until there has been deducted from the participating share of such non member in the profits the amount of five dollars (\$5.00) covering the par value of one share of common stock in the corporation.

6/3/47

EXHIBIT B

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

P. O. Box 12300

Raleigh, North Carolina 27605

Telephone: (919) 821-4560



February 17, 1976

TO MEMBERS WHO DELIVERED TOBACCO TO STABILIZATION
FROM THE 1967 AND/OR 1968 CROPS:

Dear Member:

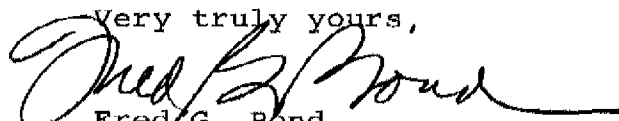
All tobacco received from the 1967 and 1968 crops has been sold. Net gains, amounting to over 7% of the value of deliveries by members from each of those crops, were realized. The portion of net gains allocated to you is being distributed in the form of the enclosed check(s) and certificate(s) of interest in capital reserve. The basis of that allocation is explained in the enclosed certificate(s) of interest. If you had deliveries to Stabilization from both crops, there are enclosed two checks and two certificates of interest. The enclosed check(s) represent(s) 60% of amount(s) allocated to you and the enclosed certificate(s) of interest represent(s) the remaining 40% allocated to you which has been retained in a capital reserve established by your Board of Directors. The establishment of such a capital reserve is in accordance with applicable law, the governing instruments of Stabilization, and the terms of your Membership Agreement. The certificate(s) should be kept with your valuable papers.

The uncertainty in connection with the future of the tobacco program points up the wisdom and practical necessity of Stabilization maintaining a capital reserve to be used if needed to continue operations and to meet other unforeseen emergencies. It is a crucial time for tobacco and it is essential that Stabilization be financially strong in order to cope with problems which may be greater in the years ahead than those experienced in the past. Your contribution to the capital reserve will help insure that Stabilization will be able to continue to provide price support operations to growers in the event that difficult times arise.

Please be sure to cash your check(s) promptly and include your Social Security number in the space provided for it on the back of the check(s), along with your endorsement. We are required by the Internal Revenue Service to report the dividend(s) and to include your Social Security number. Federal and state laws require that you report the total amount of both the check(s) and the amount appearing in Block 6 of the certificate(s) of interest, as income for the taxable year in which you receive and cash the enclosed check(s).

We also enclose financial statements on the 1967 and 1968 crops, along with an informational pamphlet on Stabilization.

Very truly yours,


Fred G. Bond,
General Manager

Enclosures

SERVING THE GROWERS IN THE BRIGHT LEAF AREA

*Note on
back*

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

STATEMENT OF 1967 CROP OPERATIONS
FEBRUARY 17, 1976

RECEIPTS:

Sales of tobacco and miscellaneous income \$233,647,345

EXPENSES:

Advances to Growers - 282,300,009 green pounds	\$165,860,965
Processing charges (redrying, freight, etc.)	19,376,563
Carrying charges (storage, fumigation, insurance, etc.)	6,898,212
Overhead and administrative cost	1,205,702
Barter sales profits paid to Commodity Credit Corporation	168,722
Interest paid to Commodity Credit Corporation	<u>28,520,134</u>

TOTAL EXPENSES 222,030,298

NET GAINS REALIZED ON SALE OF TOBACCO \$ 11,617,047

Interest received on funds invested 610,288

TOTAL NET GAINS \$ 12,227,335

Amount retained in Capital Reserve (40% of Net Gains) 4,890,934

AMOUNT DISTRIBUTED IN CASH TO MEMBERS (60% of Net Gains) \$ 7,336,401

STATEMENT OF 1968 CROP OPERATIONS
FEBRUARY 17, 1976

RECEIPTS:

Sales of tobacco and miscellaneous income \$105,237,760

EXPENSES:

Advances to Growers - 128,300,257 green pounds	\$ 75,223,939
Processing charges (redrying, freight, etc.)	9,569,494
Carrying charges (storage, fumigation, insurance, etc.)	2,853,677
Overhead and administrative cost	938,240
Barter sales profits paid to Commodity Credit Corporation	2,720
Interest paid to Commodity Credit Corporation	<u>11,143,499</u>

TOTAL EXPENSES 99,731,569

NET GAINS REALIZED ON SALE OF TOBACCO \$ 5,506,191

Interest received on funds invested 275,058

TOTAL NET GAINS \$ 5,781,249

Amount retained in Capital Reserve (40% of Net Gains) 2,312,500

AMOUNT DISTRIBUTED IN CASH TO MEMBERS (60% of Net Gains) \$ 3,468,749

W D Ballone
Deceased in 1968
Mayaguez Ballone
Daughter-in-law to returning
The Cherba

MAR 7 - ANSD

EXHIBIT C

SERVING THE GROWERS IN THE BRIGHT LEAF AREA

TOBACCO INDUSTRY
FOR THE
"TESTIFY"
AND
"IDENTIFY"



NEWS LETTER

Published by

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

1304 ANNAPOLIS DRIVE

RALEIGH, NORTH CAROLINA 27605

Fred G. Bond, General Manager

December 1985

1985 MARKETING SEASON:

Eastern N. C. Area (Type 12)

The 1985 marketing season began July 25 with a special auction for 1984 carry-over tobacco. Regular auctions started July 31 with final sales held October 29, 1985. Sales were held 51 days -- four more than last year.

Gross sales for the season amounted to 305.9 million pounds, down 14.6 million pounds from last season, for an average of \$170.43 per hundred. Total value of the crop was \$520.7 million. During the 1984 season, 319.9 million pounds were marketed for an average of \$180.94 per hundred. Resales for 1985 totaled 22.6 million pounds or 7.4%.

Stabilization's receipts amounted to 55.4 million pounds, or 18.1% of gross sales. In 1984, receipts to-

taled 55.8 million pounds, or 17.5% of gross sales.

Old & Middle Belt
Marketing Area (Type 11)

Although there was a smaller crop in 1985, the tobacco offered this year was more desirable than in the past several years.

Gross sales for the season totaled 256.4 million pounds, down 32.6 million pounds from last season, for an average of \$173.57 per hundred. Total value of the crop was \$445.1 million. During the 1984 season, 289.0 million pounds were marketed for an average of \$180.32 per hundred. Resales for 1985 totaled 20.3 million pounds or 7.9%.

Stabilization's receipts for the season amounted to 38.8 million pounds, or 15.1% of gross sales. In 1984, re-

FLUE CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION
P. O. Box 12300
RALEIGH, NORTH CAROLINA 27605

	LBS. SOLD DURING NOV.	LBS. ON HAND
1976	-0-	7,199,611
1977	1,784,070	53,547,044
1978	56,356	15,020,177
1979	-0-	15,329,848
1980	-0-	64,185,293
1981	160,742	89,214,704
1982	9,937	211,979,581
1983	431,047	162,054,298
1984	<u>1,241,882</u>	<u>149,207,153</u>
TOTAL	3,684,034	767,737,709

lina, and Virginia, who engaged in the production of the 1985 crop, are eligible to vote. Producers who leased and transferred their quota in 1985 are eligible to vote. A list of eligible voters will be available in the county ASCS offices by December 1, 1985. If you have any questions about the Quota Referendum, contact your County or State ASCS office.

SALES AND STOCKS ON HAND: (FARM WEIGHT)

Since the November News Letter, Stabilization has sold 3,684,034 pounds of tobacco. For the calendar year

BULK RATE
U.S. POSTAGE
PAID
RALEIGH, N.C.
PERMIT NO. 356

Following is an analysis of 1985 crop receipts by state and type for the season:

STATE	TYPE	GROSS SALES (Mil. Pounds)	STABILIZATION RECEIPTS (Pounds)*	PERCENT
Fla.	14	18.2	1,306,848	7.19
Ga.	14	95.4	4,598,985	4.82
Total	14	113.6	5,905,833	5.20
S.C.	13	102.5	21,230,309	20.72
N.C.	13	84.7	10,870,039	12.83
Total	13	187.2	32,100,348	17.15
N.C.	12	305.5	55,387,141	18.13
Total	12	305.5	55,387,141	18.13
N.C.	11B	78.9	13,932,651	17.66
Total	11B	78.9	13,932,651	17.66
N.C.	11A	95.0	10,695,631	11.26
Va.	11A	82.5	14,199,690	17.20
Total	11A	177.5	24,895,321	14.02
TOTAL-ALL TYPES		862.7	132,221,294	15.33

*Preliminary - subject to adjustment.

The adjusted total receipts by Stabilization for the 1984 crop amounted to 158,601,449 pounds, representing 17.17% of gross sales.

ceipts totaled 71.3 million pounds, or 24.8% of gross sales.

TAX RELIEF FOR GROWERS:

Stabilization's Board of Directors, at its November 19, 1985 meeting, passed a resolution requesting the Secretary of Agriculture to establish an Account within Commodity Credit Corporation and to transfer all assets from the present Fund to the Account. When this is done, in December 1985 the Board plans to cancel all preferred stock and per unit retain

certificates which were issued for the 1982 and 1983 crops and those that were to be issued for the 1984 and 1985 crops.

The cancellation of these certificates renders them worthless and establishes a business loss to the holders in the year cancelled.

In 1986 and subsequent years, payments to insure a No Net Cost Tobacco Program will be in the form of assessments deposited into an Account instead of capital contributions to the Fund and

may be treated as a business expense in the year paid.

Growers are advised to take cancellation notices which will be mailed in late December to their income tax preparer.

TOBACCO ASSOCIATES, INC. REFERENDUM:

Tobacco growers in North Carolina and South Carolina have been mailed ballots in order to vote on the continuation of Tobacco Associates, Inc. for the next three years (1986, 1987, and 1988). A positive vote will authorize the collection of an assessment in an amount not to exceed one-tenth (1/10) of a cent per pound to be used for the purpose of promoting the export and use of U.S. flue-cured tobacco.

It is important to note that this is the first referendum conducted by mail and independent of the Tobacco Quota Referendum.

The ballots must be returned no later than December 12, 1985. The returned ballots will be tallied on December 17, 1985 by an Independent Tally Agent, Coopers and Lybrand, CPA's.

Farmers who engage in the production of flue-cured tobacco and/or the proceeds of such crop shall be eligible to vote. If you have not received a ballot in the mail

by December 2, 1985 and you feel you are eligible to vote, in North Carolina you can call (919-821-7670) or in South Carolina (803-774-5191). A request for ballots will be taken until December 6, 1985.

The main objectives of Tobacco Associates, Inc. are as follows:

(a) Promote, develop, and expand the export market for American produced flue-cured tobacco.

(b) Represent the growers' interest in the development of export markets for American flue-cured throughout the world.

(c) Monitor all international and national trade policy developments, regulations, or proposals that have an impact on tobacco trade.

FLUE-CURED TOBACCO QUOTA REFERENDUM:

The national flue-cured tobacco quota must be announced by the Secretary of Agriculture by December 15, 1985. The referendum must be conducted within 30 days of the quota announcement. Target dates for the referendum are January 6-10, 1986 with ballots being tallied on January 15, 1986. The vote will be conducted by mail. Flue-cured tobacco producers in Florida, Georgia, Alabama, South Carolina, North Caro-

EXHIBIT D



United States
Department of
Agriculture

Agricultural
Stabilization and
Conservation Service

P.O. Box 2415
Washington, D.C.
20013

CONFIDENTIAL

07 MAY 1992

Mr. Fred G. Bond
Chief Executive Officer
Flue-Cured Tobacco Cooperative
Stabilization Corporation
P.O. Box 12300
Raleigh, North Carolina 27605

Dear Mr. Bond:

This letter responds to a request from the Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation (Stabilization) to redeem the 1983 crop loan inventory of flue-cured tobacco. In the request, the Board proposed to redeem the 1983 crop of flue-cured tobacco by transferring approximately \$74.4 million of funds generated from the 1984 No-Net-Cost (NNC) Account (\$69.8 million) and the 1986 crop excess Graham-Rudman-Hollings (GRH) special assessment (\$4.6 million), to liquidate the debt owing Commodity Credit Corporation (CCC) on the 1983 loan collateral inventory. Redemption was requested in accordance with paragraph 19 of the 1983 Loan Agreement between Stabilization and CCC.

The request, as submitted, has been disapproved. The principal reason for disapproval of the request is that CCC would be left with a debt of approximately \$28 million on the 1984 crop without NNC funds to cover any possible losses. However, CCC approved the redemption of the 1983 and 1984 crop loan collateral inventories upon payment of the total debt outstanding, both principal and interest, on these crop year loans. CCC also approved the use of the 1984 NNC and 1986 GRH funds to be used to reduce the outstanding debt on these crop loans.

By redeeming both the 1983 and 1984 crop year loan inventories, CCC would be relieved of all responsibilities on the 1983 and 1984 flue-cured tobacco inventories and Stabilization would be solely responsible for these inventories of approximately 15 million pounds. By redeeming the 1983 and 1984 crops, Stabilization may retain the sales proceeds resulting from the sale of the remainder of these crop inventories once the 1983 and 1984 loan accounts with CCC have been closed.

If Stabilization's Board of Directors elect to pursue redemption of both the 1983 and 1984 crop loan inventories, please let us know and CCC will make arrangements with

SC 08650



CONFIDENTIAL

Mr. Fred Bond

Page 2

your servicing agent bank to liquidate the outstanding loan balances on the 1983 and 1984 loan crop inventories.

If you have any questions concerning the above matters, please let me know.

Sincerely,

Dallas L. Smith

Director,
Tobacco and Peanuts Division

SC 08651

EXHIBIT E

FILE COPY

**FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION
AND SUBSIDIARY**

Consolidated Financial Statements
April 30, 1993 and 1992
(With Independent Auditors' Report Thereon)

CONFIDENTIAL



Peat Marwick

Certified Public Accountants

150 Fayetteville Street Mall
Suite 1200
Post Office Box 29543
Raleigh, NC 27626-0543

INDEPENDENT AUDITORS' REPORT

The Board of Directors
Flue-Cured Tobacco Cooperative Stabilization Corporation:

We have audited the accompanying consolidated balance sheets of Flue-Cured Tobacco Cooperative Stabilization Corporation and subsidiary as of April 30, 1993 and 1992, and the related consolidated statements of operations, stockholders' equity, and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Flue-Cured Tobacco Cooperative Stabilization Corporation and subsidiary at April 30, 1993 and 1992, and the results of their operations and their cash flows for the years then ended in conformity with generally accepted accounting principles.

As discussed in note 5 to the consolidated financial statements, the Company changed its method of accounting for income taxes in 1993 to adopt the provisions of the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes".

KPMG Peat Marwick

May 13, 1993

-1-



CONFIDENTIAL

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Consolidated Balance Sheets

April 30, 1993 and 1992

<u>Assets</u>	<u>1993</u>	<u>1992</u>
Cash	\$ 152,984	125,207
Investment in interest-bearing obligations, at amortized cost (note 7)	151,384,089	108,422,235
Accrued interest receivable	2,160,063	1,984,335
Accounts receivable	48,494	232,863
Unreimbursed costs due from Tobacco Loan Funds (notes 2 and 3)	39,039	10,247
Prepaid expenses	89,880	75,508
Tobacco inventory (note 4)	45,659,459	56,347,567
Cash surrender value of life insurance	48,591	46,374
Prepaid retirement cost (note 6)	1,389,500	1,542,000
Property, plant, and equipment:		
Land	307,589	307,589
Buildings	3,643,077	3,608,960
Furniture, fixtures and equipment	1,313,434	1,281,892
Automobiles and trucks	348,986	373,466
Total	5,613,086	5,571,907
Less accumulated depreciation	3,481,582	3,263,176
Net property, plant and equipment	2,131,504	2,308,731
	<u>\$ 203,103,603</u>	<u>171,095,067</u>
<u>Liabilities and Stockholders' Equity</u>		
Accounts payable	4,282	16,102
Accrued expenses	6,526	5,989
Income taxes payable	315,910	2,198,700
Deferred income taxes	18,576,000	22,399,503
Total liabilities	<u>18,902,718</u>	<u>24,620,294</u>
Stockholders' equity:		
Common stock, \$5 par value (note 2):		
Authorized 1,000,000 shares; issued and outstanding 793,997 shares in 1993 and 792,316 shares in 1992	3,969,985	3,961,580
Paid but not issued 1,333 shares in 1993 and 1,319 shares in 1992	6,665	6,595
Total common stock	3,976,650	3,968,175
Additional paid-in capital (note 4)	110,753,161	75,800,535
Capital equity credits	26,802,854	26,802,963
Retained earnings	42,668,220	39,903,100
Total stockholders' equity	<u>184,200,885</u>	<u>146,474,773</u>
Commitments and contingencies (notes 3, 6 and 8)		
	<u>\$ 203,103,603</u>	<u>171,095,067</u>

See accompanying notes to consolidated financial statements.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Consolidated Statements of Operations

Years ended April 30, 1993 and 1992

	<u>1993</u>	<u>1992</u>
Revenue:		
Sale of tobacco, net of sales adjustments (notes 3 and 4)	\$ 65,969,155	30,972,032
Cost of tobacco sold (notes 3 and 4)	<u>68,592,714</u>	<u>30,972,032</u>
Gross profit (loss) on tobacco sales	(2,623,559)	-
Storage income	<u>1,019,870</u>	<u>901,066</u>
Total net revenues	<u>(1,603,689)</u>	<u>901,066</u>
Expense:		
Operating expense	589,630	601,950
General and administrative, net of price support and other reimbursements of \$1,140,322 in 1993 and \$745,744 in 1992 (note 2)	<u>2,460,544</u>	<u>2,157,915</u>
Total expense	<u>3,050,174</u>	<u>2,759,865</u>
Operating loss	<u>(4,653,863)</u>	<u>(1,858,799)</u>
Other income:		
Interest income	8,391,569	7,995,504
Other revenue and expense, net	<u>241,578</u>	<u>169,979</u>
Total other income	<u>8,633,147</u>	<u>8,165,483</u>
Earnings before provision for income taxes and cumulative effect of change in accounting principle	3,979,284	6,306,684
Provision for income taxes (note 5)	<u>809,667</u>	<u>2,152,000</u>
Earnings before cumulative effect of change in accounting principle	3,169,617	4,154,684
Cumulative effect at May 1, 1992 of change in accounting for income taxes (note 5)	<u>404,497</u>	<u>-</u>
Net earnings	\$ <u>2,765,120</u>	<u>4,154,684</u>

See accompanying notes to consolidated financial statements.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Consolidated Statements of Stockholders' Equity

Years ended April 30, 1993 and 1992

	Common stock		Additional paid-in capital	Capital Equity Credits		Retained earnings
	Issued	Paid but not issued		Total	Qualified	Nonqualified
Balances, April 30, 1991	\$ 3,952,585	6,500	-	26,802,987	25,977,095	825,892
Net earnings for the year ended April 30, 1992	-	-	-	-	-	-
Redemption of nonqualified capital equity credits	-	-	-	(24)	-	(24)
Reclassification of deposits due to patrons to additional paid-in capital (note 4)	-	-	75,800,535	-	-	-
Common stock transactions:						
New memberships issued	9,330	-	-	-	-	-
Memberships cancelled	(335)	-	-	-	-	-
Increase in common stock paid but not issued	-	95	-	-	-	-
Balances, April 30, 1992	3,961,580	6,595	75,800,535	26,802,963	25,977,095	825,868
Net earnings for the year ended April 30, 1993	-	-	-	-	-	-
Redemption of nonqualified capital equity credits	-	-	-	(109)	-	(109)
Inventory received from Commodity Credit Corporation (note 4)	-	-	34,952,626	-	-	-
Common stock transactions:						
New memberships issued	8,675	-	-	-	-	-
Memberships cancelled	(270)	-	-	-	-	-
Increase in common stock paid but not issued	-	70	-	-	-	-
Balances, April 30, 1993	\$ 3,969,985	6,665	110,753,161	26,802,854	25,977,095	825,759

See accompanying notes to consolidated financial statements.

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FLUË-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Consolidated Statements of Cash Flows

Years ended April 30, 1993 and 1992

	<u>1993</u>	<u>1992</u>
Cash flows from operating activities:		
Net earnings	\$ 2,765,120	4,514,684
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation	266,790	283,092
Amortization of premium and discount on interest bearing obligations, net	(346,877)	(308,711)
Prepaid retirement cost	152,500	(332,000)
Deferred income taxes	(26,277,836)	(26,609,118)
Increase in accrued interest receivable	(175,728)	(241,673)
Decrease (increase) in accounts receivable	184,369	(213,585)
Decrease in tobacco inventory	68,095,067	30,401,774
Increase in other assets	(45,381)	(57,094)
Decrease in accounts payable	(11,820)	(27,787)
Increase in accrued expenses	537	3,693
Increase (decrease) in income taxes payable	(1,882,790)	1,946,200
Net cash provided by operating activities	<u>42,723,951</u>	<u>8,999,475</u>
Cash flows from investing activities:		
Purchases of property, plant and equipment	(89,563)	(255,215)
Purchases of interest bearing obligations	(133,744,977)	(79,961,325)
Maturities of interest bearing obligations, net of gain	<u>91,130,000</u>	<u>71,172,721</u>
Net cash used in investing activities	<u>(42,704,540)</u>	<u>(9,043,819)</u>
Cash flows from financing activities:		
Proceeds from sale of common stock	8,745	9,425
Retirement of common stock	(270)	(335)
Redemption of nonqualified capital equity credits	(109)	(24)
Net cash provided by financing activities	<u>8,366</u>	<u>9,066</u>
Net increase (decrease) in cash	27,777	(35,278)
Cash at beginning of year	<u>125,207</u>	<u>160,485</u>
Cash at end of year	\$ <u>152,984</u>	<u>125,207</u>

(Continued)

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Consolidated Statements of Cash Flows, Continued

Years ended April 30, 1993 and 1992

	<u>1993</u>	<u>1992</u>
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	\$ <u>29,374,790</u>	<u>26,557,520</u>

Supplemental schedule of noncash investing activities:

In 1993, the Corporation took possession of approximately 13,140,000 pounds of tobacco from the 1983 and 1984 crop inventories (see note 4) recording tobacco inventory of \$57,406,959 and additional paid-in capital of \$34,952,626, net of deferred income taxes of \$22,454,333.

In 1992, the Corporation adjusted the carrying value of the tobacco inventory primarily due to lower carrying charges being capitalized than originally estimated. The net adjustment was a reduction in tobacco inventory value of \$2,000,000 with a corresponding reduction in the deposit due to patrons.

In 1992, the Corporation elected to retain the income from the sale of 1982 crop tobacco (see note 4) and the deposit due to patrons was reclassified to additional paid-in capital in the amount of \$75,800,535, net of income taxes of \$48,950,000.

See accompanying notes to consolidated financial statements.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Notes to Consolidated Financial Statements

April 30, 1993 and 1992

(1) Summary of Significant Accounting Policies

A summary of the major accounting policies followed by the Flue-Cured Tobacco Cooperative Stabilization Corporation (the "Corporation") in the preparation of the accompanying consolidated financial statements is set forth below:

(a) Consolidation Policy

The accompanying financial statements include the accounts of the Corporation and its wholly-owned subsidiary, Tobacco Growers Services, Inc. All material intercompany balances and transactions have been eliminated.

(b) Statements of Cash Flows

For purposes of the statement of cash flows, the Company considers all short-term investments with a maturity at date of purchase of three months or less to be cash equivalents.

(c) Interest-Bearing Obligations

Interest-bearing obligations are stated at amortized cost.

(d) Tobacco Inventory

Tobacco inventory is stated at the base purchase price plus carrying costs of the tobacco.

(e) Property, Plant and Equipment

Property, plant, and equipment are stated at cost. Depreciation is provided over the estimated useful lives of the individual assets using the declining-balance or the straight-line method.

(f) Income Taxes

In February 1992, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes. Statement 109 requires a change from the deferred method of accounting for income taxes of APB Opinion 11 to the assets and liability method of accounting for income taxes. Under the asset and liability method of Statement 109, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Under Statement 109, the effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

Effective May 1, 1992, the Company adopted Statement 109 and it has reported the cumulative effect of that change in the method of accounting for income taxes in the 1993 consolidated statement of operations.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(1) Summary of Significant Accounting Policies, Continued

(f) Income Taxes, Continued

Pursuant to the deferred method under APB Opinion 11, which was applied in 1992 and prior years, deferred income taxes are recognized for income and expense items that are reported in different years for financial reporting purposes and income tax purposes using the tax rate applicable in the year of the calculation. Under the deferred method, deferred taxes are not adjusted for subsequent changes in tax rates.

In prior years, the Corporation paid income taxes with respect to non-qualified capital equity credits. The Corporation receives an income tax deduction for nonqualified capital equity credits in the year of redemption. The income taxes provided for in prior years are accounted for as a reduction of the nonqualified capital equity credits (\$855,900 and \$856,011 at April 30, 1993 and 1992, respectively).

(g) Pension Plan

The Corporation has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan provides benefits through guaranteed investment contracts and an investment in timber contracts. It is the Corporation's policy to fully fund all accumulated plan benefits.

(2) Organization Data

The Corporation was incorporated on June 1, 1946 under the provisions of the Cooperative Marketing Act of the State of North Carolina, as a corporation operating on a cooperative basis, with capital stock.

The authorized capital stock of the Corporation consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who shall patronize the Corporation in accordance with uniform terms and conditions prescribed thereby. At all meetings of the stockholders, each stockholder is entitled to only one vote. No dividends are payable upon the common stock. The Corporation has adopted a bylaw consent form in which each member agrees to take into gross income patronage refunds allocated to them.

The Corporation is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members and patrons. The capital equity credits are used to accumulate capital as considered necessary by the Board of Directors. Capital equity credits bear no interest, have no due date, and may be revolved at the discretion of the Board of Directors in order of issuance by years.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(2) Organization Data, Continued

The business activities of the Corporation have consisted primarily of marketing and storage services for its member growers under the provisions of a price support loan agreement with Commodity Credit Corporation (CCC) whereby CCC provides the funds necessary to pay member growers the support price of eligible tobacco delivered for sale, plus the costs of transporting, processing, handling and storing the "loan tobacco". Funds provided by CCC are evidenced by nonrecourse notes, payable on demand, and are collateralized by the underlying tobacco crops. Proceeds from the sale of pre-1982 loan tobacco are remitted to CCC to be applied first as a reduction in the principal amount of outstanding loans and then against accrued interest and collateral fees charged by CCC. Repayments of 1982 or subsequent crop years will be applied to both principal and interest on a first borrowed, first repaid basis within each crop year. The funds provided by CCC are categorized as "Tobacco Loan Funds" for 1981 and prior crop pools and the "No Net Cost Tobacco Account" for the 1982 and subsequent crop pools and are not recorded in the accounts of the Corporation as described in note 3.

The Corporation may be liable for any tobacco damaged due to the negligence of its employees. In the opinion of management, any potential loss to the Corporation is not material.

For financial reporting purposes, the Corporation recognizes as income the storage fees earned. Direct costs incurred on behalf of the funds are reimbursed by CCC.

The tobacco loan funds have also borrowed \$.01 per pound of tobacco from CCC to offset a portion of the administrative costs of operating the price support program.

(3) Tobacco Loan Funds

(a) Tobacco Loan Funds - 1981 and Prior Crop Pools

For 1981 and prior crops, amounts due CCC and unpaid upon final sale of the related tobacco crop will be absorbed by CCC unless it can be proven that the Corporation has not complied with all the terms of its agreement with CCC. At April 30, 1993, the 1977, 1978, 1980 and 1981 crop pools remain unclosed.

At April 30, 1993, there were 596,520 pounds of dry tobacco in the 1981 and prior crop pools inventory and the amount due CCC by the Corporation, including interest and insurance, was \$665,873,250.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(3) Tobacco Loan Funds, Continued

(a) Tobacco Loan Funds - 1981 and Prior Crop Pools, Continued

The 1986 tobacco support program with CCC provides that the tobacco from the 1981 and prior crop pools shall be offered for sale at the base prices plus carrying charges (reduced by 90%) from April 20, 1986 and increased by applicable carrying charges until such tobacco is removed from inventory. The Corporation has signed purchase agreements for the remaining tobacco in the 1981 and prior crop pools at the reduced price under an arrangement that allows the purchasers to acquire the tobacco over a buyout period that could extend to 1996.

In the opinion of management of the Corporation, the Corporation has complied with all the terms of its agreement with CCC.

(b) No Net Cost Tobacco Account - 1982 and Subsequent Crop Pools

Beginning with the 1982 crop the loan agreements between the Corporation and CCC provides that, insofar as practicable, CCC will suffer no net losses from the loans including interest and amounts advanced to cover the overhead costs of the Corporation. To ensure that CCC will suffer no net losses, each tobacco producer was required to deposit a specified amount per pound (determined prior to the start of each season) as a grower assessment. Beginning with the 1986 crop, purchasers pay a matching assessment.

The assessments are held by CCC, accordingly, they are not shown as an asset of the Corporation. At April 30, 1993, \$100,626,428, including interest credited by CCC, was on deposit with CCC for the 1986 through 1992 crop pool inventory.

At April 30, 1993, there were 132,648,875 pounds of dry tobacco in the 1986 through 1992 crop pool inventory and the amount due CCC by the Corporation, including interest, was \$322,977,704.

The Corporation has signed purchase agreements for the remaining tobacco in the 1982 through 1984 crop pools at the base prices plus carrying charges (reduced by 10%) from April 20, 1986 and increased by applicable carrying charges until such tobacco is removed from inventory. The purchase agreement permits the purchasers to acquire the tobacco over a buyout period that could extend to 1996.

The loan agreement for the 1982 and subsequent year crops with CCC provides that any gain realized upon final sale of a crop pool may be held in order to offset possible future losses. If funds are considered more than sufficient to ensure payment to CCC, a distribution to the grower on a patronage basis may be made provided such payment is approved by CCC. If funds including amounts held by CCC are insufficient for payment to CCC upon final sale of the tobacco, the Corporation will not be liable and the loss will be absorbed by CCC unless it can be proven that the Corporation has not complied with all the terms of its agreement.

In the opinion of management of the Corporation, the Corporation has complied with all the terms of its agreements with CCC.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(4) Tobacco Inventory

In October 1992, the Board of Directors of the Corporation approved a plan whereby approximately \$75,374,000 of the no net cost account held by CCC from producers' accounts for the 1984, 1985, and 1986 crop years was to be transferred from the no net cost account to pay the debt owed by the Corporation to CCC for the 1983 and 1984 crop years. Effective October 31, 1992, the proposed redemption was approved by CCC making the Corporation solely responsible for the remaining 1983 and 1984 crop year inventories of approximately 13,860,000 pounds of tobacco. The Corporation has the right to retain the resulting sales proceeds from the tobacco. The redemption was requested by the Corporation because funds had built up in excess of needs for the no net cost account due to the accelerated pace of the buy-out program (note 3).

The inventory of tobacco for the crop years 1982 through 1984 is subject to the terms and conditions of contracts between the Corporation and purchasers, dated July 2, 1986, whereby purchasers might not complete purchases of this tobacco until 1996. The Corporation is continuing to pay the ongoing expenses of storage, insurance, management costs, etc. arising from the holding of this inventory.

Under these conditions, the Corporation cannot determine when the 1982 through 1984 crop inventories will be closed out or when all income will be realized by the Corporation from sales of this tobacco inventory.

Proceeds from sales, net of sales adjustments, for the years ended April 30, 1993 and 1992, were \$65,969,155 (17,595,740 pounds of inventory) and \$30,972,032 (7,365,237 pounds of inventory), respectively. Proceeds from the sales have been invested in short-term and long-term U.S. Treasury bills, notes, and municipal bonds.

On April 30, 1991, the tobacco inventory received by the Corporation from CCC was reflected in the financial statements at the estimated net sales value with a corresponding deposit due to patrons, as management's intentions with respect to the distribution of the sales proceeds had not been determined. However, during the year ended April 30, 1992, the Board of Directors of the Corporation authorized the retention of the sales proceeds within the Corporation to use for possible future price support programs. Accordingly, the deposit due to patrons was reclassified to additional paid-in capital, net of applicable income taxes.

(5) Income Taxes

As discussed in note 1, the Company adopted Statement 109 as of May 1, 1992. The cumulative effect of this change in accounting for income taxes of \$404,497 is determined as of May 1, 1992 and is reported separately in the consolidated statement of operations for the year ended April 30, 1993. Prior years' financial statements have not been restated to apply the provisions of Statement 109.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(5) Income Taxes, Continued

Income tax expense consists of:

	<u>Current</u>	<u>Deferred</u>	<u>Total</u>
1993:			
Federal	\$ 22,464,000	(21,320,038)	1,143,962
State	<u>5,028,000</u>	<u>(5,362,295)</u>	<u>(334,295)</u>
	\$ <u>27,492,000</u>	<u>(26,682,333)</u>	<u>809,667</u>
1992:			
Federal	\$ 11,621,000	(9,488,000)	2,133,000
State	<u>2,516,000</u>	<u>(2,497,000)</u>	<u>19,000</u>
	\$ <u>14,137,000</u>	<u>(11,985,000)</u>	<u>2,152,000</u>

The actual income tax expense for both 1993 and 1992 differs from the "expected" tax expense (computed by applying the U. S. Federal corporate income tax rate of 34% to earnings before provision for income taxes and cumulative effect of change in accounting principle) as follows:

	<u>1993</u>	<u>1992</u>
Computed "expected" tax expense	\$ 1,352,957	2,144,273
Increase (reduction) in income taxes resulting from:		
State income taxes, net of federal income tax benefit	(220,635)	12,540
Interest of state and local government agency obligations	(372,106)	(94,503)
Other, net	<u>49,451</u>	<u>89,690</u>
	\$ <u>809,667</u>	<u>2,152,000</u>

Deferred income taxes result from timing differences in the recognition of revenue and expenses for tax and financial statement purposes. The sources of these differences and the tax effect of each are as follows:

	<u>1993</u>	<u>1992</u>
Difference in recognition of certain retirement costs	\$ (60,000)	130,000
Difference in depreciation for financial statement and tax purposes	17,000	15,000
Difference in recognition of tobacco sales proceeds for financial statement and tax purposes	(26,633,333)	(12,124,000)
Amortization of the tax effect of the difference between financial statement and tax depreciation on the involuntary conversion of an office building	<u>(6,000)</u>	<u>(6,000)</u>
	\$ <u>(26,682,333)</u>	<u>(11,985,000)</u>

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(5) Income Taxes, Continued

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities at April 30, 1993 are presented below:

Deferred tax asset:	
Assessments paid on behalf of members	\$ 672,000
Less valuation allowance	(672,000)
Net deferred tax asset	\$ <u>-</u>
Deferred tax liabilities:	
Recognition of certain retirement costs	\$ (540,000)
Property, plant and equipment, due to differences in depreciation	(251,000)
Recognition of tobacco inventory valuation	(17,785,000)
Total gross deferred liabilities	(18,576,000)
Net deferred tax liability	\$ <u>(18,576,000)</u>

The valuation allowance for deferred tax assets as of May 1, 1992 was \$672,000. There was no change in the total valuation allowance for the year ended April 30, 1993.

(6) Retirement Plan

The Corporation sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Corporation are eligible to participate after one year of service if they are less than 60 years of age when employed. During the years ended April 30, 1993 and 1992, the Corporation made no contribution to the plan and recorded pension expense of \$152,500 in 1993 and prepaid retirement cost of \$332,000 in 1992. The components of net retirement cost are shown below:

	<u>1993</u>	<u>1992</u>
Service cost	\$ 216,000	224,500
Interest cost	771,500	740,000
Return on plan assets	(770,500)	(1,232,000)
Net amortization	<u>(64,500)</u>	<u>(64,500)</u>
Net periodic pension cost	\$ <u>152,500</u>	<u>(332,000)</u>

A summary of the actuarially determined obligation for benefits under the Plan are as follows:

	<u>1993</u>	<u>1992</u>
Actuarial present value of accumulated plan benefits:		
Vested - retirees	\$ 5,886,000	5,243,000
Vested - other participants	3,196,000	3,516,000
Nonvested	<u>15,000</u>	<u>10,000</u>
Total	\$ <u>9,097,000</u>	<u>8,769,000</u>

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(6) Retirement Plan, Continued

The following table sets forth the plan's funded status at April 30, 1993 and 1992, respectively:

	<u>1993</u>	<u>1992</u>
Pension plan assets at fair value	\$ 12,900,000	12,778,000
Projected benefit obligation	(11,000,000)	(10,650,000)
Pension plan assets in excess of projected benefit obligation	1,900,000	2,128,000
Unrecognized transition asset	(1,152,000)	(1,281,000)
Unrecognized prior service cost	801,000	864,000
Unrecognized (gains)/losses	(159,500)	(169,000)
Prepaid retirement cost	<u>\$ 1,389,500</u>	<u>1,542,000</u>

The projected benefit obligation at April 30, 1993 and 1992 was determined using a weighted average discount rate of 7-1/2%, an expected long-term return on plan assets of 6% in 1993 and 10% in 1992 and an expected increase in salary levels of 6%.

During the year ended April 30, 1991, an insurance company holding approximately 65% of the plan's assets was placed into rehabilitation. The insurance company filed a rehabilitation plan on August 3, 1992 and remains under the supervision of a rehabilitator. Until the plan is approved by the appropriate authorities, the insurance company has frozen all withdrawals from deposit contracts. However, the insurance company is continuing to make all death, disability, and monthly retirement payments under the provisions of the contract. Also, withdrawals qualifying under established hardship guidelines are being permitted. Because the outcome of the events surrounding the rehabilitation are uncertain at this time, no accrual for any additional pension plan contributions that may be required in future years has been reflected in the financial statements. However, the net periodic pension cost for 1993 is higher due to a significant reduction in the expected long-term return on assets which is prompted by the rehabilitation circumstances.

FLUË-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(7) Investment in Interest-Bearing Obligations

The Corporation invests in various government-guaranteed, interest-bearing obligations during the year. The Corporation carries these investments at amortized cost. These investments are scheduled to mature at various times ranging from one week to five years from the balance sheet date. The policy of the management of the Corporation is to hold the investments until maturity, at which time the proceeds will be reinvested in similar securities. The following classifies the investments by maturity, with short-term investments being those scheduled to mature within the next fiscal year and long-term investments being those with a scheduled maturity greater than one year.

	<u>April 30, 1993</u>		<u>April 30, 1992</u>	
	<u>Cost</u>	<u>Market</u>	<u>Cost</u>	<u>Market</u>
Short-term	\$ 70,744,452	71,302,884	15,823,803	16,229,293
Long-term	<u>80,639,637</u>	<u>83,950,841</u>	<u>92,598,432</u>	<u>95,164,742</u>
	<u>\$ 151,384,089</u>	<u>155,253,725</u>	<u>108,422,235</u>	<u>111,394,035</u>

(8) Commitments and Contingencies

The Corporation is contingently liable for \$200,000 of a \$1,000,000 loan to an entity in which the Corporation is a minority shareholder. The Corporation is the guarantor on the portion of the loan until December 31, 1993.

The Company is currently undergoing an audit by the Internal Revenue Service for tax returns filed in prior years. At this time, any potential liability of the Company for additional income taxes and interest is unknown, and accordingly, no accrual has been made in the financial statements. Management believes that any potential liability arising from the audit will be immaterial.



Peat Marwick

Certified Public Accountants

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INDEPENDENT AUDITORS' REPORT ON SUPPLEMENTARY INFORMATION

The Board of Directors
Flue-Cured Tobacco Cooperative Stabilization Corporation:

We have audited and reported separately herein on the consolidated financial statements of Flue-Cured Tobacco Cooperative Stabilization Corporation and subsidiary as of and for the years ended April 30, 1993 and 1992.

Our audits were made for the purpose of forming an opinion on the consolidated financial statements of Flue-Cured Tobacco Cooperative Stabilization Corporation and subsidiary taken as a whole. The consolidating and individual company supplementary information included in Schedules 1 through 6 is presented for purposes of additional analysis of the consolidated financial statements rather than to present the financial position, results of operations, and cash flows of the individual companies. The supplementary information included in Schedules 7 and 8 is presented for purposes of additional analysis and is not a required part of the consolidated financial statements. Such consolidating and supplementary information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and, in our opinion, is fairly stated in all material respects in relation to the consolidated financial statements taken as a whole.

KPMG Peat Marwick

May 13, 1993



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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Consolidating Schedule - Balance Sheet Information

April 30, 1993

<u>Assets</u>	<u>Consolidated</u>	<u>Eliminations</u>	<u>Flue-Cured Tobacco Cooperative Stabilization Corporation</u>	<u>Tobacco Growers Services, Inc.</u>
Cash	\$ 152,984	-	118,258	34,726
Investment in interest-bearing obligations at amortized cost	151,384,089	-	148,776,825	2,607,264
Accrued interest receivable	2,160,063	-	2,121,793	38,270
Accounts receivable	48,494	-	17,535	30,959
Unreimbursed costs due from Tobacco Loan Funds	39,039	-	39,039	-
Prepaid expenses	89,880	-	86,377	3,503
Tobacco inventory	45,659,459	-	45,659,459	-
Investment in Tobacco Growers Services, Inc., at equity	-	(3,752,195)	3,752,195	-
Prepaid retirement cost	1,389,500	-	1,389,500	-
Cash surrender value of life insurance	48,591	-	48,591	-
Property, plant and equipment:				
Land	307,589	-	192,348	115,241
Buildings	3,643,077	-	1,208,135	2,434,942
Furniture, fixtures and equipment	1,313,434	-	942,412	371,022
Automobiles and trucks	348,986	-	277,570	71,416
Total	5,613,086	-	2,620,465	2,992,621
Less accumulated depreciation	3,481,582	-	1,687,738	1,793,844
Net property, plant and equipment	2,131,504	-	932,727	1,198,777
	<u>\$ 203,103,603</u>	<u>(3,752,195)</u>	<u>202,942,299</u>	<u>3,913,499</u>
<u>Liabilities and Stockholders' Equity</u>				
Accounts payable	4,282	-	-	4,282
Accrued expenses	6,526	-	1,204	5,322
Income taxes payable	315,910	-	340,210	(24,300)
Deferred income taxes	18,576,000	-	18,400,000	176,000
Total liabilities	18,902,718	-	18,741,414	161,304
Stockholders' equity:				
Common stock	3,976,650	(250,000)	3,976,650	250,000
Additional paid-in capital	110,753,161	-	110,753,161	-
Capital equity credits	26,802,854	-	26,802,854	-
Retained earnings	42,668,220	(3,502,195)	42,668,220	3,502,195
Total stockholders' equity	184,200,885	(3,752,195)	184,200,885	3,752,195
Commitments and contingencies				
	<u>\$ 203,103,603</u>	<u>(3,752,195)</u>	<u>202,942,299</u>	<u>3,913,499</u>

See accompanying auditors' report on supplementary information.

CONFIDENTIAL

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Consolidating Schedule - Earnings Information

Year ended April 30, 1993

	<u>Consolidated</u>	<u>Eliminations</u>	<u>Flue-Cured Tobacco Cooperative Stabilization Corporation</u>	<u>Tobacco Growers Services, Inc.</u>
Revenues:				
Sale of tobacco, net of sales adjustments	\$ 65,969,155	-	65,969,155	-
Cost of tobacco sold	<u>68,592,714</u>	-	<u>68,592,714</u>	-
Gross loss on tobacco sales	<u>(2,623,559)</u>	-	<u>(2,623,559)</u>	-
Storage income	<u>1,019,870</u>	-	-	<u>1,019,870</u>
Total net revenues	<u>(1,603,689)</u>	-	<u>(2,623,559)</u>	<u>1,019,870</u>
Expenses:				
Operating expenses	589,630	-	-	589,630
General and administrative expenses	3,600,866	-	3,600,866	-
Price support and other reimbursements	<u>(1,140,322)</u>	-	<u>(1,140,322)</u>	-
Total expenses	<u>3,050,174</u>	-	<u>2,460,544</u>	<u>589,630</u>
Operating income (loss)	<u>(4,653,863)</u>	-	<u>(5,084,103)</u>	<u>430,240</u>
Other income:				
Interest income	8,391,569	-	8,234,259	157,310
Other revenue and (deductions) - net	<u>241,578</u>	-	<u>276,538</u>	<u>(34,960)</u>
Total other income	<u>8,633,147</u>	-	<u>8,510,797</u>	<u>122,350</u>
Earnings before provision for income taxes and cumulative effect of change in accounting principle	3,979,284	-	3,426,694	552,590
Provision for income taxes	<u>809,667</u>	-	<u>595,667</u>	<u>214,000</u>
Earnings before cumulative effect of change in accounting principle	3,169,617	-	2,831,027	338,590
Cumulative effect at May 1, 1992 of change in accounting for income taxes	<u>(404,497)</u>	-	<u>(422,806)</u>	<u>18,309</u>
Net earnings	\$ <u>2,765,120</u>	-	<u>2,408,221</u>	<u>356,899</u>

See accompanying auditors' report on supplementary information.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Balance Sheet Information - Parent Company

April 30, 1993 and 1992

<u>Assets</u>	<u>1993</u>	<u>1992</u>
Cash	\$ 118,258	112,922
Investment in interest-bearing obligations, at amortized cost	148,776,825	106,151,430
Accrued interest receivable	2,121,793	1,938,835
Accounts receivable	17,535	221,182
Unreimbursed costs due from Tobacco Loan Funds	39,039	10,247
Prepaid expenses	86,377	72,220
Tobacco inventory	45,659,459	56,347,567
Investment in Tobacco Growers Services, Inc., at equity	3,752,195	3,395,296
Cash surrender value of life insurance	48,591	46,374
Prepaid retirement cost	1,389,500	1,542,000
Property, plant and equipment:		
Land	192,348	192,348
Buildings	1,208,135	1,203,310
Furniture, fixtures, and equipment	942,412	920,025
Automobiles and trucks	277,570	277,570
Total	2,620,465	2,593,253
Less accumulated depreciation	1,687,738	1,524,382
Net property, plant and equipment	932,727	1,068,871
	<u>\$ 202,942,299</u>	<u>170,906,944</u>

Liabilities and Stockholders' Equity

Accounts payable	-	12,707
Accrued expenses	1,204	1,270
Income taxes payable	340,210	2,191,000
Deferred income taxes	18,400,000	22,227,194
Total liabilities	<u>18,741,414</u>	<u>24,432,171</u>
Stockholders' equity:		
Common stock	3,976,650	3,968,175
Additional paid-in capital	110,753,161	75,800,535
Capital equity credits	26,802,854	26,802,963
Retained earnings	42,668,220	39,903,100
Total stockholders' equity	<u>184,200,885</u>	<u>146,474,773</u>
	<u>\$ 202,942,299</u>	<u>170,906,944</u>

See accompanying auditors' report on supplementary information.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Earnings Information - Parent Company

Years ended April 30, 1993 and 1992

	<u>1993</u>	<u>1992</u>
Sale of tobacco, net of sales adjustments	\$ 65,969,155	30,972,032
Cost of tobacco sold	<u>68,592,714</u>	<u>30,972,032</u>
Gross loss on tobacco sales	<u>(2,623,559)</u>	<u>-</u>
Other income:		
Interest	8,234,259	7,844,248
Rent	127,423	125,405
Overhead and salary reimbursements	30,000	30,000
Other	<u>119,115</u>	<u>54,134</u>
Total other income	<u>8,510,797</u>	<u>8,053,787</u>
General and administrative expenses:		
Salaries and wages	1,749,234	1,661,332
Employee group insurance and retirement	532,086	(22,170)
Repairs and maintenance	41,637	35,775
Directors fees and expense	111,676	92,830
Heat, light, and water	59,144	58,655
Depreciation	184,274	195,429
Professional fees	72,639	91,681
Travel expense	107,862	91,884
Member relations	5,406	7,578
Promotional and public relations	137,784	136,830
Taxes and licenses	41,486	37,459
Office supplies and expense	71,370	49,129
Payroll taxes	131,056	126,659
Insurance	100,141	82,702
Automobile and truck expense	12,591	7,866
Postage and telephone expense	123,500	147,402
Fumigation	57,388	66,181
Pesticide testing	76,349	77,169
Other	<u>(14,757)</u>	<u>(40,732)</u>
Total general and administrative expenses	<u>3,600,866</u>	<u>2,903,659</u>
Less price support and other reimbursements	<u>1,140,322</u>	<u>745,744</u>
Net general and administrative expenses	<u>2,460,544</u>	<u>2,157,915</u>
Earnings before provision for income taxes and cumulative effect of change in accounting principle	3,426,694	5,895,872
Provision for income taxes	<u>595,667</u>	<u>2,000,000</u>
Earnings before cumulative effect of change in accounting principle	2,831,027	3,895,872
Cumulative effect at May 1, 1992 of change in accounting for income taxes	<u>422,806</u>	<u>-</u>
Net earnings - parent company	2,408,221	3,895,872
Net earnings - subsidiary	<u>356,899</u>	<u>258,812</u>
Net earnings	\$ <u>2,765,120</u>	<u>4,154,684</u>

See accompanying auditors' report on supplementary information.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Balance Sheet Information - Tobacco Growers Services, Inc.

April 30, 1993 and 1992

<u>Assets</u>	<u>1993</u>	<u>1992</u>
Cash	\$ 34,726	12,285
Investment in interest-bearing obligations, at amortized cost	2,607,264	2,270,805
Accrued interest receivable	38,270	45,500
Accounts receivable	30,959	11,681
Prepaid expense	3,503	3,288
Property, plant and equipment:		
Land	115,241	115,241
Buildings	2,434,942	2,405,650
Furniture, fixtures and equipment	371,022	361,867
Automobiles and trucks	71,416	95,896
Total	2,992,621	2,978,654
Less accumulated depreciation	1,793,844	1,738,794
Net property, plant and equipment	1,198,777	1,239,860
	<u>\$ 3,913,499</u>	<u>3,583,419</u>
<u>Liabilities and Stockholder's Equity</u>		
Accounts payable - trade	4,282	3,395
Accrued expenses	5,322	4,719
Income taxes payable	(24,300)	7,700
Deferred income taxes	176,000	172,309
Total liabilities	<u>161,304</u>	<u>188,123</u>
Stockholder's equity:		
Common stock	250,000	250,000
Retained earnings	3,502,195	3,145,296
Total stockholder's equity	<u>3,752,195</u>	<u>3,395,296</u>
	<u>\$ 3,913,499</u>	<u>3,583,419</u>

See accompanying auditors' report on supplementary information.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Earnings Information - Tobacco Growers Services, Inc.

Years ended April 30, 1993 and 1992

	<u>1993</u>	<u>1992</u>
Storage Income:		
Parent company	\$ 882,973	836,381
Others	<u>136,897</u>	<u>64,685</u>
Total storage income	1,019,870	901,066
Operating expense	<u>589,630</u>	<u>601,950</u>
Operating income	430,240	299,116
Other income - net	<u>122,350</u>	<u>111,696</u>
Earnings before provision for income taxes and cumulative effect of change in accounting principle	552,590	410,812
Provision for income taxes	<u>214,000</u>	<u>152,000</u>
Earnings before cumulative effect of change in accounting principle	338,590	-
Cumulative effect at May 1, 1992 of change in accounting for income taxes	<u>18,309</u>	<u>152,000</u>
Net earnings	\$ <u>356,899</u>	<u>258,812</u>

See accompanying auditors' report on supplementary information.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Operating Expense Information - Tobacco Growers Services, Inc.

Years Ended April 30, 1993 and 1992

	<u>1993</u>	<u>1992</u>
Labor:		
Salaries and wages - full time	\$ 129,868	123,574
Seasonal labor	125,161	121,101
Payroll taxes and insurance	20,372	19,794
Employee group insurance and retirement expense	<u>58,142</u>	<u>50,917</u>
Total labor	<u>333,543</u>	<u>315,386</u>
Other expenses:		
Depreciation	82,517	87,663
Heat, lights, and water	9,602	11,415
Repairs and maintenance - equipment	3,396	4,980
Building rent	-	14,253
Operating supplies	15,922	14,361
Repairs and maintenance - building	5,435	10,002
Taxes and licenses	46,758	46,351
Insurance	36,215	39,645
Gasoline and oil	11,301	12,725
Tow motor expense	26,573	31,583
Automobile and truck expense - net	2,271	4,061
Telephone	4,664	5,453
Office supplies and expense	11,085	1,637
Travel expense	348	1,550
Claims paid	-	885
Total other expense	<u>256,087</u>	<u>286,564</u>
Total	\$ <u>589,630</u>	<u>601,950</u>

See accompanying auditors' report on supplementary information.

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Schedule 8

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION AND SUBSIDIARY

Other Income - Net - Tobacco Growers Services, Inc.

Years ended April 30, 1993 and 1992

	<u>1993</u>	<u>1992</u>
Other income:		
Interest income	\$ 157,310	151,256
Rental income	1,440	1,440
Miscellaneous	<u>4,500</u>	<u>2,300</u>
Total other revenue	<u>163,250</u>	<u>154,996</u>
Other deductions:		
Management fees and expense	30,000	30,000
Directors fee and expense	6,900	9,300
Legal and accounting expense	<u>4,000</u>	<u>4,000</u>
Total other deductions	<u>40,900</u>	<u>43,300</u>
Other income - net	\$ <u>122,350</u>	<u>111,696</u>

See accompanying auditors' report on supplementary information.

EXHIBIT F

**U.S. TOBACCO COOPERATIVE INC.
AND SUBSIDIARIES
Raleigh, North Carolina**

**CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016**

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INDEPENDENT AUDITORS' REPORT

Board of Directors
U.S. Tobacco Cooperative Inc.
and Subsidiaries
Raleigh, North Carolina

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries, which comprise the consolidated balance sheets as of April 30, 2017 and 2016, and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for the years then ended, and the related notes to consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

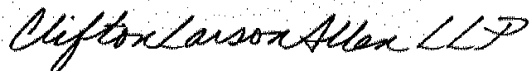
An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Board of Directors
U.S. Tobacco Cooperative Inc.
and Subsidiaries

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of U.S. Tobacco Cooperative Inc. and Subsidiaries as of April 30, 2017 and 2016, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.



CliftonLarsonAllen LLP

Stevens Point, Wisconsin
July 11, 2017

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
April 30, 2017 and 2016

	<u>2017</u>	<u>2016</u>
ASSETS		
Current assets		
Cash and cash equivalents	\$ 11,473,765	\$ 12,710,115
Investment in interest-bearing obligations	25,152,224	21,095,615
Accounts receivable, net	51,974,423	60,333,034
Inventories, net	129,577,773	149,192,091
Prepaid expenses and other assets	1,826,422	1,414,833
Income taxes receivable	289,008	363,772
Total current assets	<u>220,293,615</u>	<u>245,109,460</u>
Investment in interest-bearing obligations	104,346,849	106,633,925
Property, plant, and equipment, net	40,636,136	29,364,765
Intangible assets, net	156,464,020	132,860,749
Other assets	689,846	621,344
TOTAL ASSETS	<u>\$ 522,430,466</u>	<u>\$ 514,590,243</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	\$ 3,277,443	\$ 1,942,476
Accrued expenses	18,374,143	10,534,998
Current portion of long-term debt	8,980,688	8,008,524
Revolving line of credit	-	2,500,000
Patronage dividends payable in cash	-	4,486,543
Stock redemption payable	4,024,075	4,062,668
Customer deposits	744,166	1,948,701
Total current liabilities	<u>35,400,515</u>	<u>33,483,910</u>
Deferred income taxes	1,820,458	3,732,727
Pension benefits	5,841,759	7,577,240
Other	54,225	59,734
Revolving line of credit	89,888,023	95,000,000
Long-term debt, less current portion	40,489,531	11,146,116
Total liabilities	<u>173,494,511</u>	<u>150,999,727</u>
Stockholders' equity		
Common stock	3,640	3,695
Additional paid-in capital	110,753,161	110,753,161
Accumulated other comprehensive loss	(4,951,274)	(5,396,558)
Contributed capital	81,520,000	81,520,000
Capital equity credits:		
Qualified	32,199,308	34,895,751
Nonqualified	3,813,562	8,852,886
Retained earnings	125,597,558	132,961,581
Total stockholders' equity	<u>348,935,955</u>	<u>363,590,516</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$ 522,430,466</u>	<u>\$ 514,590,243</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
Years Ended April 30, 2017 and 2016

	<u>2017</u>	<u>2016</u>
REVENUE	\$ 266,955,457	\$ 247,363,257
COST OF SALES	<u>245,900,735</u>	<u>212,232,898</u>
Gross margin	21,054,722	35,130,359
SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES	<u>35,819,593</u>	<u>28,913,399</u>
Operating margin (loss)	<u>(14,764,871)</u>	<u>6,216,960</u>
OTHER INCOME (EXPENSE)		
Interest income	2,017,022	1,840,176
Interest expense	(2,506,630)	(2,197,331)
Other revenue, net	473,981	1,652,368
Gain (loss) on disposal of assets	<u>77,341</u>	<u>(80,020)</u>
Total other income (expense)	<u>61,714</u>	<u>1,215,193</u>
Margin (loss) before income taxes	(14,703,157)	7,432,153
PROVISION (CREDIT) FOR INCOME TAXES	<u>(2,299,810)</u>	<u>(2,089,006)</u>
NET MARGIN (LOSS)	<u>\$ (12,403,347)</u>	<u>\$ 9,521,159</u>
Distribution of net margin (loss):		
Patronage dividends payable in cash	\$ -	\$ 4,486,543
Issuance of nonqualified equity credits	-	<u>3,813,562</u>
Total allocated net margin for members	-	8,300,105
Unallocated margin (loss) and income taxes retained	<u>(12,403,347)</u>	<u>1,221,054</u>
	<u>\$ (12,403,347)</u>	<u>\$ 9,521,159</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
Years Ended April 30, 2017 and 2016

	<u>2017</u>	<u>2016</u>
NET MARGIN (LOSS)	<u>\$ (12,403,347)</u>	<u>\$ 9,521,159</u>
OTHER COMPREHENSIVE INCOME (LOSS), NET OF TAXES		
Available-for-sale investments		
Unrealized holding gains (losses) arising during the year	(504,701)	143,471
Add reclassification adjustment for losses included in net margin	78,952	4,440
	<u>(425,749)</u>	<u>147,911</u>
Defined benefit pension plan		
Net gain (loss) arising during the year	559,638	(1,652,766)
Add reclassification adjustment for amortization of net gain on pension included in net margin	311,395	226,939
	<u>871,033</u>	<u>(1,425,827)</u>
Other comprehensive gain (loss), net of taxes	<u>445,284</u>	<u>(1,277,916)</u>
COMPREHENSIVE INCOME (LOSS)	<u><u>\$ (11,958,063)</u></u>	<u><u>\$ 8,243,243</u></u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
Years Ended April 30, 2017 and 2016

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Contributed Capital	Capital Equity Credits		Retained Earnings	Total
	Shares	Amount				Qualified	Nonqualified		
BALANCE, APRIL 30, 2015	849	\$ 4,245	\$ 110,753,161	\$ (4,118,642)	\$ 81,520,000	\$ 35,508,215	\$ 5,865,085	\$ 131,740,527	\$ 361,272,591
Net margin	-	-	-	-	-	-	-	9,521,159	9,521,159
Net loss on pension plan	-	-	-	(1,425,827)	-	-	-	-	(1,425,827)
Unrealized gain on investments	-	-	-	147,911	-	-	-	-	147,911
Patronage declared on 2016 net margin:									
Issuance of capital equity credits	-	-	-	-	-	-	3,813,562	(3,813,562)	-
Payable in cash	-	-	-	-	-	-	-	(4,486,543)	(4,486,543)
Capital equity credits called for redemption						(1,438,225)			(1,438,225)
Transfers	-	-	-	-	-	825,761	(825,761)	-	-
Membership stock issued and cancelled, net	(110)	(550)	-	-	-	-	-	-	(550)
BALANCE, APRIL 30, 2016	739	3,695	110,753,161	(5,396,558)	81,520,000	34,895,751	8,852,886	132,961,581	363,590,516
Net loss	-	-	-	-	-	-	-	(12,403,347)	(12,403,347)
Net gain on pension plan	-	-	-	871,033	-	-	-	-	871,033
Unrealized loss on investments	-	-	-	(425,749)	-	-	-	-	(425,749)
Capital equity credits called for redemption:									
1967 - 1973 qualified equity credits paid	-	-	-	-	-	(549,871)	-	-	(549,871)
2010 qualified equity credits paid	-	-	-	-	-	(2,146,572)	-	-	(2,146,572)
2014 nonqualified equity credits cancelled	-	-	-	-	-	-	(5,039,324)	5,039,324	-
Membership stock issued and cancelled, net	(11)	(55)	-	-	-	-	-	-	(55)
BALANCE, APRIL 30, 2017	<u>728</u>	<u>\$ 3,640</u>	<u>\$ 110,753,161</u>	<u>\$ (4,951,274)</u>	<u>\$ 81,520,000</u>	<u>\$ 32,199,308</u>	<u>\$ 3,813,562</u>	<u>\$ 125,597,558</u>	<u>\$ 348,935,955</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
Years Ended April 30, 2017 and 2016

	<u>2017</u>	<u>2016</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Net margin (loss)	\$ (12,403,347)	\$ 9,521,159
Adjustments to reconcile net margin (loss) to net cash provided by operating activities:		
Depreciation and amortization	4,512,779	4,231,345
Amortization of premiums on investments	909,430	1,385,239
Provision for obsolete inventory	273,324	3,515,760
Inventory valuation adjustment	11,235,823	-
Provision (credit) for doubtful accounts	(19,455)	699,165
Realized (gain) loss on sale of investments	(16,067)	89,690
Gain on disposal of assets	(61,274)	(9,670)
Net periodic benefit costs (benefit)	343,819	(52,455)
Employer contribution to the pension plan	(384,255)	(632,719)
Deferred income taxes	(2,464,081)	(2,174,480)
Cash provided by (used in) changes in:		
Receivables	9,665,174	5,768,247
Income taxes receivable	74,764	(167,813)
Inventories	10,094,747	(11,883,649)
Prepaid expenses and other assets	(318,172)	(1,052,568)
Accounts payable	483,238	(77,900)
Accrued expenses and other liabilities	4,801,201	2,459,290
Customer deposits	(1,204,535)	(473,076)
Net cash provided by operating activities	<u>25,523,113</u>	<u>11,145,565</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of property, plant, and equipment	(13,646,737)	(6,994,672)
Proceeds on disposal of assets	75,723	18,069
Cash from business acquisition	1,329,870	-
Purchase of interest-bearing obligations	(55,776,521)	(51,999,686)
Maturities and calls of interest-bearing obligations	52,421,035	48,793,114
Net cash used in investing activities	<u>(15,596,630)</u>	<u>(10,183,175)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Net borrowings on revolving line of credit	(7,611,977)	18,500,000
Payments on note payable	(8,573,345)	(8,016,686)
Payment of loan origination costs	(171,568)	(778,265)
Proceeds from long term debt	12,415,691	-
Net payments on common stock	(55)	(550)
Redemption of stockholders' equity credits	(2,735,036)	(2,513,518)
Patronage distribution	(4,486,543)	(5,669,240)
Net cash provided by (used in) financing activities	<u>(11,162,833)</u>	<u>1,521,741</u>
INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(1,236,350)	2,484,131
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	<u>12,710,115</u>	<u>10,225,984</u>
CASH AND CASH EQUIVALENTS, END OF YEAR	<u>\$ 11,473,765</u>	<u>\$ 12,710,115</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES

Organization Data

U.S. Tobacco Cooperative Inc. (USTC) was incorporated on June 1, 1946, under the provisions of the Cooperative Marketing Act of the State of North Carolina as a cooperative operating on a cooperative basis, with capital stock. USTC and its subsidiaries (collectively the Cooperative) have four primary business activities; 1) as a global leaf supplier, 2) as a manufacturer and distributor of 10 brands of tobacco consumer products within the United States of America, 3) as a contract manufacturer of consumer products, principally internationally, and 4) as a producer of cut rag and pipe tobacco. The Cooperative purchases the majority of its leaf tobacco from member growers. The leaf tobacco is processed, stored, and shipped internationally, domestically, and for use in the Cooperative's own brands of consumer products.

The authorized capital stock of USTC consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who patronize USTC. At all meetings of the members, each member is entitled to only one vote. No dividends are payable on the common stock. USTC has adopted a bylaw consent form in which each member agrees to take into taxable gross income patronage refunds allocated to them.

USTC is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members. The capital equity credits are used to accumulate capital as considered necessary by the board of directors. Capital equity credits bear no interest, have no due date, and may only be redeemed or retired at the discretion of the board of directors in order of issuance by years.

A summary of the Cooperative's significant accounting policies follows:

Consolidation Policy

The accompanying consolidated financial statements include the accounts of USTC and its wholly-owned subsidiaries, U.S. Flue-Cured Tobacco Growers, Inc. (USFC), Premier Manufacturing, Inc. (Premier), Franchise Wholesale Co., L.L.C. (Franchise), Big South Distribution, LLC (Big South), and King Maker Marketing, Inc. (KMM). KMM was acquired effective November 15, 2016. All material intercompany balances and transactions have been eliminated.

Revenue Recognition

Revenues are generated primarily from sales of leaf tobacco and tobacco consumer products. Sales are recognized upon shipment of goods to the customer at which time there is transfer of the title and risk of loss to the customer.

The Cooperative's accounting policy is to include federal and state excise taxes in revenues and cost of sales. Such revenues and cost of sales totaled \$69,542,106 and \$54,149,701 for the years ended April 30, 2017 and 2016, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES (CONTINUED)

Shipping and Handling Costs

Shipping and handling costs are included in cost of sales.

Cash and Cash Equivalents

For purposes of the statements of cash flows, the Cooperative considers money market funds and all other short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents. The Cooperative places its cash and cash equivalents with high credit-quality institutions.

The Cooperative maintains cash balances that from time to time may exceed the federally insured limits. The Cooperative has not experienced any losses on such accounts and management believes the Cooperative is not exposed to any significant credit risk on these accounts.

Interest-Bearing Obligations

The Cooperative's interest-bearing obligations consist of debt securities, which are classified as available for sale. Investments in debt securities are stated at fair values as adjusted for amortization of premium or discount, if applicable, and unrealized holding gains and losses are reported as accumulated other comprehensive income. Amortized discounts and premiums are included in net interest income. Interest on investments in debt securities is credited to income as it accrues on the principal amount outstanding adjusted for amortization of premiums and discounts computed by the effective interest method. Realized gains and losses on disposition of investments are included in net interest income in the accompanying consolidated statements of operations. The cost of investments sold is determined on the specific identification method.

Fair Value Measurements

The estimated fair value of the Cooperative's short-term financial instruments, including cash and cash equivalents, accounts receivable, income taxes receivable, accounts payable, accrued expenses, stock redemption and patronage payable, and customer deposits approximates their individual carrying amounts due to the relatively short period of time between their origination and expected realization. The fair value of the line of credit is estimated based on current rates offered to the Cooperative for similar debt of the same remaining maturities. The carrying value of the fixed rate long-term debt approximates fair value due to its proximity to current market rates for similar debt issues.

Accounts Receivable

Accounts receivable are recorded at net realizable value. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history, and current economic conditions. The allowance is reviewed periodically and adjusted for accounts deemed uncollectible by management. After all attempts to collect have failed, the receivable is written off against the allowance. The allowance for doubtful accounts totaled \$843,432 and \$868,165 as of April 30, 2017 and 2016, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES (CONTINUED)

Inventories

Inventories are priced at the lower of average cost (which approximates the first-in, first-out method) or market.

The Cooperative evaluates its inventory value at the end of each year to ensure that it is carried at the lower of cost or market. This evaluation includes a review of potential obsolete and slow-moving stock, based on historical product sales and forecasted sales, and an overall consolidated analysis of potential excess inventories. Events which could affect the amount of reserves for obsolete or slow moving inventories include a decrease in demand for the products due to economic conditions, price decreases by competitors on specific products or systems, or the discontinuance by a vendor. To the extent historical physical inventory results are not indicative of future results and if future events impact, either favorably or unfavorably, the salability of the Cooperative's products or its relationship with certain key vendors, the Cooperative's inventory reserves could differ significantly, resulting in either higher or lower future inventory provisions.

Property, Plant, and Equipment

Property, plant, and equipment are stated at cost and depreciated over their estimated useful lives using the straight-line method. Routine maintenance and repairs are charged to expense when incurred. When an asset is disposed of, the asset and related accumulated depreciation are written off and any gain or loss on the disposal is recognized. Major replacements and improvements are capitalized and depreciated over their estimated useful lives.

Accounting for Impairment of Long-Lived Assets

Long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate that an asset may not be recoverable and are grouped with other assets to the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. If the sum of the projected undiscounted cash flows is less than the carrying value of the assets, the assets are written down to the estimated fair value. Assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell.

No impairment of long-lived assets was recognized during the years ended April 30, 2017 and 2016.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES (CONTINUED)

Business Combinations – Valuation of Acquired Assets and Liabilities Assumed

The Cooperative allocates the purchase price for each business combination, or acquired business, based upon (i) the fair value of the consideration paid and (ii) the fair value of net assets acquired. The determination of the fair value of net assets acquired requires estimates and judgments of future cash flow expectations for the acquired business and the allocation of those cash flows to identifiable tangible and intangible assets. Fair values are calculated by incorporating expected cash flows into industry standard valuation techniques. For current assets and current liabilities, the book value is generally assumed to equal the fair value. Goodwill is the amount by which the purchase price consideration exceeds the fair value of tangible and intangible assets, less assumed liabilities. To the extent possible, the purchase price should be allocated to separate identifiable intangible assets, such as customer relationships and brands, which are amortized to expense over their estimated useful lives. Indefinite-lived intangible assets are not amortized, but are tested for impairment annually, and if impaired, their value is reduced to fair value. Acquisition costs are expensed as incurred.

Due to the time required to gather and analyze the necessary data for each acquisition, U.S. GAAP provides a "measurement period" of up to one year in which to finalize such calculations. Most calculations are considered preliminary until the end of the measurement period. All subsequent adjustments to initial valuations and estimates during the measurement period that reflect newly discovered information that existed as of the acquisition date are recorded as an adjustment to the acquired balance sheet; otherwise, those adjustments are reflected as income or expense, as appropriate. The consolidated balance sheet for the period of acquisition is modified for subsequent measurement period adjustments when that period is presented in future consolidated financial statements.

Income Taxes

Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and net operating loss carryforwards. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The Cooperative recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Cooperative's policy is to recognize interest and penalties related to income taxes in its income tax provision. The Cooperative has not accrued or paid interest or penalties which were material to its results of operations for the years ended April 30, 2017 and 2016. As of April 30, 2017 and 2016, the Cooperative had no material unrecognized tax benefits. The Cooperative files in the U.S. and various state jurisdictions.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES (CONTINUED)

Pension Plan

The Cooperative has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan was frozen effective July 31, 2010. The plan provides benefits through mutual funds invested in common stocks and bonds. The Cooperative is required to recognize in its consolidated balance sheet the funded status of a benefit plan measured as the difference between the fair value of plan assets and benefit obligations, net of tax.

Self-Insurance

The Company maintains a self-insured employee benefit plan which covers health care costs. Benefit costs are accrued based on the aggregate of the liability for reported claims and an estimated liability for claims incurred but not reported. The accompanying consolidated statements of operations include expenses relating to self-insured plans.

Advertising Costs

Advertising costs are expensed as incurred. Advertising expenses of \$583,316 and \$291,138 for the years ended April 30, 2017 and 2016, respectively, are included in selling, general, and administrative expenses in the accompanying consolidated statements of operations.

Use of Estimates

The preparation of financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates include the valuation of accounts receivable, inventories, trademarks, customer relationships, and the master settlement agreement grandfather exemption. Estimates also include the useful lives of property, plant, and equipment and are used in determining the master settlement agreement obligation, pension benefit obligations, accrued and deferred income taxes, and litigation contingencies.

Reclassifications

Certain amounts in these 2016 financial statements have been reclassified to conform to the 2017 presentation. These reclassifications had no effect on previously reported net margin.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 2 – BUSINESS COMBINATION

On October 8, 2016, Premier entered into a stock purchase agreement to acquire 100% of the outstanding securities of KMM for a purchase price of approximately \$23,895,000 financed by borrowings from a note payable. The acquisition was made to expand the number of consumer product offerings of the Cooperative and is considered a business combination. All activity since the effective date of acquisition on November 15, 2016, is included in the consolidated statement of operations for the year ended April 30, 2017.

The following table summarizes the approximate estimated fair values of the assets acquired and liabilities assumed at the date of acquisition:

	Amount
Cash	\$ 1,330,000
Accounts Receivable	598,000
Inventories	1,990,000
Prepaid Expenses	162,000
Intangible Assets	23,700,000
Total Assets Acquired	<u>27,780,000</u>
Accounts Payable	852,000
MSA Settlement Payable	2,667,000
Accrued Expenses	102,000
FDA Assessment Payable	264,000
Total Liabilities Assumed	<u>3,885,000</u>
Net Assets Acquired	<u>\$ 23,895,000</u>

Costs related to the acquisition, which included legal, accounting, and transaction fees in the amount of approximately \$1,290,000 were charged directly to operations and are included in other expenses on the consolidated statement of operations for the year ended April 30, 2017.

NOTE 3 – FAIR VALUE MEASUREMENTS

Under the accounting standards authoritative guidance on fair value measurements, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value, the Cooperative uses various methods including market, income, and cost approaches. Based on these approaches, the Cooperative often uses certain assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and/or the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated, or generally unobservable inputs. The Cooperative uses valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 3 – FAIR VALUE MEASUREMENTS (CONTINUED)

Based on the observability of the inputs used in the valuation techniques the Cooperative is required to provide the following information according to the fair value hierarchy. The fair value hierarchy ranks the quality and reliability of the information used to determine fair values. Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

- Level 1 – Quoted prices for identical assets and liabilities traded in active exchange markets, such as the New York Stock Exchange.
- Level 2 – Observable inputs other than Level 1 including quoted prices for similar assets or liabilities, quoted prices in less active markets, or other observable inputs that can be corroborated by observable market data. Level 2 also includes derivative contracts whose value is determined using a pricing model with observable market inputs or can be derived principally from or corroborated by observable market data.
- Level 3 – Unobservable inputs supported by little or no market activity for financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation, also includes observable inputs for nonbinding single dealer quotes not corroborated by observable market data.

The following tables summarize fair value measurements by level as of April 30, 2017 and 2016, for assets measured at fair value on a recurring basis:

April 30, 2017				
	Total	Level 1	Level 2	Level 3
Available for sale securities				
Money market funds	\$ 78,207	\$ 78,207	\$ -	\$ -
Mutual funds	485,664	485,664	-	-
Debt securities:				
Government agency (state taxable)	31,363,785	-	31,363,785	-
Agency mortgage-backed securities	28,521,778	-	28,521,778	-
Corporate bonds	69,049,639	-	69,049,639	-
Total available for sale securities	\$ 129,499,073	\$ 563,871	\$ 128,935,202	\$ -
April 30, 2016				
	Total	Level 1	Level 2	Level 3
Available for sale securities				
Money market funds	\$ 401,569	\$ 401,569	\$ -	\$ -
Debt securities:				
Government agency (state taxable)	16,974,256	-	16,974,256	-
Agency mortgage-backed securities	38,829,748	-	38,829,748	-
Corporate bonds	71,523,967	-	71,523,967	-
Total available for sale securities	\$ 127,729,540	\$ 401,569	\$ 127,327,971	\$ -

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 4 – INVESTMENT IN INTEREST-BEARING OBLIGATIONS

Investments in interest-bearing obligations at April 30, 2017 and 2016 were as follows:

		2017			
		Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term		\$ 25,120,985	\$ 35,677	\$ (4,438)	\$ 25,152,224
Long-term		104,603,386	137,110	(393,647)	104,346,849
		<u>\$ 129,724,371</u>	<u>\$ 172,787</u>	<u>\$ (398,085)</u>	<u>\$ 129,499,073</u>

		2016			
		Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term		\$ 20,949,910	\$ 145,945	\$ (240)	\$ 21,095,615
Long-term		105,774,274	950,310	(90,659)	106,633,925
		<u>\$ 126,724,184</u>	<u>\$ 1,096,255</u>	<u>\$ (90,899)</u>	<u>\$ 127,729,540</u>

The unrealized gains (losses) on the Cooperative's investment in interest-bearing obligations were primarily due to changes in interest rates and not credit quality. There were 72 and 39 debt securities in loss positions as of April 30, 2017 and 2016, respectively. It is unlikely that the Cooperative will be required to sell its investments before recovery of the amortized cost basis, which may be maturity. Accordingly, the Cooperative's investment in interest-bearing obligations are not considered to be other-than-temporarily impaired at April 30, 2017.

Contractual maturities of interest-bearing obligations as of April 30, 2017, are summarized below.

	Amortized Cost	Estimated Fair Value
Due in one year or less	\$ 25,120,985	\$ 25,152,224
Due after one year through five years	99,989,388	99,763,242
Due after five years through ten years	2,504,344	2,471,407
Due after ten years	2,109,654	2,112,200
	<u>\$ 129,724,371</u>	<u>\$ 129,499,073</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 5 – INVENTORIES

Inventories consisted of the following at April 30, 2017 and 2016:

	<u>2017</u>	<u>2016</u>
Processed tobacco	\$ 111,756,534	\$ 133,469,619
Materials and work in process	5,696,223	5,152,423
Tobacco products	<u>13,374,347</u>	<u>11,909,432</u>
	130,827,104	150,531,474
Reserve for obsolete and slow moving inventory	<u>(1,249,331)</u>	<u>(1,339,383)</u>
	<u>\$ 129,577,773</u>	<u>\$ 149,192,091</u>

During the years ended April 30, 2017 and 2016, the Cooperative determined that the market value of various tobacco products had permanently declined in value. In response, the Cooperative recorded an inventory write-down of \$11,509,147 and \$4,096,413 for the years ended April 30, 2017 and 2016, respectively, to present the impacted tobacco products at their net realizable value.

NOTE 6 – PROPERTY, PLANT, AND EQUIPMENT

Property, plant, and equipment, their estimated useful lives, and related accumulated depreciation at April 30, 2017 and 2016, are summarized as follows:

	<u>Estimated Useful Lives In Years</u>	<u>2017</u>	<u>2016</u>
Land	-	\$ 1,748,677	\$ 1,265,977
Buildings	5-20	17,196,370	14,408,143
Machinery and equipment	3-15	50,996,248	48,683,116
Furniture and fixtures	3-10	2,888,673	2,284,217
Automobiles and trucks	3-5	389,413	643,433
Construction in progress	-	<u>11,971,011</u>	<u>2,691,055</u>
		85,190,392	69,975,941
Less accumulated depreciation		<u>(44,554,256)</u>	<u>(40,611,176)</u>
		<u>\$ 40,636,136</u>	<u>\$ 29,364,765</u>

For the years ended April 30, 2017 and 2016, depreciation expense amounted to \$4,209,075 and \$3,919,780, respectively, of which \$2,791,234 and \$2,600,083 are included in cost of sales, and \$1,417,841 and \$1,319,697 are included in selling, general, and administrative expenses, respectively, in the accompanying consolidated statements of operations.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 6 – PROPERTY, PLANT, AND EQUIPMENT (CONTINUED)

The Company entered into various contracts during 2017 and 2016 for the acquisition of property, equipment, and facility upgrades. The acquisitions and upgrades are expected to be completed at various dates through January 2018. Costs totaling \$11,971,011 have been incurred and are included above as construction in progress at April 30, 2017. No interest has been capitalized in association with these contracts, and the total additional cost upon completion is estimated to be approximately \$3,270,000.

NOTE 7 – INTANGIBLE ASSETS

Intangible assets consisted of the following at April 30, 2017 and 2016:

	Estimated Lives	2017	2016
Master Settlement Agreement (MSA) - grandfather exemption	Indefinite	\$ 149,930,020	\$ 127,785,379
Trademarks	10 Year - Indefinite	5,864,000	5,064,000
Customer list and noncompete	5-10 Years	930,000	180,000
		156,724,020	133,029,379
Less accumulated amortization		(260,000)	(168,630)
		<u>\$ 156,464,020</u>	<u>\$ 132,860,749</u>

U.S. GAAP require that the unamortized value of indefinite lived intangible assets be evaluated annually to determine whether the amount reflected above has been impaired. During 2017 and 2016, no amounts were determined to be impaired.

A previously acquired customer list and noncompete agreement totaling \$180,000 was amortized over five years on a straight-line basis, with final amortization of \$11,370 recorded in 2017. As part of the acquisition of KMM, Premier acquired a customer list as well as a noncompete agreement totaling \$750,000. The customer list is being amortized over 10 years with \$35,000 recognized in 2017. The noncompete agreement is being amortized over five years with \$5,000 recognized in 2017.

Premier carries \$5,064,000 related to the Wildhorse, First Class, Ultra Buy, and Shield trademarks which is considered to be an indefinite lived intangible asset. These trademarks were available commercially prior to February 15, 2007, the effective date of the FDA's Substantial Equivalence requirements. Premier also owns the 1839 and Traffic brands, which have no costs associated with them. Premier also acquired the Ace, Gold Crest, Checkers, and Hi-Val trademarks valued at \$800,000 as part of the acquisition of KMM which are being amortized over 10 years with \$40,000 recognized in 2017.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 7 – INTANGIBLE ASSETS (CONTINUED)

Future amortization of the intangible assets is as follows:

<u>Year Ending</u> <u>April 30.</u>	<u>Amount</u>
2018	\$ 160,000
2019	160,000
2020	160,000
2021	160,000
2022	155,000
Later years	675,000

In 1998, the major United States cigarette manufacturers entered into the MSA with attorneys general representing 46 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas. The MSA became effective on November 23, 1998, when final approval was achieved in 80% of the settling jurisdictions. The MSA settled all health care cost recovery actions brought by settling jurisdictions and contains releases of various additional present and future claims. To entice other cigarette manufacturers into joining the MSA, the agreement provided that if a subsequent participating manufacturer (SPM) joined within 90 days following the MSA's "Execution Date," that SPM would be exempt from making annual payments to the settling states unless their share of the national cigarette market exceeded its 1998 market share or 125% of its 1997 market share.

Premier became a signatory to the MSA in 1999, and was granted an exemption in perpetuity from payment obligations under the MSA except to the extent that its market share exceeds approximately 0.25% of the total cigarettes sold in the United States. KMM became a signatory to the MSA in 1999, and was granted an exemption in perpetuity from payment obligations under the MSA except to the extent that its market share exceeds approximately 0.08% of the total cigarettes sold in the United States.

NOTE 8 – MASTER SETTLEMENT AGREEMENT OBLIGATION

As a party to the MSA, Premier, USFC, and KMM are required to make certain payments to the extent cigarettes sold exceed a specified level. The payment amounts are based generally on Premier's, USFC's, and KMM's relative market share and are subject to several adjustments, including inflation, United States cigarette volume, and certain other factors. At April 30, 2017 and 2016, the Cooperative's management estimated the liability to be \$3,858,240 and \$1,553,150, respectively. The balances accrued at April 30, 2017, are expected to be paid in April 2018, along with the accumulated obligation from April 30, 2017, through the end of the 2017 calendar year. The balance accrued at April 30, 2016, was paid in April 2017, along with the accumulated obligation from April 30, 2016, through the end of the 2016 calendar year.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 9 – ACCRUED EXPENSES

The components of accrued expenses at April 30, 2017 and 2016 are summarized as follows:

	<u>2017</u>	<u>2016</u>
Accrued tobacco product related taxes	\$ 3,563,240	\$ 3,291,647
Other accrued expenses	8,571,266	4,908,848
Accrued master settlement agreement obligation	3,652,826	1,343,830
Accrued insurance	199,607	167,356
Accrued salaries and related benefits	2,327,204	763,317
Accrued interest	60,000	60,000
	<u>\$ 18,374,143</u>	<u>\$ 10,534,998</u>

NOTE 10 – REVOLVING LINES OF CREDIT

On November 15, 2016, the Cooperative entered into a second amended and restated syndicated loan (Loan Agreement) with six financial institutions which consists of a term loan (Term Loan) and a revolving credit facility (Revolving Credit Facility). The Loan Agreement is collateralized by all assets of the Cooperative. The Cooperative is required to maintain a minimum tangible net worth and fixed charge coverage ratio under the conditions of the Loan Agreement. The Cooperative failed to attain the required fixed charge coverage ratio for the quarter ended April 30, 2017, however the lender has subsequently waived the failure as of April 30, 2017, as well as modified the covenant requirements for the first three quarters of fiscal year ending April 30, 2018.

The Revolving Credit Facility provides for up to \$195,000,000 in funding through the use of two separate tranches (Tranche A and Tranche B) and a swing line (Swing Line), all of which mature on March 24, 2021. Tranche A provides up to \$95,000,000 in funding, subject to a borrowing base limitation as defined in the Loan Agreement. Interest-only payments are due monthly at the one-month London Interbank Offered Rate (LIBOR) rate plus 1.00% (1.9828% at April 30, 2017). Tranche B provides up to \$100,000,000 in funding, subject to a borrowing base limitation as defined in the Agreement, and requires a zero balance for 60 consecutive days within each fiscal year. Interest-only payments are due monthly at the one-month LIBOR rate plus 1.50% (2.4828% at April 30, 2017). The Swing Line provides up to \$10,000,000 in funding. Interest-only payments are due monthly at the prime rate plus 1.00% (5.00% at April 30, 2017). At April 30, 2017 and 2016, Tranche A had an outstanding balance of \$89,888,023 and \$95,000,000, respectively. Tranche B had an outstanding balance of \$-0- and \$2,500,000 as of April 30, 2017 and 2016, respectively. There was no balance outstanding on the Swing Line at April 30, 2017 or 2016.

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NOTE 11 – LONG-TERM DEBT

Long-term debt consisted of the following as of April 30, 2017 and 2016:

	<u>2017</u>	<u>2016</u>
Note payable to financial institutions, payable in monthly interest payments and quarterly principal payments of \$2,000,000 at a variable interest rate equal to the one-month LIBOR rate plus 1.00%, refinanced on November 15, 2016.	\$ -	\$ 20,000,000
Note payable to financial institutions, payable in monthly interest payments and quarterly principal payments of \$2,208,333 at a variable interest rate equal to the one-month LIBOR rate plus 1.10% (2.0828% at April 30, 2017), maturing March 24, 2021.	48,583,333	-
Warehouse financing contract payable in monthly payments of \$13,438, including imputed interest at 2.00% through May 24, 2021.	1,709,017	-
Equipment financing contracts payable in various monthly payments including interest, through 2021.	66,388	83,925
Loan origination fees and costs	(888,519)	(929,285)
	49,470,219	19,154,640
Less current portion of long-term debt	(8,980,688)	(8,008,524)
Long-term debt, less current portion	<u>\$ 40,489,531</u>	<u>\$ 11,146,116</u>

Remaining maturities of long-term debt subsequent to April 30, 2017 are as follows:

<u>Year Ending</u> <u>April 30,</u>	<u>Amount</u>
2018	\$ 8,980,688
2019	8,983,043
2020	8,981,560
2021	8,991,268
2022	10,014,524
Thereafter	4,407,655
	<u>\$ 50,358,738</u>

Loan origination fees and costs were \$1,132,897 and \$961,329 at April 30, 2017 and 2016, respectively, and accumulated amortization was \$244,378 and \$32,044 at April 30, 2017 and 2016, respectively. The costs and fees are amortized over the lives of the applicable debt securities. Total amortization expense for the years ended April 30, 2017 and 2016, was \$212,334 and \$293,565, respectively, and is included as part of interest expense.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 11 – LONG-TERM DEBT (CONTINUED)

The Cooperative entered into an interest rate swap agreement effective November 30, 2016, to effectively fix the interest rate on the \$48,583,333 term note above from a variable interest rate note to a fixed rate of 2.67%. The interest rate swap agreement matures March 24, 2021. The Cooperative's purpose in entering into the swap agreement was to hedge against the risk of interest rate increases on the related variable rate debt. The derivative financial instrument is reflected on the consolidated balance sheet at its fair value which was insignificant as of April 30, 2017. During 2017, the Cooperative closed out previous interest rate swap agreements due to a refinancing of debt during the year. The Cooperative has not adopted hedge accounting for any of these financial instruments. The cash flow effects of the swap agreements are included in interest expense on the consolidated statement of operations. The effect for the years ended April 30, 2017 and 2016, was to increase interest expense by \$140,178 and \$186,010, respectively.

NOTE 12 – OPERATING LEASES

During the fiscal years ended April 30, 2017 and 2016, the Cooperative entered into year-to-year operating leases for purposes of operating tobacco marketing centers and office space for the 2016 and 2015 crop years. Total lease expense for the centers amounted to \$915,437 and \$990,000 for the years ended April 30, 2017 and 2016, respectively.

The Cooperative has noncancelable operating leases, primarily for certain equipment and vehicles, that provide for renewal options for varying periods.

Total lease and rental expenses for operating leases amounted to \$1,118,108 and \$1,348,783 for the years ended April 30, 2017 and 2016, respectively, and are included as a component of selling, general, and other administrative expenses in the accompanying consolidated statements of operations.

Commitments for minimum future lease payments, by year and in aggregate, to be paid under noncancelable operating leases with initial or remaining terms in excess of one year as of April 30, 2017, are as follows:

Year Ending	Amount
April 30,	
2018	\$ 1,437,201
2019	748,626
2020	406,378
2021	216,911
2022	4,777
	<u>\$ 2,813,893</u>

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NOTE 13 – STOCK REDEMPTION PAYABLE

Cooperative membership requires participation in the crop year, which runs May 1 through April 30. Beginning in May 2004, the board of directors approved a plan to terminate stock ownership of members who did not enter into marketing agreements with the Cooperative for the subsequent year.

During the year ended April 30, 2017, the Cooperative offered an open call for redemption of the 1967 to 1973, capital equity credits, from December 1, 2016 through February 28, 2017.

The amounts of capital equity credits offered for redemption and called for redemption are as follows:

<u>Crop year</u>	<u>Offered for Redemption</u>	<u>Called for Redemption</u>
1967	\$ 4,168,283	\$ 85,638
1968	1,924,076	38,515
1969	2,645,548	68,430
1970	7,744,198	201,880
1971	3,063,424	90,529
1972	1,543,179	41,244
1973	753,610	23,635
	<u>\$ 21,842,318</u>	<u>\$ 549,871</u>

The balance of stock redemption payable comprises the following at April 30, 2017 and 2016:

	<u>2017</u>	<u>2016</u>
Terminated stock balances payable	\$ 4,024,075	\$ 4,024,090
Balance due on 1967 to 1973 capital credits called for redemption	-	38,578
	<u>\$ 4,024,075</u>	<u>\$ 4,062,668</u>

NOTE 14 – CASH FLOW DISCLOSURES

Cash paid for interest and income taxes for the years ended April 30, 2017 and 2016 were as follows:

	<u>2017</u>	<u>2016</u>
Interest	\$ 2,069,735	\$ 1,744,450
Income taxes	137,691	421,446

Noncash investing and financing activities consisted of acquisition of property, plant, and equipment by notes payable of \$1,848,158 and \$100,611 at April 30, 2017 and 2016, respectively. In addition, the Cooperative acquired KMM using new long-term borrowings of \$24,584,309.

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NOTE 15 – INCOME TAXES

The provision (credit) for income taxes consisted of the following for the years ended April 30, 2017 and 2016:

		2017		
		Current	Deferred	Total
Federal		\$ -	\$ (2,051,916)	\$ (2,051,916)
State		164,271	(412,165)	(247,894)
		<u>\$ 164,271</u>	<u>\$ (2,464,081)</u>	<u>\$ (2,299,810)</u>

		2016		
		Current	Deferred	Total
Federal		\$ (19,413)	\$ (1,805,347)	\$ (1,824,760)
State		104,887	(369,133)	(264,246)
		<u>\$ 85,474</u>	<u>\$ (2,174,480)</u>	<u>\$ (2,089,006)</u>

The actual provision (credit) for income taxes for 2017 and 2016 differs from the "expected" taxes (computed by applying the U.S. federal corporate income tax rate of 34%) to the margin before income taxes as follows:

	2017	2016
Computed "expected" tax expense	\$ (5,000,000)	\$ 2,526,900
Change in income tax expense (benefit) resulting from:		
State income taxes, net of federal income tax benefit	154,400	318,840
Patronage dividends	-	(3,178,100)
Cancellation of 2014 nonqualified equity credits	1,929,557	-
Nondeductible expenses	94,500	103,000
Valuation allowance	212,183	38,159
Other, net	309,550	(1,897,805)
	<u>\$ (2,299,810)</u>	<u>\$ (2,089,006)</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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April 30, 2017 and 2016

NOTE 15 – INCOME TAXES (CONTINUED)

The tax effects of temporary differences that give rise to the net deferred tax liabilities at April 30, 2017 and 2016 are presented below:

	<u>2017</u>	<u>2016</u>
Deferred tax assets		
Recognition of certain retirement costs	\$ 2,977,878	\$ 2,901,326
Net operating losses and credits	10,077,919	3,904,407
Master settlement agreement	1,477,228	593,495
Allowances and reserves	322,950	332,421
Inventories	2,996,899	2,643,040
Accrued expenses	1,826,899	1,411,678
Capital loss	77,288	83,411
Nonqualified equity credits	1,452,069	3,705,954
Less valuation allowance	<u>(1,064,986)</u>	<u>(852,803)</u>
	<u>20,144,144</u>	<u>14,722,929</u>
Deferred tax liabilities		
Property, plant, and equipment	2,710,056	3,185,980
Intangibles	<u>19,254,546</u>	<u>15,269,676</u>
	<u>21,964,602</u>	<u>18,455,656</u>
	<u>\$ (1,820,458)</u>	<u>\$ (3,732,727)</u>

As of April 30, 2017 and 2016, the Cooperative has \$22,203,918 and \$4,716,746, respectively, of federal net operating loss carry forwards, which expire in 2035 through 2037.

As of April 30, 2017 and 2016, the Cooperative had state net operating loss carryovers of \$33,181,927 and \$26,501,024, respectively, which expire in 2018 through 2037. A valuation allowance is required to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all the evidence, both positive and negative, management has determined that \$1,064,986 and \$852,803 valuation allowance at April 30, 2017 and 2016, respectively, is necessary to reduce the deferred tax asset related to the state net operating losses that will not be realized. The change in the valuation allowance for 2017 and 2016 was \$212,183 and \$38,159, respectively. After taking into account the valuation allowance, the Cooperative has a net deferred tax asset relating to state net operating losses for the years ending April 30, 2017 and 2016 of \$358,518 and \$284,091, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 16 – RETIREMENT PLANS

Defined Benefit Pension Plan: The Cooperative sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Cooperative were eligible to participate after one year of service, which is the completion of 1,000 or more hours of service within a period in which the employee is employed for 12 consecutive months. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service. On May 31, 2010, the Cooperative's board of directors approved a Certificate of Resolution to freeze benefits after July 31, 2010.

The Cooperative's funding policy requires a contribution in the amount necessary to satisfy the minimum required contributions under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), subject to the Cooperative's long-term funding strategy. The Cooperative's funding policy is to contribute funds to the trust for the plan as necessary to provide for current service and for any unfunded projected benefit obligation over a reasonable period. To the extent that these requirements are fully covered by assets in the trust, the Cooperative may elect not to make a contribution in a particular year. The Cooperative made contributions of \$384,255 and \$632,719 to the plan for the years ended April 30, 2017 and 2016, respectively. The Cooperative anticipates making contributions of \$381,000 to the plan for the year ending April 30, 2018.

The following table sets forth the plan's funded status and amounts recognized in the Cooperative's consolidated balance sheets at April 30, 2017 and 2016, as follows:

	Pension Benefits	
	2017	2016
Change in projected benefit obligation:		
Projected benefit obligation - beginning of year	\$ 24,195,266	\$ 23,251,553
Interest cost	942,983	905,666
Actuarial loss	(581,600)	1,452,512
Benefit payment	(1,622,875)	(1,414,465)
Projected benefit obligation - end of year	<u>22,933,774</u>	<u>24,195,266</u>
Change in plan assets:		
Fair value of plan assets - beginning of year	16,618,026	17,478,442
Actual return on plan assets	1,712,609	(78,670)
Employer contributions	384,255	632,719
Benefit payments	(1,622,875)	(1,414,465)
Fair value of plan assets - end of year	<u>17,092,015</u>	<u>16,618,026</u>
Funded status - end of year, and noncurrent liability recognized in the consolidated balance sheets	<u>\$ (5,841,759)</u>	<u>\$ (7,577,240)</u>

The accumulated benefit obligation as of April 30, 2017 and 2016 was \$22,933,774 and \$24,195,266, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 16 – RETIREMENT PLANS (CONTINUED)

Amounts recognized in accumulated other comprehensive loss as of April 30, 2017 and 2016, not yet reflected in net periodic benefit cost, consist of:

	Pension Benefits	
	2017	2016
Net loss	\$ 7,774,754	\$ 9,469,799
Less deferred tax benefit	(2,977,879)	(3,801,891)
	<u>\$ 4,796,875</u>	<u>\$ 5,667,908</u>

The net periodic cost (credit) of the plan was \$343,819 and (\$52,455) for 2017 and 2016, respectively. These amounts included the following reclassification adjustments of other comprehensive income:

	2017	2016
Amortization of net gain	<u>\$ 605,980</u>	<u>\$ 396,206</u>

The estimated gain that will be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2018 is \$461,000.

The following table provides the weighted average actuarial assumptions at April 30, 2017 and 2016:

	Pension Benefits	
	2017	2016
Weighted-average assumptions used to determine benefit obligations as of April 30:		
Discount rate	4.3%	4.0%
Weighted-average assumptions used to determine Net periodic benefit cost for years ended April 30:		
Discount rate	4.0%	4.0%
Expected long-term return on plan assets	7.5%	8.0%

During 2016, the Cooperative changed from the RP-2000 Mortality Table to the RP-2014 Mortality Table, to better reflect current and expected future mortality improvements.

Management determines the expected return on plan assets based on historical performance of the plan's investments. Management compares their expected rate of return with other companies to ensure that it is in line with broad market expectations.

The plan holds investments in various equities and mutual funds covering a wide range of investment opportunities. The various mutual funds are valued at fair value based on quoted market prices.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 16 – RETIREMENT PLANS (CONTINUED)

The fair values of the Cooperative's pension plan assets at April 30, 2017 and 2016, respectively, are as follows:

April 30, 2017				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$ 4,876,876	\$ 4,876,876	\$ -	\$ -
International equities	2,591,324	2,591,324	-	-
Real estate	263,731	263,731	-	-
Fixed income	7,781,875	7,781,875	-	-
Commodities	273,008	273,008	-	-
Hedge funds	933,485	933,485	-	-
Money market account	371,716	371,716	-	-
Total	\$ 17,092,015	\$ 17,092,015	\$ -	\$ -

April 30, 2016				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$ 5,262,687	\$ 5,262,687	\$ -	\$ -
International equities	2,712,910	2,712,910	-	-
Real estate	343,233	343,233	-	-
Fixed income	6,568,244	6,568,244	-	-
Commodities	348,779	348,779	-	-
Hedge funds	917,770	917,770	-	-
Money market account	464,403	464,403	-	-
Total	\$ 16,618,026	\$ 16,618,026	\$ -	\$ -

The investment policy guidelines outline risk tolerance, goals, permissible and prohibited investments, and target investment allocations.

Risk tolerance as defined by the policy guidelines identify that historical capital market returns allow for the assumption of short run investment risks in favor of greater returns provided by capital markets over the longer term.

Permissible investments as defined by the policy guidelines are individual securities, separate accounts, mutual funds, trusts, private placements, partnerships, commingled funds, pooled funds, contracts and other legally constituted means of buying and selling investments including domestic equities, fixed income investments, cash equivalents, international equities, and real estate.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 16 – RETIREMENT PLANS (CONTINUED)

Prohibited investments as defined by the policy guidelines are short sales, margin purchases, securities lending, borrowings of plan assets, purchase of letter stock (restricted stock), options, futures, loans, investments requiring pledging of plan assets as collateral and any other investment not outlined as a permissible investment under the policy guidelines unless authorized in writing by the committee.

The current investment policy target mix is as follows:

Cash	2.50%
Fixed income	45.12%
U.S. equities	28.62%
International equities	15.12%
Real estate	1.62%
Commodities	1.62%
Hedge funds	5.40%

Benefits expected to be paid in each of the next five fiscal years, and in the aggregate for the five fiscal years thereafter, are as follows:

Year Ending	Amount
<u>April 30,</u>	
2018	\$ 1,604,078
2019	1,550,838
2020	1,496,923
2021	1,517,490
2022	1,472,636
2023-2027	7,491,959

Defined Contribution Plans: The Cooperative maintains a 401(k) plan for all of its eligible employees. The plan year is January 1 to December 31, and allows eligible employees to defer a portion of their compensation up to the maximum allowed by law (\$18,000 in 2017 and 2016 with catch-up contributions of \$6,000 in 2017 and 2016 for age 50 and older). The plan allows for a 100% match of the first 3% of an employee's elective contribution and a 50% match of an additional 2% of an employee's elective contribution. The Cooperative may make discretionary matching and profit sharing contributions to the plan. The board of directors did not elect to make either of these additional contributions for the years ended April 30, 2017 and 2016.

The Cooperative also provides a deferred compensation plan for certain executive positions, with defined terms and amounts.

For the years ended April 30, 2017 and 2016, total employer contributions made to these defined contribution plans were \$705,104 and \$337,598, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 17 – COMMITMENTS AND CONTINGENCIES

The Cooperative is currently engaged in several lawsuits.

In 2005, two class-action lawsuits (*Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corp.* & *Fisher v. Flue-Cured Tobacco Cooperative Stabilization Corp.*) were filed against the Cooperative in North Carolina Superior Court in Wake County, North Carolina seeking to dissolve the Cooperative and distribute its assets based on allegations that the Cooperative has no valid business purpose following termination of the Federal Tobacco Loan Program. These lawsuits have since been consolidated into a single action. The claim for dissolution has been dropped. Plaintiffs are nonetheless still advancing claims seeking to force the Cooperative to distribute a substantial portion of its reserves. In February 2014, the North Carolina Superior Court (state trial court) issued an order certifying named plaintiffs as representatives for a class consisting of all former and present members of the Cooperative from 1946 through 2004, plus heirs and assigns, resulting in members of this certified class well in excess of 800,000. The North Carolina Superior Court's order was affirmed on appeal by the North Carolina Supreme Court in December 2016. The case is now proceeding before the trial court. The trial court has set trial for September 2018, and the parties are now in the early stages of discovery. The Cooperative intends to continue vigorously defending itself in this case. That said, as described below, the Cooperative has conducted a two-day mediation in the parallel class action brought by an overlapping set of plaintiffs in federal court. The Cooperative has reached a provisional settlement to resolve the parallel class action litigation in federal court, which, if approved, may aid in defending against this state court action.

In October 2012, a civil, class-action lawsuit (*Speaks v. United States Tobacco Cooperative Inc.*) was filed against the Cooperative in the United States District Court for the Eastern District of North Carolina. Those plaintiffs seek to dissolve the Cooperative and distribute its assets to the Cooperative's members based on allegations that the Cooperative no longer serves a valid business purpose following the termination of the Federal Tobacco Loan Program. In May 2017, the Cooperative participated in a two-day mediation with the *Speaks* plaintiffs, which led to a provisional agreement to settle the *Speaks* action. The Cooperative is in the process of memorializing the terms of the settlement for presentation to the Federal Court for preliminary and, eventually final approval. If the tentative settlement does not gain acceptance, the Cooperative will continue to vigorously defend itself in this case alongside the others.

In May 2007, certain individual plaintiffs (all former members of the Cooperative) represented by the same counsel filed a series of individual lawsuits against the Cooperative in the Superior Court of Georgia in Berrien County, Georgia. The presiding state court judge has stayed all cases while the lead case, *Rigby v. Flue-Cured Tobacco Cooperative Stabilization Corp.* (in which seven individual plaintiffs, all former members of the Cooperative, initially joined in filing suit), proceeded to final resolution. In an earlier round of the *Rigby* litigation, the trial judge sided with the Cooperative in dismissing all claims. On a prior appeal, the Georgia Court of Appeals reversed in part by reinstating two claims (one for breach of fiduciary duty and the other for potential recovery of attorney's fees in connection with that claim) for further merits proceedings, while otherwise affirming dismissal of all other claims by the plaintiffs.

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NOTE 17 – COMMITMENTS AND CONTINGENCIES (CONTINUED)

Following the partial reversal and remand back to the trial court, the trial afforded the Cooperative discovery into the two remaining claims as well as opportunity to seek summary judgment. The Cooperative then obtained that discovery, moved for summary judgment, and obtained summary judgment dismissing plaintiffs' two remaining claims. On appeal, the Georgia Court of Appeals affirmed the trial court's dismissal in November 2016. In June 2017, the Georgia Supreme Court denied the plaintiffs' petition for certiorari, thereby effectively ending the case. Now that the *Rigby* case has been finally resolved in favor of the Cooperative, the Cooperative will be pursuing similar dismissal of the parallel actions in Georgia that have been stayed.

In July 2013, the Cooperative filed a lawsuit (*US Tobacco Cooperative, et al v. Big South Wholesale Virginia, et. al.,*) in the United States District Court for the Eastern District of North Carolina. The Cooperative's lawsuit states claims for RICO violations breach of contract, unfair trade practices, fraud in the inducement, fraud and other legal violations. The defendants include the former Chairman of the Board, two former executives, a former consultant, and several entities that they owned or controlled and unnamed co-conspirators. Some of the defendants have filed counter-claims against the plaintiffs. Additionally, the Alcohol and Tobacco Tax and Trade Bureau (TTB) is considering levying a civil tax assessment against USFC for failing to pay excise taxes on certain cigarettes manufactured by USFC in 2011-2013 which directly corresponds to the circumstances in the Big South case. The TTB has not yet sought to levy an assessment and is aware of our Big South suit. The TTB and the Company are currently in negotiations as USFC is vigorously denying any liability. The judge presiding over the case, the Honorable James C. Fox, recently retired and was replaced by the Honorable Terrence W. Boyle. Judge Boyle held a status conference on May 17, 2017 where he indicated he would make decisions quickly on several pending motions, including summary judgment. In the last several months, the facts underlying this case and the government's role in the allegations have been the subject of a series of articles in *The New York Times* and are now being investigated by the Committee on Oversight and Government Reform of the U.S. House of Representatives and the U.S. Senate's Committee on the Judiciary. Judge Boyle has indicated he would partially grant the Cooperative's motion to lift the current seal in the proceedings in this case which will allow the press and Congress material access to the previously sealed pleadings and documents.

During July 2009, the State of California (California Board of Equalization – BOE) performed a Cigarette and Tobacco Products tax audit of Franchise. During the audit period (June 2006 through June 2009), Franchise routinely sold both stamped and unstamped product into California. At the conclusion of the audit, Franchise was notified that California statutes preclude Franchise from shipping unstamped product into California, which was in contradiction of guidance the State of California had previously provided Franchise. The Cooperative has recorded an accrued expense for \$1,380,000 related to this ongoing dispute. This dispute occurred prior to the Cooperative's acquisition of Franchise, but was known and accounted for as part of that transaction.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 17 – COMMITMENTS AND CONTINGENCIES (CONTINUED)

On November 10, 2016, USTC filed suit against three (3) growers from South Carolina (*US Tobacco Cooperative Inc. v. Phillip Owens, Chad Owens, and Charles Cuttino*) in Wake County, North Carolina Superior Court alleging these growers sold multiple bales of tobacco to USTC that were intentionally laced and/or nested with old, cigarette-beetle infested tobacco, in direct violation of their Marketing Agreements and as a result of which USTC incurred significant damages to mitigate the infestation. USTC seeks to collect \$371,289 in out-of-pocket damages from the three defendants. The defendants deny that they sold old or infested tobacco to USTC. USTC had the bales at issue inspected by a neutral 3rd party at the USDA who issued a report concluding that the “bales appeared to have been prepared or arranged to conceal leaves of inferior grades, distinctly different stalk positions, beetle infested, carry-over-crop year and condition (fermented), any of which could not have been readily detected upon inspection”. Written discovery has been exchanged and responded to by both sides, and the Court has issued a Case Management Order requiring the case be mediated by September 7, 2017 with the case to be set for trial on November 6, 2017 if not resolved.

On February 16, 2017, USTC and USFC filed suit against former USTC Chairman of the Board, Albert Johnson and others (*US Tobacco Cooperative Inc. and US Flue-Cured Tobacco Growers, Inc. v. Albert M. Johnson, et. al.*) in Wake County, North Carolina Superior Court alleging that Mr. Johnson had abused his position as Chairman of the USTC Board of Directors to arrange for unauthorized, illegal, and secretive kick-backs to Mr. Johnson from the other defendants in the case. USTC and USFC seek damages relating to at least \$424,322 in kick-backs received by Mr. Johnson and intend to investigate via written discovery request, depositions, and subpoenas whether additional kick-backs and/or unauthorized payments were made to Mr. Johnson or the other defendants as a result of business dealings orchestrated by Mr. Johnson during his tenure as Chairman of the Board for USTC. All defendants have filed motions to dismiss the lawsuit. USTC and USFC are in the process of responding to those motions to dismiss, and will subsequently send discovery requests and subpoenas to defendants seeking further information needed to investigate and/or support the claims asserted against the defendants in this lawsuit.

USFC and Premier were also recently named as defendants in a suit filed in Miami, Florida by VIBO Corporation (*VIBO Corporation, Inc. d/b/a General Tobacco v. U.S. Flue-Cured Tobacco Growers, Inc., Premier Manufacturing, Inc., Hobart Anderson and Unknown Unnamed Confidential Informant*). The plaintiff has asserted two common law claims against USFC and Premier for unjust enrichment and unfair competition. This suit and the claims asserted arise from substantially the same facts underpinning the claim against Big South Wholesale of Virginia, as described above. USFC and Premier removed the case to federal court and recently filed a motion to dismiss the claims against it.

The Cooperative is also party to legal actions arising in the ordinary course of its business. Management asserted that these cases are without merit and will be defended vigorously. While the results cannot be predicted with certainty, management believes it is not possible to form an assessment of potential outcome or an estimate of liability, if any, and that the final outcome of such legal actions will not have a material adverse effect on the Cooperative's financial position.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 18 – BUSINESS CONCENTRATIONS

Customer Concentrations

The Cooperative has one customer which accounts for over 10% of total sales and total accounts receivable. For the years ended April 30, 2017 and 2016, sales to this customer accounted for 17% and 27% of total sales, respectively. At April 30, 2017 and 2016, the customer's account balance accounted for 83% and 93% of total receivables, respectively.

NOTE 19 – ACCUMULATED OTHER COMPREHENSIVE LOSS

Accumulated other comprehensive loss consisted of the following at April 30, 2017 and 2016:

April 30, 2017			
	Total	Unrealized Gains (Losses) on Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$ (5,396,558)	\$ 271,350	\$ (5,667,908)
Other comprehensive income (loss)	54,937	(504,701)	559,638
Reclassification adjustments	390,347	78,952	311,395
Balance, end of year	\$ (4,951,274)	\$ (154,399)	\$ (4,796,875)

April 30, 2016			
	Total	Unrealized Gains Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$ (4,118,642)	\$ 123,439	\$ (4,242,081)
Other comprehensive income (loss)	(1,509,295)	143,471	(1,652,766)
Reclassification adjustments	231,379	4,440	226,939
Balance, end of year	\$ (5,396,558)	\$ 271,350	\$ (5,667,908)

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 19 – ACCUMULATED OTHER COMPREHENSIVE LOSS (CONTINUED)

The allocation on income tax benefit (expense) for each component of other comprehensive income (loss) was as follows for the years ended April 30, 2017 and 2016:

	April 30, 2017		
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding losses arising during the year	\$ (827,379)	\$ 322,678	\$ (504,701)
Add reclassification adjustment for losses included in net margin - other revenue, net	129,430	(50,478)	78,952
Defined benefit pension plan			
Net gain arising during the year	1,089,065	(529,427)	559,638
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	605,980	(294,585)	311,395
	<u>\$ 997,096</u>	<u>\$ (551,812)</u>	<u>\$ 445,284</u>
April 30, 2016			
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding gains arising during the year	\$ 250,482	\$ (107,011)	\$ 143,471
Add reclassification adjustment for losses included in net margin - other revenue, net	7,751	(3,311)	4,440
Defined benefit pension plan			
Net loss arising during the year	(2,885,509)	1,232,743	(1,652,766)
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	396,206	(169,267)	226,939
	<u>\$ (2,231,070)</u>	<u>\$ 953,154</u>	<u>\$ (1,277,916)</u>

NOTE 20 – SUBSEQUENT EVENTS

Management evaluated and noted no additional subsequent events requiring recognition or disclosure through July 11, 2017, which is the date the consolidated financial statements were available to be issued.

This information is an integral part of the accompanying consolidated financial statements.

EXHIBIT G

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

KAY W. FISHER, ORVILLE WIGGINS,
DALE C. BONE, THOMAS N. RHOAD,
LINWOOD SCOTT, JR., ROBERT C.
BOYETTE, RICHARD RENEGAR, AND
KENDALL HILL AND OTHER SIMILARLY
SITUATED,

Plaintiffs,

v.

FLUE-CURED TOBACCO STABILIZATION
CORPORATION, KEITH BEAVERS,
MCDANIEL WYNNE, BRUCE L. FLYE,
RICHARD J. JENKS, CLAUDE B.
FRENCH, AND ANDREW Q. SHEPARD,

Defendants.

NO. 05-CVS-1938

DEPOSITION OF

PENDER SHARP

LAW OFFICES OF SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.
2500 WACHOVIA CAPITOL CENTER
RALEIGH, NORTH CAROLINA

THURSDAY, SEPTEMBER 7, 2006

10:07 A.M.

VOLUME I

PAGES 1 THROUGH 293

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I N D E X

REPORTER'S NOTE: This transcript may contain quoted material. If so, such material is reproduced as read or spoken.

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E X H I B I T S

NUMBER		IDENTIFIED
[1]	Website page of Fisher vs. Flue-Cured Tobacco Stabilization Corporation	89
[2]	"Dear Fellow Tobacco Farmers" letter	113
[3]	November 29, 2004, letter from Lioniel S. Edwards with attachment	148
[4]	December 20, 2004, letter from Lioniel S. Edwards with attachment	148
[5]	Complaint	172
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STIPULATIONS

Pursuant to notice and/or consent of the parties, the deposition hereon captioned was conducted at the time and location indicated and was conducted before Ranae McDermott, Notary Public in and for the County of Wake, State of North Carolina at large.

Notice and/or defect in notice of time, place, purpose and method of taking the deposition was waived. Formalities with regard to sealing and filing the deposition were waived and it is stipulated that the original transcript, upon being certified by the undersigned court reporter, shall be made available for use in accordance with the applicable rules as amended.

It was stipulated that objections to questions and motions to strike answers are reserved until the testimony, or any part thereof, is offered for evidence, except that objection to the form of any question shall be noted herein at the time of the taking of the testimony, and that objections based on questions calling for privileged information or work product may be made and the witness may defer answer until he or she may be instructed to answer by the Court after motion to compel by the questioning party.

Reading and signing of the deposition was requested by the witness.

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P R O C E E D I N G S

Whereupon, PENDER SHARP, was
called as a witness, duly sworn,
and testified as follows:

Direct Examination

10:07 a.m.

BY MR. TUCKER:

Q. Mr. Sharp, my name is Don Tucker. I
represent Stabilization. We've -- we've met before.
The purpose of the deposition today is to take your
sworn testimony on certain topics related to the
litigation against Stabilization.

I'm going to be asking you a series of
questions. The court reporter will take down my
questions and your answers, so I want to make sure
that you understand my question clearly before you
answer. If you don't, please ask me to rephrase it,
and I'll do my best to do that.

A. Okay.

Q. And if you can answer with a yes or no
rather than a nod, just so she can get that down on
the transcript.

A. Okay.

Q. If you need to take a break at any time,
let me know. Generally, I'll take a break about
every hour or hour and 15 minutes. But if you need

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1 interest in Sharp Farms?

2 A. Because I wanted to at the time.

3 Q. Did you -- do you -- do you currently have
4 an interest in Sharp Farms, Inc.?

5 A. I do not.

6 Q. Have you ever had an interest in Sharp
7 Farms, Inc.?

8 A. I have not.

9 Q. Have you been involved in farming since you
10 relinquished your interest in Sharp Farms Partnership
11 sometime in the mid to late 1990s?

12 A. I manage the farming operation for Sharp
13 Farms, Inc., and the properties for Sharp Farms,
14 Incorporated -- for Sharp Farms Partnership.

15 Q. How long have you managed the farming
16 operations for Sharp Farms, Inc.?

17 A. Since its origination in the mid to late
18 '90s.

19 Q. And before Sharp Farms, Inc., was formed,
20 did you manage the farming operations for Sharp Farms
21 Partnership?

22 A. Yes, I did.

23 Q. Are you currently an employee of Sharp
24 Farms, Inc.?

25 A. Yes, I am.

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1 Q. Are you employed as well by Sharp Farms
2 Partnership?

3 A. It has no employees.

4 Q. Okay. Tell me about the types of farming
5 activities that Sharp Farms Partnership was involved
6 in while it was still the farming operation and then
7 sort of take me through the transition to present.
8 And I understand presently that the farming
9 operations are limited to Sharp Farms, Inc.

10 A. That's correct.

11 Q. Okay.

12 A. The general farming operation primarily
13 focused on flue-cured tobacco, also corn, wheat,
14 soybeans, sweet potatoes, some vegetable crops, and a
15 swine operation.

16 Q. Okay. I'm not sure I asked you: who are
17 the shareholders of Sharp Farms, Inc.?

18 A. My father and my brother.

19 Q. Have they always been the only two
20 shareholders?

21 A. Yes, sir.

22 Q. How much tobacco quota did Sharp Farms,
23 Inc., hold or Sharp Farms Partnership hold at the
24 time of the buyout, how many pounds of quota?

25 A. Probably around 60,000 pounds.

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1 Q. How many acres of tobacco does Sharp Farms,
2 Inc., farm currently?

3 A. In 2006?

4 Q. Yeah, 2006.

5 A. 300.

6 Q. 300.

7 And how about 2005?

8 A. I don't remember. Probably 150.

9 Q. I'm just trying to get a sense for how the
10 size of the flue-cured tobacco operation has changed
11 over the last five or ten years.

12 A. Um-hum.

13 Q. Has it been in the range of 150 to 300
14 acres over that time period, or has it changed?

15 A. In the peak of the quota in 1997, I
16 distinctly remember we were growing 200 acres. And
17 then as the quota declined, our acreage declined.

18 Q. Right.

19 A. And now without the program, the acreage is
20 beginning to climb again.

21 Q. And is that because you're putting existing
22 acres under cultivation, or are you acquiring
23 additional tobacco farms?

24 A. Some of both.

25 Q. And how many acres total all crops does

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1 Sharp Farms have under cultivation in 2006?

2 A. Approximately 1,500.

3 Q. Okay. Was that approximately the same in
4 2005?

5 A. Yes.

6 Q. How many people does Sharp Farms have on
7 its payroll presently?

8 A. Approximately 12 full-time people and an
9 additional 20 part time.

10 Q. How about in 2005?

11 A. Approximately the same.

12 Q. Have you ever individually been a member of
13 stabilization?

14 A. Not individually.

15 Q. Has Sharp Farms or Sharp Farms, Inc., ever
16 been a member of stabilization?

17 A. Both have.

18 Q. Can you tell me when they first became
19 members? Let's start with Sharp Farms Partnership.

20 A. Sharp Farms Partnership was formed when I
21 was in high school, which would have been in the late
22 '60s, and became members the first time they sold
23 tobacco.

24 Q. And when that happened in the late '60s,
25 what -- what was your role within the partnership?

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1 what were your responsibilities?

2 A. I was basically a laborer for the
3 partnership in those years.

4 Q. would your father have been the person
5 responsible for decision-making and management of the
6 partnership?

7 A. Forty years ago, yes, sir.

8 Q. And do you recall the -- the
9 circumstances -- the actual circumstances of when
10 Sharp Farms became a member of Stabilization?

11 A. When Sharp Farms --

12 Q. When sharp Farms Partnership became a
13 member of Stabilization.

14 A. I do not.

15 Q. Do you recall whether Sharp Farms
16 Partnership received a certificate of stock in
17 Stabilization at the time it first became a member?

18 A. I'm certain it did, but I don't know.

19 Q. That would have -- that would be something
20 that your father would have been responsible for at
21 the time?

22 A. Right. Right.

23 Q. And to the extent that Sharp Farms
24 Partnership received any written communications or
25 information concerning membership issues at the time

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1 Q. Is -- is your father still alive?

2 A. Yes, he is.

3 Q. Is he still actively involved in the
4 farming operation?

5 A. My father is 75 years old, and he -- he
6 enjoys going to the bank and he enjoys going to the
7 marketplace. And he picked up a golfing habit when
8 he turned 70.

9 Q. A what kind of habit?

10 A. A golfing habit. He never played until he
11 turned 70, and now he plays twice a week.

12 Q. It's an addictive habit. My father suffers
13 from the same addiction.

14 A. Yeah.

15 Q. How about your brother; is he actively
16 involved in the farming operation?

17 A. He is. My brother manages the hog
18 operation and assists in the row crop operation.

19 Q. Are you familiar with the No-Net Cost Act?

20 A. Yes, I am.

21 Q. Can you explain to me generally how you
22 understood that program to operate?

23 A. The No-Net Cost program was to ensure that
24 the taxpayers did not have to subsidize the tobacco
25 program at any point in the future. And it was

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1 A. Yes, sir.

2 Q. Going back to the No-Net Cost program, do
3 you know whether a profit was ever made on any of the
4 tobacco delivered to Stabilization during the era of
5 the No-Net Cost program?

6 A. Ask that again, please, sir.

7 Q. Yeah. Do you know -- maybe I need to
8 establish a little background first.

9 You understood that Stabilization was
10 responsible for processing and then selling loan
11 tobacco, tobacco that was placed under the Federal
12 Price Support Program?

13 A. Yes, sir.

14 Q. And my question is: Do you know whether
15 any of the loan crops that were delivered to
16 stabilization during the time of the No-Net Cost
17 program were resold for amounts above the CCC loan
18 amounts for a profit?

19 A. I do not know.

20 Q. Do you know mechanically how the No-Net
21 Cost Account operated; who was responsible for those
22 monies and how they were administered?

23 A. To some extent.

24 Q. Tell me what you know about that.

25 A. It was basically stabilization's

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1 responsibility to operate that with Commodity Credit.

2 Q. Do you remember that there was a -- a
3 No-Net Cost Fund initially and then Stabilization
4 transitioned to using the CCC's No-Net Cost Account?

5 A. Um-hum.

6 Q. How did you learn about that?

7 A. It became common knowledge back through the
8 years. You know, I think you're referring to '82, '3
9 and '4.

10 Q. There was a period of time --

11 A. Yeah.

12 Q. -- when Stabilization used something called
13 the No-Net Cost Fund, and then later it went to
14 something called the No-Net Cost Account.

15 A. It became public knowledge through the
16 years. The information was disseminated at meetings
17 and through the printed press about how that change
18 had come back.

19 Q. Do you remember generally being aware at
20 the time that there was a change made from how the
21 No-Net Cost assessment fees were being handled?

22 A. Yes. There was a change, and there was
23 \$110 million left in that account originally.

24 Q. Tell me what you -- explain what you mean
25 about that.

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1 A. In the '82, '3 and '4 in that account when
2 the transition was made, there was \$110 million that
3 was supposed to be certificates issued on that.

4 Q. What's the source of your information about
5 that?

6 A. Well, that was common knowledge throughout
7 the industry and -- and through the printed press at
8 the time back during the -- the late '80s and early
9 '90s.

10 Q. What was your understanding as to the
11 source of the \$110 million?

12 A. It would have been a part of the change
13 from the No-Net Cost program, the -- the assessments
14 that we were paying in that were being maxed by the
15 companies.

16 Q. Do you remember when the companies first
17 began paying No-Net Cost fees?

18 A. The same year that we did.

19 Q. And you're not aware that the manufacturers
20 didn't begin paying No-Net Cost assessment fees until
21 approximately 1985?

22 A. No, not exactly. Maybe the first year, we
23 paid 25 cents as a grower.

24 Q. Do you remember what -- you believe that
25 was the first year of the program?

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1 and that's what's left.

2 Q. What is -- what's the source of your
3 information about any monies that are currently in
4 Stabilization's accounts? Have you reviewed the
5 financial statements of Stabilization?

6 A. Yes. I looked at the financial statement
7 every year.

8 Q. And you're referring to the financial
9 statement that is included in the annual report
10 that's sent to members?

11 A. Yes, sir.

12 Q. And that identifies the amount of assets
13 that are maintained by Stabilization?

14 A. Um-hum.

15 Q. Other than information provided in the
16 annual reports, do you have -- do you have any
17 information concerning the amount of Stabilization's
18 assets or liabilities?

19 A. No. I assumed that's all I needed.

20 Q. Okay. I'm just trying to determine whether
21 you have access to any other information,
22 conversations with any Stabilization directors,
23 access to audited financial statements or any
24 information other than what's contained in the annual
25 report.

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1 A. I've had conversations with -- with Jimmy
2 Hill, the public director.

3 Q. Okay.

4 A. Looking at the financial statement. I
5 assume the financial statement that Stabilization
6 prints is true and accurate in their annual report.
7 At least I -- I took it to be true and accurate.

8 Over the -- the \$110 million as a separate
9 line item, it's listed as an asset --

10 Q. Right. Right.

11 A. -- that belongs to Stabilization, just like
12 buildings and everything else is listed as an asset
13 and the \$26 million.

14 Q. Right. Do you know what the \$26 million
15 relates to?

16 A. Yeah. That's money from '67 to '72 that
17 should have been sent out 30 years ago.

18 Q. Do you -- does Sharp Farms, Inc., have a
19 certificate of interest relating to any of the monies
20 from '67 through '72?

21 A. Don't have any paperwork on it, but I'm
22 sure that Sharp Farms has got some.

23 Q. That would have been Sharp Farms
24 Partnership at the time?

25 A. Partnership.

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1 Q. You've never seen a certificate of interest
2 to Sharp Farms?

3 A. No.

4 Q. Have you asked your father about that?

5 A. No, I have not.

6 Q. Have you reviewed the records to see
7 whether or not Sharp Farms holds a certificate of
8 interest?

9 A. No. I've just said I've never seen one. I
10 don't know that we have one. But no doubt during
11 those years we were putting tobacco under loan with
12 stabilization.

13 Q. And I'm really just trying to determine
14 whether or not you've made any effort to go back and
15 see if there is a certificate somewhere that relates
16 to the tobacco from those years.

17 A. Stabilization's got those records.

18 Q. Have you ever asked anyone at Stabilization
19 to check its records and determine --

20 A. I have not.

21 Q. -- determined whether Sharp Farms
22 Partnership has a certificate of interest?

23 A. I have not.

24 Q. You mentioned that you had reviewed or
25 discussed the financial statements with Jimmy Hill.

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1 crops? Do you have any information about that?

2 A. why they retained that?

3 Q. Um-hum. Um-hum. Rather than distributing
4 it.

5 A. I Cannot imagine why they did not
6 distribute that.

7 Q. Do you -- do you recall discussion about
8 the reasons in any of the newsletters or annual
9 reports that you received or that Sharp Farms may
10 have received in that time period?

11 A. Bruce Flye's comment to me was several
12 years ago over the \$26 million, "why send it out,
13 because most of those people are dead? It would go
14 into the escheats fund. You couldn't get it to the
15 people." That's a lame excuse 30 years later. It
16 could have been sent out 30 years ago to the people
17 that it belonged to.

18 Q. And you're aware that a portion of the
19 profits from the '67 through '72 crops were
20 distributed to farmers, correct? Or let me ask it a
21 different way.

22 were you aware that 60 percent of the
23 profits on those crop years had been distributed to
24 farmers?

25 A. I was not.

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1 Q. Okay. So you weren't aware that the \$26
2 million represents 40 percent of the profits from
3 those years that was retained by Stabilization as a
4 reserve?

5 A. All I know is they still got \$26 million
6 that belongs to somebody else.

7 Q. Do you -- are -- are you -- have you ever
8 read the bylaws of Stabilization?

9 A. I think I probably have over time.

10 Q. Were you aware that Stabilization's
11 articles and bylaws authorize the board of directors
12 to retain money as reserves for the operation of the
13 cooperative?

14 A. I would suspect that's true.

15 Q. Let's go back to the first meeting that you
16 had with Mr. Williams and Mr. Runyan, just to make
17 sure I have my chronology right.

18 You had a conversation with a minister that
19 you knew independently. He mentioned that his
20 nephew, Charles Williams, was a lawyer --

21 A. Um-hum.

22 Q. -- and was involved in some litigation
23 involving the burley co-op in Kentucky, correct?

24 A. Um-hum.

25 Q. And did -- did he tell you that

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1 Mr. Williams would like to meet with you or did you
2 request a meeting with Mr. Williams? How did that
3 come about?

4 A. He said, "He's coming to my house to visit
5 and I thought he might like to meet you."

6 Q. Okay. So then -- then the minister invited
7 you to his home for a meeting with Mr. Williams?

8 A. Yes.

9 Q. And did you -- did you attend that meeting?

10 A. Yes, I did.

11 Q. Do you remember when that meeting occurred?

12 A. Sometime around December '04.

13 Q. Okay. Who -- who was present for that
14 meeting?

15 A. Mr. Williams. Neither the minister nor his
16 wife stayed in there. She had prepared a -- drinks
17 and cookies and everything and -- but they didn't
18 stay out on the patio with us. It was the first time
19 I had met him. And I had invited several tobacco
20 growers to go with me.

21 Q. Do you remember the names of the growers
22 who accompanied you to that meeting?

23 A. I know Jerome Vick went, Sonny Scott. I
24 don't remember the others.

25 Q. Do you recall that there were other farmers

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1 talking to about potential litigation against
2 stabilization?

3 A. Every tobacco farmer that I ran into and
4 everyone that ran into me.

5 Q. And identify for me by name, if you can,
6 the people who -- who you were able to get interested
7 in -- in sort of your -- your -- your thought process
8 about what should happen next. Was there a core
9 group of people who were driving the decision to --

10 A. My challenge was not to convince people, as
11 you said, to get involved in this. My challenge was
12 to find time to do other things other than talk on
13 the phone about litigation with Stabilization,
14 because everybody I talked to and every -- everywhere
15 I went, that's all everybody was talking about.

16 Q. In -- in terms of the decision to proceed
17 with litigation, would -- would you describe yourself
18 as sort of the -- as the driving force behind the
19 decision to file a lawsuit?

20 A. I was a part of that, but it -- it gained a
21 momentum of its own out of -- of frustration and --
22 and what we felt was -- was lack of attention that we
23 were getting from the Stabilization board.

24 Q. Did -- did you -- were you actually calling
25 up people and placing --

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1 [TELEPHONE INTERRUPTION.]

2 THE WITNESS: Excuse me. I thought I
3 had cut it off.

4 MR. TUCKER: Let's go off the record
5 for a second.

6 [DISCUSSION OFF THE RECORD.]

7 BY MR. TUCKER:

8 Q. Did -- did you have a phone list or a -- a
9 list of names that you were calling to discuss
10 potential litigation?

11 A. No, I did not.

12 Q. How did you identify the people that you
13 wanted to talk to about possible litigation against
14 Stabilization?

15 A. There was no identification process used
16 really, because as I said, everybody you run into,
17 this was a topic of conversation.

18 Q. At some point, did you have a second
19 meeting with Mr. Runyan?

20 A. We had what I would consider our first
21 official meeting with him after the one at the
22 minister's house.

23 Q. Right.

24 A. And I guess you would say I was responsible
25 for that, because Mr. Runyan had left me a card and I

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1 called that number. We -- Jerome Vick made a contact
2 for a meeting place.

3 Q. Um-hum.

4 A. And Jerome contacted a few people and I
5 contacted a few people, and I called Mr. Runyan to
6 see if he would come up and meet with us.

7 Q. Where did that meeting take place?

8 A. At the Wilson Country Club.

9 Q. Do you remember the date?

10 A. I do not. It would have been early in
11 2005.

12 Q. Okay.

13 A. Maybe -- maybe January. I don't know.

14 Q. And who attended that meeting?

15 A. There were probably -- I don't remember
16 everyone that was there. I didn't contact everyone
17 that was there. I know Sonny Scott was there.
18 Robert Boyette was there, Jerome Vick, myself, Kay
19 Fisher, Dale Bone. I think Kendall Hill was there,
20 and -- and others.

21 Q. Okay. All the people -- I think all the
22 people that you've just mentioned ultimately
23 agreed -- with the exception of yourself and
24 Mr. Vick -- ultimately agreed to serve as Plaintiffs
25 in the Fisher lawsuit; is that right?

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1 A. I think that's correct.

2 Q. Were there other growers there who -- who
3 did not join the lawsuit in an official capacity?

4 A. I think there were a few there that decided
5 not to be lead Plaintiffs in it.

6 Q. Okay. And do you remember the names of any
7 of those people?

8 A. I think J.F. Scott was one person that
9 chose not to be a lead Plaintiff, and I can't
10 remember the others.

11 Q. Okay. How long did that meeting last?

12 A. That meeting probably lasted between one
13 and two hours.

14 Q. Were there any lawyers other than
15 Mr. Runyan present?

16 A. Not that I remember, other than Mr. Runyan
17 may have brought someone from his office with him.
18 Maybe -- maybe he did. I'm -- I'm not sure.

19 Q. And other than the growers that were
20 invited and Mr. Runyan and whoever attended from his
21 office, were -- were there any other people in
22 attendance at that meeting?

23 A. No, sir.

24 Q. Okay. Where did -- where did the meeting
25 take place in the country club?

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1 A. In a private room.

2 Q. Who arranged for that?

3 A. I think it was Jerome Vick.

4 Q. Do you remember who you invited
5 specifically?

6 A. Robert Boyette, Sonny Scott, J.F. Scott.
7 That's all I remember.

8 Q. And Mr. Vick was responsible for inviting
9 the other people?

10 A. I'm not sure exactly how that worked. My
11 guess is he probably called someone and they called
12 someone.

13 Q. Okay. How did you decide who to invite to
14 the meeting?

15 A. Well, I guess others did the same thing I
16 did; I called those that had had the most
17 conversations with me about Stabilization.

18 Q. Okay. Were there people that you called to
19 invite who decided not to attend for any reason?

20 A. None that I called.

21 Q. All the people that you called attended the
22 meeting?

23 A. Yeah.

24 Q. How about Mr. Vick; do you know whether he
25 invited people --

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1 A. I don't know.

2 Q. -- that didn't attend?

3 And did -- did you or the group of people
4 who attended the meeting actually engage Mr. Runyan's
5 law firm to represent you during the course of the
6 meeting?

7 A. I -- I don't know.

8 Q. Did you -- when you left that meeting, did
9 you feel that you had an agreement with Mr. Runyan or
10 his firm to serve as counsel for you or for any group
11 of people in the lawsuit against Stabilization?

12 A. I felt like when I left that meeting, we
13 were headed in that direction. Now, whether we had
14 particularly crossed that hurdle or not, I don't
15 know.

16 Q. Okay. What -- tell me everything you
17 remember that was discussed at that meeting.

18 MR. RUNYAN: Hang on just a second.

19 [PAUSE.]

20 MR. RUNYAN: Go ahead.

21 THE WITNESS: Excuse me, Alan?

22 MR. RUNYAN: Go ahead. Go ahead.

23 A. Don, that meeting started like any other
24 meeting; everybody talking about Stabilization's got
25 our money and we're getting nowhere talking to board

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1 members and it's time to send the money back.

2 And then Mr. Runyan talked to us about how
3 class action lawsuits work.

4 Q. Um-hum.

5 A. And that's about all I remember.

6 Q. Okay. Was there a discussion about who
7 would serve as the Plaintiffs in the lawsuit that you
8 were contemplating?

9 A. I don't remember.

10 Q. At some point, did you enter into an
11 agreement, oral or written, with Mr. Runyan's law
12 firm to represent you as counsel?

13 A. Yes, I did.

14 Q. Do you remember when that happened?

15 A. Not specifically.

16 Q. And was that in the form of a written
17 engagement letter or something else?

18 A. A written.

19 Q. And you don't recall the date of that
20 letter?

21 A. No, I do not.

22 Q. And did that -- was that engagement limited
23 to matters relating to Stabilization?

24 A. I would assume.

25 Q. Okay. And do -- were there other -- are

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1 there other parties to the engagement letter, or was
2 it just between you and Mr. Runyan's firm?

3 A. Just me and Mr. Runyan's firm.

4 Q. Do you know whether the named Plaintiffs in
5 the lawsuit have signed any sort of engagement letter
6 with Mr. Runyan's firm?

7 A. I do not know.

8 Q. You've never seen any letter like that?

9 A. No, huh-uh.

10 Q. Who -- who paid for the lunch meeting, the
11 second lunch meeting that was held to talk about a
12 possible lawsuit?

13 A. I think I remember Dale Bone paying for it.

14 Q. Was he -- he was a member at Wilson Country
15 Club?

16 A. Yes.

17 Q. Have you provided any funding for the
18 lawsuit against Stabilization in the form of legal
19 fees or anything --

20 A. No, sir.

21 Q. -- any other funding?

22 A. No, sir.

23 Q. Do you have any agreement to be responsible
24 for any fees or expenses --

25 A. I do not.

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1 Q. -- in connection with the lawsuit?
2 What's your understanding about how
3 Mr. Runyan's firm is to be paid, if you have one?

4 A. I -- I don't know.

5 MR. RUNYAN: Hold on.

6 MR. TUCKER: Hold on. He may have an
7 objection.

8 MR. RUNYAN: I think you already
9 answered it anyway. Go ahead.

10 A. I mean, I don't know. I'm not a lead
11 Plaintiff in it.

12 Q. You haven't received any bills or invoices
13 relating to the litigation?

14 A. No, sir.

15 Q. Do you have any agreement with Mr. Runyan's
16 firm or any of the named Plaintiffs or anyone else as
17 to what you or Sharp Farms will receive in the
18 litigation if there is a recovery in this action?

19 A. Absolutely not.

20 Q. To your knowledge, do any of the named --
21 do any of the named Plaintiffs have an agreement
22 concerning amounts that they will receive if there is
23 a recovery?

24 A. I don't know.

25 Q. Okay. You haven't had a conversation

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1 with --

2 A. No.

3 Q. -- any of the other named Plaintiffs about
4 that?

5 A. Huh-uh.

6 Q. Did you have any further meetings with
7 Mr. Runyan or any other lawyers after the second
8 meeting that we've discussed and before the date that
9 the lawsuit was actually filed?

10 A. Not that I'm aware of.

11 Q. What involvement, other than what we've
12 discussed, did you have in the decision to actually
13 proceed with the filing of a lawsuit?

14 A. What part did I play?

15 Q. Yes. In -- in that -- in the decision
16 process to proceed with the filing of the lawsuit.

17 A. I didn't play any part in the
18 decision-making process. I was more of a cheerleader
19 encouraging those that were involved to go for it.

20 Q. Do you know how the named Plaintiffs were
21 identified, how it was determined who would serve as
22 a named Plaintiff?

23 A. I do not.

24 Q. They were all people that either you or
25 Mr. Vick had brought to the second meeting; is that

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1 correct?

2 A. Or possibly Kay Fisher or others. I mean,
3 as I explained, when one person called one --

4 Q. Right.

5 A. -- then they may have called someone else.
6 I don't know how they all got there.

7 Q. And did you ever have any discussion with
8 anyone about serving as a named Plaintiff yourself in
9 the lawsuit?

10 A. Yes, I have.

11 Q. Who have you discussed that with?

12 A. Mr. Runyan and Mr. Vick.

13 Q. Okay. And did you have that conversation
14 with Mr. Runyan at a time when he was engaged as your
15 lawyer, engaged to represent you; or was that prior
16 to the time that you engaged Mr. Runyan?

17 A. I don't remember.

18 Q. Why did you decide not to serve as a named
19 representative in the lawsuit against Stabilization?

20 A. Out of respect for my father.

21 Q. Explain that to me a little bit, if you
22 would.

23 A. When I approached my father about this --
24 and he is burning mad over what's happening with the
25 money in Stabilization -- that he looked at me and he

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1 said, "At my age, I do not want to be involved in any
2 litigation over anything, period. Not just
3 stabilization, but anything else."

4 And out of respect for him, I am not a lead
5 Plaintiff and Sharp Farms is not a lead Plaintiff.

6 Q. And you individually are not a member of
7 stabilization, correct?

8 A. That's correct.

9 Q. So to the extent that you were to be
10 involved in the lawsuit, it would have had to have
11 been through Sharp Farms Partnership or Sharp Farms,
12 Inc.?

13 A. That's correct.

14 Q. Who are the only entities who hold a
15 stabilization membership?

16 A. That's correct.

17 Q. And -- and your father, who is a partner in
18 the partnership and a shareholder in Sharp Farms,
19 Inc., did not want Sharp Farms to be associated with
20 litigation of any kind; is that correct?

21 A. As a lead Plaintiff, right.

22 Q. Is there any other reason why you decided
23 not to have Sharp Farms Partnership or Sharp Farms,
24 Inc., involved directly in the lawsuit?

25 A. That's the only reason, out of respect for

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1 I don't see a date on it.

2 A. I don't remember exactly when I wrote it.
3 It would have been early on. Probably -- probably
4 early in -- in '05.

5 Q. Was this -- do you know -- do you remember
6 whether this was first drafted before the lawsuit was
7 filed or -- or whether it was drafted after the
8 lawsuit was filed?

9 A. No. This is after the lawsuit was filed.

10 Q. Okay. Did you prepare this on -- on a home
11 word processor or computer?

12 A. Yes, I did.

13 Q. At your office or at your home?

14 A. At my home.

15 Q. And did -- did you discuss the concept of
16 writing a letter to tobacco farmers with anyone
17 before you prepared this?

18 A. I did not.

19 Q. You did this sort of on your own?

20 A. Yeah.

21 Q. Without direction from anyone else?

22 A. Yep.

23 Q. Did you discuss with the lawyers for the
24 Fisher Plaintiffs that you intended to prepare and
25 send a letter to tobacco farmers before it was sent?

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1 That was not -- let -- let me ask that a different
2 way. It wasn't very artful. It wasn't a very good
3 question.

4 Before you -- you sent this letter out, did
5 you notify the lawyers for the Fisher Plaintiffs that
6 you had prepared and intended to send a letter to
7 fellow -- to fellow tobacco farmers?

8 A. I don't remember.

9 Q. Do you remember discussing this letter with
10 anybody before you circulated it for signature?

11 A. I don't remember if I circulated it first
12 or sent a copy to Alan.

13 Q. What was the purpose of the letter, in your
14 view?

15 A. To express my opinion and reasoning behind
16 the lawsuit. And I thought it pretty much reflected
17 every else's concept, and it did by their agreement
18 and signature.

19 Q. You -- you knew at the time you wrote this
20 that there was already a lawsuit pending, correct?

21 A. Right.

22 Q. Why did you take it upon yourself to send
23 this letter given that you were not a named Plaintiff
24 in the lawsuit?

25 A. Because of my interest in seeing

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1 Stabilization do the right thing.

2 Q. Did any other members of Sharp Farms
3 Partnership or Sharp Farms, Inc., review this letter
4 before you sent it out?

5 A. No, sir.

6 Q. And your name appears on this -- on the
7 second page of the letter, correct?

8 A. Right.

9 Q. You didn't identify yourself as the author
10 of this letter, though, correct?

11 A. No, I didn't identify myself as the author.

12 Q. Did -- was -- was your father aware that
13 you were going to send this letter out before you
14 sent it?

15 A. Not that I'm aware of.

16 Q. How did you identify the people whose names
17 appear as signatories on these letters? How is it
18 determined that they would sign the letter?

19 A. They were friends and acquaintances of mine
20 that I run into from time to time.

21 Q. Was there -- is there a reason that names
22 appear in the order or sequence that they appear on
23 page 2?

24 A. Just in alphabetical order.

25 Q. Okay. And do you recall the process that

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1 you followed once you had -- had drafted this letter
2 in order to obtain the signatures of these people?

3 A. No. I -- I gave a -- passed a copy around
4 and -- and people passed it to others, and then it
5 all ended up back with me.

6 Q. How -- did -- did you send copies of the
7 letter out by mail to all of the people who are
8 identified on the second page?

9 A. Everyone that signed it?

10 Q. Yes.

11 A. Yes, sir.

12 Q. How did you get the addresses of those
13 folks?

14 A. I just rounded them up. I don't know
15 specifically.

16 Q. No one assisted you in preparing the letter
17 or mailing it out?

18 A. No. Good, bad or indifferent, it's mine.

19 Q. Okay. Do you know if the letter was sent
20 to anyone other than the people who have signed it
21 and -- and -- I mean, before it was sent out
22 generally in the process of preparing it, was it sent
23 to others for potential signature who may not
24 actually have signed it?

25 A. Not -- not that I'm aware of.

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1 Q. Okay. And did -- did everyone that you
2 sent this to agree to have their name listed on the
3 letter and actually sign it?

4 A. Yes, they did.

5 Q. Was there any information sent with the
6 letter, any attachments or other materials included
7 with the letter?

8 A. Not that I'm aware of.

9 Q. Who is Richard Anderson?

10 A. Richard Anderson is a friend of Kay Fisher
11 or an acquaintance with Kay Fisher.

12 Q. Mr. Anderson was someone that you knew
13 independently?

14 A. Kay Fisher knew Richard Anderson.

15 Q. And did you send a copy of this letter to
16 Mr. Anderson, or did Kay Fisher forward this to
17 Mr. Anderson?

18 A. Kay. Kay Fisher.

19 Q. So is it fair to say Ms. Fisher is
20 responsible for Richard Anderson signing this letter?

21 A. Yes.

22 Q. And Dale Bone is one of the named
23 Plaintiffs in the Fisher lawsuit, correct?

24 A. Right.

25 Q. Did you send this to Mr. Bone?

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1 A. I don't remember if I got it or Kay got it.
2 I see Dale from time to time. He might have signed
3 it sometime when I saw him.

4 Q. How about Douglas Boyd; who is Mr. Boyd?

5 A. I think Mr. Boyd was someone else that Kay
6 got to sign it. I'm not sure.

7 Q. Where -- where does Mr. Anderson reside?
8 where does he live?

9 A. I'm not sure.

10 Q. Is he a Wilson County or a Nash County
11 farmer, do you know?

12 A. I don't -- I don't know.

13 Q. Dale Bone is a Nash County farmer?

14 A. That's correct.

15 Q. Douglas Boyd, where does he farm?

16 A. I don't know.

17 Q. Mr. Boyette is one of the named Plaintiffs,
18 correct?

19 A. That's correct.

20 Q. And he's a personal friend of yours?

21 A. That's correct.

22 Q. Were you responsible for obtaining
23 Mr. Boyette's signature as well?

24 A. Yes, I was.

25 Q. Do you know how Kay Fisher got involved in

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1 the lawsuit?

2 A. Not specifically.

3 Q. Did you -- was she one of the people that
4 you spoke to about a potential lawsuit against
5 stabilization?

6 A. Yes. And Kay was -- was called about the
7 meeting at the country club.

8 Q. Okay. Is -- is Kay a -- how do you know
9 Kay Fisher?

10 A. Through business and friendship.

11 Q. What sort of business relationship do you
12 have with Kay Fisher or have you had?

13 A. She used to run a warehouse, tobacco
14 warehouse. We've worked on various projects and
15 lobbying efforts together.

16 Q. And is she a Nash County farmer as well?

17 A. Nash or Edgecombe maybe. I'm not sure
18 exactly how many counties she farms in.

19 Q. How about William Guthrie; who is
20 Mr. Guthrie?

21 A. I don't remember who got Mr. Guthrie's
22 signature.

23 Q. Do you know Mr. Guthrie?

24 A. Billy Guthrie, yes, I do.

25 Q. Where does he farm?

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1 A. He's in the northeastern part of this state
2 somewhere.

3 Q. How about Jerry Hamill?

4 A. Jerry Hamill. I see Jerry from time to
5 time. I think he lives over in Nash County. And I'm
6 not sure if I got that signature or someone else did.

7 Q. Did -- was there someone else specifically
8 that you relied upon to help circulate this letter
9 and obtain signatures?

10 A. Several of us circulated around to get
11 these signatures.

12 Q. And you mentioned Kay Fisher. Who -- who
13 else was sort of on the team responsible for
14 circulating the letter?

15 A. I think Jerome Vick helped with it, also.

16 Q. Kendall Hill we've discussed. Mr. Hill is
17 one of the named Plaintiffs and is a longtime
18 acquaintance of yours; is that correct?

19 A. Yes.

20 Q. Richard Renegar is a named Plaintiff.
21 Ralph Renegar, is that Mr. Renegar's
22 brother?

23 A. Yes, it is.

24 Q. And Mr. Renegar -- both of the Renegars are
25 Nash County farmers; is that correct?

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1 A. No.

2 Q. Where do they farm?

3 A. They're from the western part of the state.
4 Maybe Iredell County. I'm not sure. Around
5 Winston-Salem.

6 Q. Were you responsible for circulating the
7 letter to the Renegars?

8 A. I think I got those -- both those
9 signatures.

10 Q. How about J.F. Scott?

11 A. I got J.F.'s.

12 Q. And Mr. Scott is not a named Plaintiff.
13 How -- what -- what caused you to send the letter to
14 Mr. Scott?

15 A. Mr. Scott was at the Wilson meeting,
16 supported it 100 percent. He just didn't want to be
17 a Plaintiff.

18 Q. Are all of the people that we've talked
19 about so far through Mr. Scott, were they all in
20 attendance at the Wilson meeting?

21 A. I'm pretty sure Ralph Renegar was not
22 there. I don't remember about Richard. And I don't
23 think Douglas Boyd was there. And I don't remember
24 specifically. No, all of them were not at that
25 meeting.

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1 Q. Okay. Kent Smith, who was Mr. Smith?

2 A. Kent Smith is -- is a Nash County farmer
3 and sells tobacco where I do. I see Kent from time
4 to time.

5 Q. Were you responsible for obtaining his
6 signature?

7 A. Probably.

8 Q. And Orville Wiggins is a named Plaintiff,
9 correct?

10 A. That's right.

11 Q. Who -- who was responsible for obtaining
12 Mr. Wiggins' signature?

13 A. I'm not sure who got that one. I -- I
14 could have got it. Orville sells tobacco where I
15 sell it. And he has also bought some hogs from me
16 from time to time, so he's been to my farm a few
17 times.

18 Q. Did any of the people who signed this
19 letter provide any input or -- or are they -- or
20 strike that. Let me ask it another way.

21 Did you get any feedback or comment on the
22 draft letter you circulated from any of the people
23 that signed it?

24 A. Everybody agreed with it.

25 Q. Did anyone make any -- suggest any changes

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1 or corrections or modifications, additions to the
2 letter?

3 A. Not among the growers.

4 Q. So did you receive suggestions for
5 corrections, changes, modifications, additions from
6 anyone other than the growers?

7 A. I did not.

8 Q. Is it correct that all of the words on the
9 two pages of this letter are your words and were
10 drafted by you and no one else?

11 A. Exactly.

12 Q. Let's look at the content of the letter,
13 and I'm going to refer to the paragraphs by number
14 just for convenience.

15 A. Okay.

16 Q. Paragraph -- paragraph 1 says that, "You
17 and I and every other tobacco farmer, both past and
18 present, are members of Stabilization. This
19 membership is not something that can be withdrawn
20 just because someone changes the rules."

21 Do you see that?

22 A. Yes.

23 Q. What was the source of your information
24 about who was or was not a member of Stabilization?

25 A. Everybody who sold tobacco and participated

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1 in the program was a member of Stabilization.

2 Q. Have you ever read the provisions in the
3 articles of Stabilization or the bylaws of
4 Stabilization that define membership eligibility?

5 A. It's common knowledge that when you sell
6 your tobacco, you become a member of Stabilization.
7 And they administer the price support, and you
8 couldn't sell it any other way.

9 Q. So you haven't read the articles or the
10 bylaws that deal with the requirements for membership
11 in Stabilization?

12 A. I don't remember.

13 Q. Do -- in your opinion, if you are not
14 farming tobacco, are you still a member of
15 Stabilization?

16 A. Once you're a member, yes, sir.

17 Q. So if someone has not farmed tobacco in 20
18 years, is it your opinion that that person still has
19 a right to attend director meetings and vote for
20 directors?

21 A. Yes, sir.

22 Q. And if someone held a membership in the
23 past and has died, is it your opinion that membership
24 is -- passes on to the members of that person's
25 family?

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1 Q. Right.

2 when Stabilization used its assets --

3 Are you familiar with the barn retrofit
4 conversion project that Stabilization undertook some
5 years ago?

6 A. Yes, I am.

7 Q. And did you -- did you receive a payment as
8 a result of that program?

9 A. Yes, I did.

10 Q. I take it you didn't send that money back;
11 you were pleased to receive the money they sent you?

12 A. I didn't particularly agree with it. I
13 don't think that was the purpose of the money.

14 Q. Did you complain to anyone about
15 stabilization using a portion of its assets to fund
16 the barn retrofit program?

17 A. Not to anyone on the board, I didn't.

18 Q. And when Stabilization began operating
19 marketing centers in early 2000-2002, did you
20 complain to anyone about Stabilization using its
21 assets to fund the marketing centers?

22 A. A lot of conversations with farmers were
23 about that, and I specifically talked to Bruce about
24 that.

25 Q. What -- what do you remember discussing

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1 with Bruce about that.

2 A. "Bruce, you don't need to be out here
3 trying to -- to be in competition with tobacco
4 companies."

5 Q. Did you understand why Stabilization's
6 board believed that it was a good idea to establish
7 marketing centers?

8 A. I didn't understand the thought process.

9 Q. Did you understand that Stabilization's
10 growers were having to pay significant fees and
11 assessments to utilize the public auction houses?

12 A. Yeah. I used them for years and -- and my
13 fees didn't hurt me. But those assessments like to
14 have broke my back, and those assessments went into
15 the No-Net Cost Fund that are in Stabilization today.

16 Q. Well, let me -- let's go back to that for a
17 minute, just to make sure I understand.

18 Is it your testimony that today,
19 stabilization has control over any No-Net Cost
20 assessment monies?

21 A. Don, go back to what I said earlier this
22 morning. Stabilization has never planted any
23 tobacco. Stabilization has never had a business
24 venture that's -- that's generated a profit.

25 Every dollar that Stabilization's got, what

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1 they're paying you with today, what they buy the
2 Buick Ultras with, what they pay Arnold Hamm with,
3 the trucking, everything else, every dollar they've
4 got either came through profits of sale of farmers'
5 tobacco under loan or through assessments.

6 Q. Okay. And, again, I'm just trying to
7 understand how much of that is based on -- on
8 information that you have as opposed to sort of your
9 conclusion about where the dollars came from.

10 And if -- if I -- if I understand what
11 we've discussed, is it correct that you don't
12 actually know whether any of stabilization's assets
13 are composed of assessment dollars or fees that
14 growers paid into the No-Net Cost Account?

15 A. It doesn't really matter. Everything they
16 got came from farmers, either through profits on
17 loans or assessments. So it doesn't really matter
18 how those particular monies are, that's where it all
19 came from.

20 Q. Okay. I think I understand what -- what
21 you're saying.

22 And -- and just to make sure I -- I'm
23 reflecting your view of the world correctly, it --
24 to -- your view is that it's -- it doesn't matter
25 where the dollars came from, they weren't generated

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1 by any independent activity of stabilization;
2 therefore, they can only belong to the farmers?

3 A. Exactly.

4 Q. Okay. Let's look at paragraph 5 for a
5 minute. Paragraph 5 says, "For too many years
6 Stabilization has been allowed to operate our
7 cooperative in utmost secrecy."

8 Do you see that?

9 A. Yes, sir.

10 Q. What did you mean by that sentence?

11 A. Well, some of the things we've been talking
12 about. I don't know of any growers that knew that --
13 that we as a cooperative were fixing to go into the
14 cigarette manufacturing business until after it had
15 been done.

16 Q. You're talking about the purchase of
17 Timberlake?

18 A. Yeah.

19 Q. Other than --

20 A. I don't know that any of us members knew
21 that Stabilization was going to create a price
22 support system and this marketing plan they've got
23 until after the fact.

24 Q. Do you recall a letter that was sent out to
25 growers in November or December of 2004 describing a

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1 proposed marketing program?

2 A. Not specifically.

3 [SHARP EXHIBIT NOS. 3 & 4 MARKED FOR IDENTIFICATION.]

4 Q. Mr. Sharp, take a look at the documents
5 that have been identified as Deposition Exhibits 3
6 and 4. And for now, I just want to ask you if you
7 recognize these documents. And we'll -- I'll ask you
8 about 3 first and then 4. Take whatever time you
9 need to read through them.

10 [PAUSE.]

11 [MR. MOORE EXITS THE CONFERENCE ROOM.]

12 A. Okay.

13 Q. Looking at Exhibit 3, first, the letter
14 dated November 29th, 2004, do you recall whether
15 Sharp Farms received a copy of this letter?

16 A. Not specifically.

17 Q. Do -- have you seen the letter before?

18 A. I don't remember.

19 Q. Look at Exhibit 4, the letter dated
20 December 20th, 2004. Do you recall whether Sharp
21 Farms received a copy of that letter?

22 A. I don't remember.

23 Q. Do you -- do you know whether -- do you
24 recall seeing the letter before?

25 A. No, I do not.

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1 Q. Okay. You can put those aside for the
2 moment.

3 So you -- you mentioned -- going back to
4 paragraph 5, sir -- mentioned the Timberlake purchase
5 and you mentioned the marketing program as two things
6 that you felt like members were not advised about in
7 advance, correct?

8 A. Exactly.

9 Q. Other than those two, what -- what -- was
10 there anything else you were referring to in
11 paragraph 5?

12 A. Don, in Exhibit 3 that you just gave me --

13 Q. Um-hum.

14 A. -- is a fine example of what I'm just
15 talking about. The second paragraph, when it says
16 that the November board meeting -- and this thing was
17 dated November 29th. The directors voted to offer
18 tobacco farmers for whatever reason that do not have
19 a marketing contract the opportunity to enter into
20 Stabilization's marketing agreement. After the fact.
21 They had a November board meeting on November 29th.
22 They sent this letter out to the membership saying
23 this is what we've done.

24 Q. Well, you're -- you're --

25 A. Stabilization's board of directors,

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1 employees, no one was ever out in the community,
2 never at the meetings saying, "what do y'all think?
3 This is what we're thinking. what do you think we
4 need to do? This is something in the back of our
5 mind. what do you think about it?"

6 That Exhibit 3 is exactly what I'm talking
7 about. Stabilization reacted -- their board reacted
8 to their needs and whims and desires, and its
9 membership of tens of thousands of people find out
10 after the fact.

11 [MR. MOORE ENTERS THE CONFERENCE ROOM.]

12 Q. Did you attend any district meetings in
13 2004?

14 A. I attended my district meeting, whatever
15 district Bruce is in -- or was in --

16 Q. Um-hum.

17 A. -- every -- every year.

18 Q. And you -- you don't recall any
19 conversation or discussion at district meetings or in
20 newsletters prior to November 29th, 2004, about
21 Stabilization's interest in providing the marketing
22 program for its members?

23 A. Huh-uh.

24 Q. Okay. Back to my question: Other than the
25 purchase of the Timberlake facility and the marketing

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1 program, was there anything else specific --
2 specifically that you were referring to in paragraph
3 5 of your letter to fellow tobacco farmers?

4 A. Yeah. I was also referring to -- that was
5 a pretty all-encompassing paragraph for one sentence.
6 I was also referring to the fact of -- of these
7 continual rule changes over who can be a member and
8 who can vote and who can hold office.

9 Q. How many times have you requested
10 information from Stabilization that you have not been
11 provided?

12 A. Never requested any.

13 Q. Why not?

14 A. Anything I needed to know, I went to Jimmy
15 Hill or Bruce Flye.

16 Q. And did you ever make a request for
17 information from Jimmy Hill that he didn't respond
18 to?

19 A. No, sir.

20 Q. Did you ever make a request for information
21 from Bruce Flye that he didn't respond to?

22 A. I never asked him for information.

23 Q. Mr. Flye was the director from your
24 district, correct?

25 A. That's right.

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1 Q. And if you had a question --
2 Did -- did you know Mr. Flye?

3 A. Yes, I did.

4 Q. And you knew him well enough to feel
5 comfortable approaching him with a question --

6 A. Yeah.

7 Q. -- if you had one?

8 A. Yeah.

9 Q. But you didn't ask him any questions?

10 A. Yeah. I asked him questions all the time.

11 Q. And was there ever an occasion where you
12 asked him a question where you felt like he was --
13 he's wasn't responsive to you or you didn't --

14 A. He was always responsive: "This is what
15 the board chose to do."

16 "Why aren't you sending the money back?"

17 "Because we need it."

18 He was always responsive.

19 Q. Have -- have you always been the designated
20 representative of Sharp Farms vis-a-vis
21 Stabilization?

22 A. Yes, I have.

23 Q. Okay. And you -- I think you testified a
24 minute ago that it's your practice to attend the
25 district -- the district meetings for your district?

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1 A. Right.

2 Q. Do you -- do you believe that you've
3 attended the district meeting for Stabilization every
4 year since you've been in charge of flue-cured
5 tobacco for Sharp Farms?

6 A. Probably two-thirds of them.

7 Q. Okay. How about annual meetings?

8 A. Probably half the annual meetings.

9 Q. At the district meetings, did you
10 participate in discussions at those meetings just as
11 a general matter?

12 A. Probably.

13 Q. Did you know that Stabilization had a
14 website with information for its members?

15 A. I have been to that website before.

16 Q. When did you first visit the Stabilization
17 website?

18 A. It's been a couple years ago.

19 Q. Do you remember why you visited it?

20 A. Just out of curiosity to look at it.

21 MR. TUCKER: Let's take a break.
22 We've been going for a little over an hour.

23 MR. RUNYAN: Okay.

24 [RECESS.]

25 BY MR. TUCKER:

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1 Q. Okay. Mr. Sharp, we were talking about
2 paragraph 6 in the letter to fellow tobacco farmers
3 that you prepared, Exhibit 2 -- I think 2.

4 A. Yes.

5 Q. Before -- before the lawsuit was filed, did
6 you ever complain to Stabilization or any director or
7 any of its officers about how the board was
8 operating?

9 A. Yes, I did. To Jimmy Hill and to Bruce
10 Flye.

11 Q. And what -- what -- tell me about that.
12 When did -- when did you first make a complaint and
13 what was it that you complained about specifically?

14 [MR. MOORE ENTERS THE CONFERENCE ROOM.]

15 A. Well, they probably thought I complained
16 about everything. But when Stabilization purchased
17 Timberlake, to both of them I expressed that I
18 thought it was a bad idea. At this point in time, I
19 didn't see how they could justify spending \$26
20 million of our money on a cigarette manufacturing
21 facility with no experience in making cigarettes and
22 in a very competitive market. I just didn't think it
23 would work, and it was going to waste what money we
24 had had in stabilization.

25 Q. So you made that complaint to Bruce and to

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1 Jimmy.

2 other than the complaints about the
3 purchase of Timberlake, do you recall having made any
4 complaint to anyone from Stabilization about how the
5 cooperative -- how the board was operating?

6 A. I complained to Jimmy and Bruce and to
7 Keith Parrish and Arnold several times about the
8 membership thing; the exclusive contracts, the
9 nonexclusive contracts.

10 Q. Anything else that you remember?

11 A. And about being -- being eligible to vote
12 and being eligible to sit on the board.

13 Q. Okay. Anything else?

14 A. That's all I can think of. There's
15 probably more.

16 Q. Let's look at -- jump to paragraph 8. That
17 paragraph says, "Stabilization currently holds funds
18 that they refuse to admit belong to us. We actually
19 received 1099's on some of that money and have
20 already paid the income taxes on it."

21 Do you see that?

22 A. Yes, sir.

23 Q. And the funds that you're referring to, are
24 those the same two pots of money that we've talked
25 about previously, the 26 million and the 110 million?

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1 A. That is specifically the \$26 million.

2 Q. Okay. Paragraph 8 then refers to the
3 profits that were generated from the sale of the '67
4 to '72 tobacco?

5 A. Yes, sir.

6 Q. And do you recall that Sharp Farms received
7 a 1099 for some of the profits from the sale of the
8 '67 to '72 crops?

9 A. I remember my father back then complaining
10 about getting a 1099 and having to pay tax on it when
11 the money was still at stabilization.

12 Q. Do you -- did you have any involvement
13 at -- at that point in time in paying taxes on any of
14 the profits of Sharp Farms or figuring out what the
15 tax liabilities of the farm was?

16 A. I did not.

17 Q. So you -- is your only knowledge about this
18 what you recall what your father saying?

19 A. And other people talking about the very
20 same thing.

21 Q. Okay. And do you know why 1099's were
22 issued with respect to the proceeds from the sale of
23 the '67 -- 1967 through 1972 --

24 A. It was profits that somebody had to pay tax
25 on it.

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1 Q. Okay. And did you -- have you -- have you
2 ever made any effort to sort of understand the
3 details of how all that operated?

4 A. I think in general, Don, I understand how
5 all of it operates. It's -- it's tobacco farmers'
6 money that was put there with their blood and sweat
7 either through tobacco or assessments.

8 Q. Well, I'm talking about the '67 to '72
9 crops. That -- that was long before the No-Net Cost
10 Act --

11 A. Yeah.

12 Q. -- was enacted, correct?

13 A. Yeah.

14 Q. So there were no assessment fees being
15 paid --

16 A. Right.

17 Q. -- with respect to the '67 through '72
18 crops?

19 A. Prior to '67 through '72, farmers would get
20 a dividend or the profits of what they had under loan
21 as each crop was closed out and sold.

22 Q. And they would pay individual income taxes
23 on the profits that they received.

24 A. That's right. And they would -- they would
25 close those out.

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EXHIBIT H

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

KAY W. FISHER, ORVILLE WIGGINS,
DALE C. BONE, THOMAS N. RHOAD,
LINWOOD SCOTT, JR., ROBERT C.
BOYETTE, RICHARD RENEGAR, AND
KENDALL HILL AND OTHER SIMILARLY
SITUATED,

Plaintiffs,

v.

FLUE-CURED TOBACCO STABILIZATION
CORPORATION, KEITH BEAVERS,
MCDANIEL WYNNE, BRUCE L. FLYE,
RICHARD J. JENKS, CLAUDE B.
FRENCH, AND ANDREW Q. SHEPARD,

Defendants.

NO. 05-CVS-1938

DEPOSITION OF

KENDALL HILL

LAW OFFICES OF SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.
2500 WACHOVIA CAPITOL CENTER
RALEIGH, NORTH CAROLINA

FRIDAY, AUGUST 25, 2006

10:02 A.M.

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P R O C E E D I N G S

Whereupon, KENDALL HILL, was
called as a witness, duly sworn,
and testified as follows:

MR. RUNYAN: Witness to read and sign.

Direct Examination

10:02 a.m.

BY MR. TUCKER:

Q. Mr. Hill, my name is Don Tucker. We met
briefly before the deposition began. I'm one of the
lawyers that represents stabilization in the lawsuits
that have been filed against it by various members or
former members.

One of those lawsuits is entitled Fisher
and others versus Stabilization. You're a named
party in that lawsuit, correct?

A. Yes, sir.

Q. Have you had your deposition taken before?
Have you ever been to a proceeding like this where
you've given sworn testimony?

A. Yes, sir.

Q. So you're familiar with the fact that
everything we say will be taken down and transcribed
and you're under oath and should answer just as if we
were sitting in a courtroom and you are sworn?

A. Yes, sir.

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1 described, have you ever given any deposition
2 testimony?

3 A. I think I gave one when we had a -- a
4 explosion on our farm in '75 and we were sued along
5 with North Carolina Natural Gas, and I'm 99 percent
6 sure I gave one at that time.

7 Q. Sued by the person who was injured in the
8 explosion?

9 A. More or less.

10 Q. The person was killed as a result of the
11 accident?

12 A. Um-hum.

13 Q. Well, it sounds like it's been some time
14 since you've had your deposition, so let me just kind
15 of review the procedure with you.

16 I'll be asking questions. I'm sure you've
17 counseled with your lawyers. They may object from
18 time to time. Unless they instruct you not to
19 answer, you should allow them to object and then
20 proceed to answer the question.

21 If you don't understand a question that
22 I've asked, please ask me to rephrase it and I'll do
23 my best to -- to do that and make sure that you have
24 it in understandable form. If you don't ask me to
25 rephrase or clarify, I'm going to assume that you

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1 understand the question.

2 If you need to take a break at any time,
3 that's fine; that's absolutely fine. Just let me
4 know. We'll probably break on the hour or so anyway;
5 but if you need to take a -- if you need a break
6 before then, please just let me know.

7 when did you first learn about the lawsuit
8 in this matter that was filed by Kay Fisher and
9 others? And for convenience, I'll refer to that as
10 the Fisher lawsuit, if that's all right.

11 A. (Witness moves head up and down.)

12 Q. So when did you first learn that there was
13 a -- a lawsuit being prepared against Stabilization?

14 A. When I first learned there was actually
15 going to be one involved, Pender Sharp called me and
16 said let's -- we want to enter a lawsuit. And I
17 said, "Okay."

18 Q. Do you remember when that was?

19 A. Not really, I don't. It had to be -- this
20 is '06, '05. It was probably sometime in the fall of
21 2004, but I'm not sure.

22 Q. Did Mr. Sharp call you by telephone?

23 A. Yes. Well, we had talked about -- we had
24 been talking about it six months. We -- we were
25 talking about the wrongs that Stabilization was

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1 doing.

2 Q. who -- when you say "we," who are you
3 referring to?

4 A. Farmers in Eastern North Carolina.

5 Q. Any particular farmers that you remember?

6 A. Myself and Pender.

7 Q. Any others?

8 A. Oh, Jerome Vick was one of them. People
9 that were familiar with what was transpiring.

10 Q. And when did you see -- first start having
11 any conversations with Mr. Sharp and --

12 A. About the time --

13 Q. -- Mr. Vick?

14 A. -- about the time that buyout actually was
15 approved.

16 Q. That would have been towards the end of
17 2004.

18 A. (Witness moves head up and down.)

19 Q. And what -- what do you remember about
20 those conversations? what were the issues that
21 concerned you that you discussed with Mr. Sharp and
22 Mr. Vick?

23 A. what was going to be the purpose of
24 stabilization and what were they going to do with the
25 money that belonged to the farmers and growers and

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1 quota holders.

2 Q. And how many -- how many conversations do
3 you think you had with Mr. Sharp and Mr. Vick on
4 that -- those subjects?

5 A. I don't know. Mostly it was when we would
6 have meetings for -- concerning sweet potato
7 meetings. We would meet for other things like with
8 Pender and Jerome and myself were all on a North
9 Carolina Sweet Potato Foundation Board which was set
10 up to get grant money from Gold Leaf.

11 Q. Does that -- does that board meet on a
12 regular schedule?

13 A. Oh, we met -- that -- in 2004, we met three
14 or four times. No, we don't meet regular --
15 regularly. We would have called meetings.

16 Q. So you -- you may meet only as called by
17 the president of the board?

18 A. Right.

19 Q. And your best recollection is that when you
20 would meet for a board meeting, sometime during the
21 course of that meeting or afterwards, you had these
22 conversations with Mr. Sharp --

23 A. Yeah. When we had --

24 Q. -- and Mr. Vick?

25 A. -- when we had board meetings, we have --

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EXHIBIT I

From: Philip Isley [mailto:Plsley@bmlilaw.com]

Sent: Thursday, January 04, 2018 3:42 PM

To: Keith Forst <keithforst@quinnemanuel.com>; Alan Runyan <arunyan@runyanplatte.com>; Bob Cherry <wrc@mwglaw.com>; 'dennisworley@wwpemplaw.com' <dennisworley@wwpemplaw.com>; Andrew Platte <aplatte@runyanplatte.com>; Gibson Solomons <gsolomons@speightsandsolomons.com>; Philip Miller <PMiller@bmlilaw.com>; Hardy Lewis <HLewis@bmlilaw.com>; Jay Ward <jward@mcgowanhood.com>; Bobby Wood <bwood@rpwb.com>

Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; 'Lee M. Whitman' <lwhitman@wyrick.com>; 'PJ Puryear' <PPuryear@wyrick.com>

Subject: RE: USTC: Sharp objection to Speaks Settlement (deposition notices)

Keith, we do not believe you are entitled to take the deposition of Pender Sharp without the Court's permission and the issuance of a subpoena since he is a non-party. Alan will respond to you later today regarding the other two depositions.

Take care.

Philip R. Isley
Blanchard, Miller, Lewis & Isley, P.A.
1117 Hillsborough Street
Raleigh, NC 27603
Telephone: 919.755.3993
Facsimile: 919.755.3994
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From: Keith Forst [mailto:keithforst@quinnemanuel.com]

Sent: Thursday, January 4, 2018 2:51 PM

To: Philip Isley <Plsley@bmlilaw.com>; 'arunyan@speightsrunyan.com' <arunyan@speightsrunyan.com>; Bob Cherry <wrc@mwglaw.com>; 'dennisworley@wwpemplaw.com' <dennisworley@wwpemplaw.com>

Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; 'Lee M. Whitman' <lwhitman@wyrick.com>; 'PJ Puryear'

<PPuryear@wyrick.com>

Subject: RE: USTC: Sharp objection to Speaks Settlement (deposition notices)

Philip, Alan: Please confirm by COB today that we're on for these depositions next week. Regards, Keith

From: Keith Forst

Sent: Tuesday, January 02, 2018 4:19 PM

To: 'Philip Isley' <Plsley@bmlilaw.com>; 'arunyan@speightsrunyan.com' <arunyan@speightsrunyan.com>; 'Bob Cherry' <wrc@mwglaw.com>; 'dennisworley@wwpemplaw.com' <dennisworley@wwpemplaw.com>

Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; 'Lee M. Whitman' <lwhitman@wyrick.com>; 'PJ Puryear' <PPuryear@wyrick.com>

Subject: RE: USTC: Sharp objection to Speaks Settlement (deposition notices)

Philip, Alan: One correction to my email below. I got my dates mixed up. We've noticed the depositions for next week, January 9 and 10 (not January 16 and 17). Thanks, Keith

From: Keith Forst

Sent: Tuesday, January 02, 2018 3:35 PM

To: 'Philip Isley' <Plsley@bmlilaw.com>; 'arunyan@speightsrunyan.com' <arunyan@speightsrunyan.com>; 'Bob Cherry' <wrc@mwglaw.com>; 'dennisworley@wwpemplaw.com' <dennisworley@wwpemplaw.com>

Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; 'Lee M. Whitman' <lwhitman@wyrick.com>; 'PJ Puryear' <PPuryear@wyrick.com>

Subject: USTC: Sharp objection to Speaks Settlement (deposition notices)

Alan, Philip: Please see the attached deposition notices for Messrs. Sharp and Harrison. We've noticed their depositions for January 16 and 17, respectively. Please confirm that you will make them available on those dates. As for Mr. George, we note that he did not provide an expert report or declaration of any kind, yet you've indicated that he "may be called to testify to the issues and opinions he shares with Dr. Harrison." We view this an improper attempt to introduce cumulative expert testimony, without providing a substantive report or declaration that specifies the "issues and opinions he shares with Dr. Harrison" and those he does not. To the extent that you continue to reserve the right to call Mr. George as a witness, we will be moving to strike and have, in the alternative, attached a deposition notice for next Wednesday for him as well.

For the avoidance of doubt, we reserve rights to oppose the presentation of any live witnesses at the final fairness hearing.

Regards, Keith

Keith Forst

Partner,

Quinn Emanuel Urquhart & Sullivan, LLP

777 6th Street, NW, 11th Floor

Washington, D.C. 20001

202-538-8139 Direct

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EXHIBIT J

07-C-238

NOV 27, 2017 05:41 PM


Shawna C. Hughes, Clerk
Berrien County, Georgia

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

DELTON ALTMAN, DANNY TURNER,
JAMES DELK, JAMES R. REWIS,
BARTON WALKER, and RONNIE
WALKER,

Plaintiffs,

-vs-

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION,

Defendant.

Case No. 07C238

JURY TRIAL DEMANDED

VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COME NOW, Plaintiffs in the above referenced action, and
pursuant to O.C.G.A. § 9-11-41, hereby dismiss the above
referenced action WITHOUT PREJUDICE.

THIS THE 27th DAY OF NOVEMBER, 2017.

SAVAGE & TURNER, P.C.

By: /s/ Kathryn Hughes Pinckney
Brent J. Savage
Georgia Bar No. 627450
Kathryn Hughes Pinckney
Georgia Bar No. 376110

102 East Liberty Street, 8th Floor
Post Office Box 10600
Savannah Georgia 31412
Phone: (912) 231-1140
Fax: (912) 232-4212
kpinkney@savagelawfirm.net

CERTIFICATE OF SERVICE

This is to certify that I a true and correct copy of the foregoing was served upon all parties by causing same to be served via U. S. Mail, postage prepaid, to the following:

Derek L. Shaffer,
Keith H. Forst
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
777 6th Street NW, 11th Floor
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Gerald M. Edenfield
V. Sharon Edenfield
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Statesboro, Georgia 30459

Kenneth E. Futch, Jr.
THE FUTCH LAW FIRM
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Alma , Georgia 31510

F. David McCrea
LAW OFFICE OF DAVID McCREA
Post Office Box 412
Alma, Georgia 31510

THIS THE 27th DAY OF NOVEMBER, 2017.

SAVAGE & TURNER, P.C.

By: /s/ Kathryn Hughes Pinckney
Brent J. Savage
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Kathryn Hughes Pinckney
Georgia Bar No. 376110

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kpinkney@savagelawfirm.net

07-C-237

NOV 27, 2017 05:36 PM


Shawna C. Hughes, Clerk
Berrien County, Georgia

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

BENJAMIN SWAIN, ELISHA L.
MEEKS, JONATHAN TANNER, EUGENE
TURNER and GARY TURNER,

Plaintiffs,

-vs-

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION,

Defendant.

Case No. 07C237

JURY TRIAL DEMANDED

VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COME NOW, Plaintiffs in the above referenced action, and
pursuant to O.C.G.A. § 9-11-41, hereby dismiss the above
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V. Sharon Edenfield
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P.O. Box 1700
Statesboro, Georgia 30459

Kenneth E. Futch, Jr.
THE FUTCH LAW FIRM
1 BYRT Way
Alma , Georgia 31510

F. David McCrea
LAW OFFICE OF DAVID McCREA
Post Office Box 412
Alma, Georgia 31510

THIS THE 27th DAY OF NOVEMBER, 2017.

SAVAGE & TURNER, P.C.

By: /s/ Kathryn Hughes Pinckney
Brent J. Savage
Georgia Bar No. 627450
Kathryn Hughes Pinckney
Georgia Bar No. 376110

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Savannah Georgia 31412
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kpinkney@savagelawfirm.net

07-C-240

NOV 27, 2017 05:38 PM

Shawna C. Hughes
Shawna C. Hughes, Clerk
Berrien County, Georgia

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

MIKELL GRIFFIS, DANIEL JOHNSON,
TIM CARTER, RAY DIXON, ROY
HASKINGS, and TIM JOHNS,

Plaintiffs,

-vs-

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION,

Defendant.

Case No. 07C240

JURY TRIAL DEMANDED

VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COME NOW, Plaintiffs in the above referenced action, and
pursuant to O.C.G.A. § 9-11-41, hereby dismiss the above
referenced action WITHOUT PREJUDICE.

THIS THE 27th DAY OF NOVEMBER, 2017.

SAVAGE & TURNER, P.C.

By: /s/ Kathryn Hughes Pinckney
Brent J. Savage
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Kathryn Hughes Pinckney
Georgia Bar No. 376110

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THE FUTCH LAW FIRM
1 BYRT Way
Alma , Georgia 31510

F. David McCrea
LAW OFFICE OF DAVID McCREA
Post Office Box 412
Alma, Georgia 31510

THIS THE 27th DAY OF NOVEMBER, 2017.

SAVAGE & TURNER, P.C.

By: /s/ Kathryn Hughes Pinckney
Brent J. Savage
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Kathryn Hughes Pinckney
Georgia Bar No. 376110

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07-C-239

NOV 27, 2017 05:33 PM

Shawna C. Hughes
Shawna C. Hughes, Clerk
Berrien County, Georgia

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

L. CARLTON LEE, KINYARD
JARRIEL, LESTER JARRIEL, GEORGE
JARRIEL, FRANKLIN VANN, and
CLEVE HENDERSON,

Plaintiffs,

-vs-

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION,

Defendant.

Case No. 07C239

JURY TRIAL DEMANDED

VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COME NOW, Plaintiffs in the above referenced action, and
pursuant to O.C.G.A. § 9-11-41, hereby dismiss the above
referenced action WITHOUT PREJUDICE.

THIS THE 27th DAY OF NOVEMBER, 2017.

SAVAGE & TURNER, P.C.

By: /s/ Kathryn Hughes Pinckney
Brent J. Savage
Georgia Bar No. 627450
Kathryn Hughes Pinckney
Georgia Bar No. 376110

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Savannah Georgia 31412
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kpinkney@savagelawfirm.net

CERTIFICATE OF SERVICE

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Derek L. Shaffer,
Keith H. Forst
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
777 6th Street NW, 11th Floor
Washington, DC 20001

Gerald M. Edenfield
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Kenneth E. Futch, Jr.
THE FUTCH LAW FIRM
1 BYRT Way
Alma , Georgia 31510

F. David McCrea
LAW OFFICE OF DAVID McCREA
Post Office Box 412
Alma, Georgia 31510

THIS THE 27th DAY OF NOVEMBER, 2017.

SAVAGE & TURNER, P.C.

By: /s/ Kathryn Hughes Pinckney
Brent J. Savage
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Kathryn Hughes Pinckney
Georgia Bar No. 376110

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kpinkney@savagelawfirm.net

EXHIBIT K

07-C-238

DEC 11, 2017 12:37 PM


Shawna C. Hughes, Clerk
Berrien County, Georgia

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

BENJAMIN SWAIN, ELISHA L. MEEKS,
JONATHAN TANNER, EUGENE
TANNER and GARY TURNER,

Plaintiffs,

vs.

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

Civil Action No. 07C237

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

DELTON ALTMAN, DANNY TURNER,
JAMES DELK, JAMES J. REWIS,
BARTON WALKER and RONNIE
WALKER,

Plaintiffs,

vs.

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

Civil Action No. 07C238

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

L. CARLTON LEE, KINYARD JARRIEL,
LESTER JERRIEL, GEORGE JARRIEL,
FRANKLIN VANN, and CLEVE
HENDERSON,

Plaintiffs,

vs.

Civil Action No. 07C239

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

MIKELL GRIFFIS, DANIEL JOHNSON,
TIM CARTER, RAY DIXON, ROY
HASKINGS, and TIM JOHNS,

Plaintiffs,

vs.

Civil Action No. 07C240

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

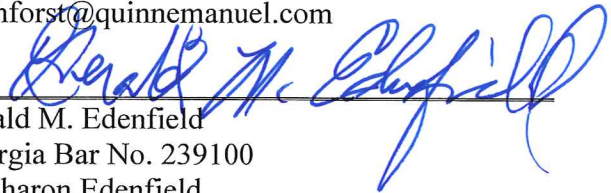
**DEFENDANT FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION'S MOTION TO VACATE VOLUNTARY DISMISSAL, ENTER
DISMISSAL WITH PREJUDICE, AND AWARD FEES AND COSTS**

Defendant Flue-Cured Tobacco Cooperative Stabilization Corporation, now known as the U.S. Tobacco Cooperative Inc. (the "Cooperative"), respectfully moves this Court, pursuant to O.C.G.A §§ 9-11-41 and 9-15-14 to vacate Plaintiffs' November 27, 2017 voluntary dismissals, dismiss the above-captioned actions with prejudice, and award the Cooperative its costs and fees. This Motion is brought on the grounds reflected in the Memorandum of Law In Support of the Motion and the documents submitted therewith.

Respectfully submitted, this December 11, 2017.



Derek L. Shaffer (*pro hac vice*)
Keith H. Forst (*pro hac vice*)
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Facsimile: (912) 764-8862
gerald@edenfieldlaw.com
sharri@edenfieldlaw.com

*Attorneys for Defendant Flue-Cured Tobacco
Cooperative Stabilization Corporation*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO VACATE VOLUNTARY DISMISSAL, ENTER DISMISSAL WITH PREJUDICE, AND AWARD FEES AND COSTS was served upon all other parties by e-mail and by first-class mail, postage pre-paid, addressed as follows:

Brent J. Savage
Savage, Turner, Durham, Pinckney and Savage
102 East Liberty St., 8th Floor
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mbankston@savagelawfirm.net
kpinckney@savagelawfirm.net
lwickline@savagelawfirm.net

This December 11, 2017.



Derek L. Shaffer (*pro hac vice*)
Keith H. Forst (*pro hac vice*)
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Washington, DC 20001
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derekshaffer@quinnemanuel.com
keithforst@quinnemanuel.com

*Attorneys for Defendant Flue-Cured Tobacco
Cooperative Stabilization Corporation*

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

BENJAMIN SWAIN, ELISHA L. MEEKS,
JONATHAN TANNER, EUGENE
TANNER and GARY TURNER,

Plaintiffs,

vs.

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

Civil Action No. 07C237

DELTON ALTMAN, DANNY TURNER,
JAMES DELK, JAMES J. REWIS,
BARTON WALKER and RONNIE
WALKER,

Plaintiffs,

vs.

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

Civil Action No. 07C238

L. CARLTON LEE, KINYARD JARRIEL,
LESTER JERRIEL, GEORGE JARRIEL,
FRANKLIN VANN, and CLEVE
HENDERSON,

Plaintiffs,

vs.

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

Civil Action No. 07C239

MIKELL GRIFFIS, DANIEL JOHNSON,
TIM CARTER, RAY DIXON, ROY
HASKINGS, and TIM JOHNS,

Plaintiffs,

vs.

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

Civil Action No. 07C240

**DEFENDANT FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION'S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION TO VACATE VOLUNTARY DISMISSAL, ENTER DISMISSAL
WITH PREJUDICE, AND AWARD FEES AND COSTS**

NOW COMES Defendant Flue-Cured Tobacco Cooperative Stabilization Corporation, now known as U.S. Tobacco Cooperative Inc. (the “Cooperative”), by and through the undersigned counsel, and hereby respectfully submits this memorandum in support of its Motion to Vacate Voluntary Dismissal, Enter Dismissal With Prejudice, and Award Fees and Costs in the above-captioned actions (the “Pending Cases”).

INTRODUCTION

The Pending Cases were due to be dismissed *with prejudice* for the reasons explained by the Cooperative in its October 23, 2017 Motion to Dismiss¹—which Plaintiffs have left entirely uncontested and unanswered. Seven years ago, Plaintiffs in the Pending Cases requested that the Court stay all but one case, *Rigby v. Flue-Cured Tobacco Coop. Stabilization Corp.*, Civil Action No. 07C236 (Ga. Super Ct.) (“*Rigby*”), which would serve as their best and lead test case. The *Rigby* matter was fully litigated and the Cooperative prevailed across the board on every claim. Having lost their dispositive test case, Plaintiffs cannot possibly prevail in any of the Pending Cases. The voluntary dismissal Plaintiffs filed to stave off the foreordained result is invalid under Georgia law and should be replaced by dismissal with prejudice, for the reasons explained herein.

It was understood by all parties involved that the Pending Cases should be dismissed with prejudice. Indeed, once *Rigby* was fully resolved by the Georgia Supreme Court’s denial of *certiorari* on June 5, 2017, Plaintiffs’ counsel indicated that they, and their clients, were prepared to stipulate to a dismissal with prejudice—as documented by a series of emails in which named plaintiffs agreed to stipulated dismissals. *See* Ex. A at 5 (reviewing correspondence and citing to Ex. Q). Only at the eleventh hour, after the Cooperative circulated to Plaintiffs’ counsel the

¹ A true and correct copy of the Cooperative’s October 23, 2017 Motion to Dismiss, as well as the exhibits submitted therewith, is attached hereto as **Exhibit A.**

proposed, stipulated dismissals with prejudice, did Plaintiffs' counsel suddenly revoke their consent, inform the Cooperative that they "understand you will have to file your motion(s) [to dismiss]," and state that they would "respond accordingly." *See* Ex. A at 7 (citing to Ex. R). But Plaintiffs did not "respond accordingly." Rather, after the Cooperative moved to dismiss the Pending Cases with prejudice on uncontested grounds, including *res judicata*, Plaintiffs—without any advance notice to the Cooperative—filed voluntary dismissals ***without prejudice*** in each of the Pending Cases on November 27, 2017.

These voluntary dismissals are invalid, inoperative, and null. Georgia law does not allow litigants to tactically circumvent the entry of a final judgment on the merits by voluntarily dismissing a case after the outcome is foreordained. For the reasons stated below, Plaintiffs' voluntary dismissals without prejudice should be vacated and this Court should enter an order dismissing the Pending Cases with prejudice for the reasons originally set forth in the Cooperative's uncontested Motion to Dismiss, which is expressly incorporated herein by reference.

Furthermore, Plaintiffs regrettably have taken to prolonging and complicating this litigation quite unnecessarily, thereby forcing the Cooperative to incur significant costs in preparing and filing two unnecessary motions. Plaintiffs have therefore become obligated to cover the Cooperative's resulting costs. As shown in the uncontested Motion to Dismiss (*see* Ex. A at 15-17), and reiterated below, Plaintiffs are liable, pursuant to O.C.G.A. §§ 9-15-14 and 13-6-11, for the Cooperative's costs from October 19, 2017 through the present.

ARGUMENT

I. Plaintiffs' voluntary dismissals should be vacated and the Court should order dismissal with prejudice.

The voluntary dismissals filed in the Pending Cases amount to a brazen attempt by Plaintiffs to avoid the dispositive force of the *Rigby* litigation after it became clear to all. Their effort is unavailing and undeserving of credit under Georgia law.

A plaintiff may generally voluntarily dismiss his or her case pursuant to O.C.G.A. § 9-11-41(a). A plaintiff may not, however, use the Code of Civil Procedure to gain tactical advantage over an opponent—the rules exist to “secure the just, speedy, and inexpensive determination of every action.” O.C.G.A. § 9-11-1; *see, e.g., Brankovic v. Snyder*, 578 S.E.2d 203, 207 (Ga. Ct. App. 2003) (requests for admission not to be used for “tactical advantage”). Thus, “the right of voluntary dismissal has *always been subject to a judicially created limitation prohibiting its exercise*, even prior to trial, where there has already been an announcement by the court of its intention to rule in favor of the defendant.” *Lakes v. Marriot Corp.*, 448 S.E. 2d 203, 204-05 (Ga. 1994) (emphasis added). This rule follows from the basic principle that there should be finality and certainty as to the end of litigation: “[A]fter a party has taken the chances of litigation and know what is the actual result reached in the suit . . . *he cannot, by exercising his right of voluntary dismissal, deprive the opposite party of the victory thus gained.*” *Id.* at 205 (quoting *People’s Bank of Talbotton v. Exchange Bank*, 46 S.E. 416 (Ga. 1903)) (emphasis added). Thus, a plaintiff’s knowledge of the actual “conclusion of the litigation” suffices to “preclude[] a filing of voluntary dismissal.” *Dillard Land Invs., LLC v. Fulton Cty.*, 761 S.E. 2d 282, 287 (Ga. 2014).

The touchstone for precluding a party’s voluntary dismissal without prejudice is whether the court has reached “*a verdict or a finding by the judge which is equivalent thereto.*” *Guillebeau v. Yeargin*, 330 S.E.2d 585, 586 (Ga. 1985) (quoting *People’s Bank of Talbotton*, 46

S.E. at 417) (emphasis added); *Dillard Land Invs.*, 761 S.E. 2d at 286-87 (same) (quoting *Cooper v. Rosser*, 211 S.E.2d 202 (1974)). Once the litigation has reached that point, a plaintiff may no longer voluntarily dismiss claims without prejudice. This rule ensures that a plaintiff's conduct "comports with principles of judicial economy," *Guillebeau*, 330 S.E.2d at 587, and that the Georgia rules of procedure serve their proper ends—securing "just, speedy, and inexpensive determination of every action." *See* O.C.G.A. § 9-11-1.

Here, Plaintiffs were fully aware that the Court had reached a finding equivalent to a verdict in the Pending Cases prior to filing the voluntary dismissals. *Rigby* served to conclusively resolve the Pending Cases as *res judicata*—that is, **with prejudice**—for the reasons set forth in the Motion to Dismiss. *See* Ex A. at 8-12.² It follows that the announcement of the final decision in *Rigby* was tantamount to an announcement of a final decision in each of the Pending Cases—the claims, issues, and parties were indistinguishable. *See id.* Plaintiffs so recognized. In fact, Plaintiffs' counsel represented to the Court, prior to proceeding with *Rigby* as the lead case, that the "issues to be tried are virtually identical" and that "Plaintiffs believe that the outcome of a consolidated case . . . would give the parties a much needed benchmark by which they can evaluate the remaining cases." *See* Ex. A at 3-4 (citing to Ex. F (Plaintiffs' Nov. 22, 2010 Mot. to Stay)). Moreover, this Court made clear that *Rigby* was intended to resolve the Pending Cases, stating in its March 28, 2013 letter to the parties that, "I am assuming that the claims in [the Pending Cases]

² O.C.G.A. § 9-12-40 establishes that a "judgment of a court of competent jurisdiction shall be **conclusive** between the same parties and their privies as to all matters put in issue . . . wherein the judgment was rendered until the judgment is reversed or set aside." O.C.G.A. § 9-12-40 (emphasis added). A judgment is conclusive, preventing the "re-litigation of all claims which have already been adjudicated, or which could have been adjudicated, between identical parties or their privies in identical causes of action." *Waldroup v. Greene County Hosp. Auth.*, 265 Ga. 864, 865-66, 463 S.E.2d 5, 6-7 (1995).

are based on the same substantive issues as were asserted in *Rigby*,” because the Court wanted to “avoid duplicate litigation of any of the cases.” *See* Ex. A at 5 (citing to Ex. O).

Nevertheless, Plaintiffs did not file their voluntary dismissals until November 27, 2017—nearly half a year after the final resolution of *Rigby* by the Georgia Supreme Court, and well after receiving clear notice that the Pending Cases were irrefutably resolved by *Rigby* in the form of the Cooperative’s Motion to Dismiss. Simply put, the decision in the Pending Cases had been openly announced before Plaintiffs purported to dismiss without prejudice. Their procedural maneuver is precisely what Georgia law forbids. *See Lakes*, S.E.2d at 204-05 (“[A]fter a party . . . know[s] what is the actual result reached in the suit [the party] **cannot, by exercising [its] right of voluntary dismissal, deprive the opposite party of the victory thus gained.**”).

Accordingly, Plaintiffs were not entitled to voluntarily dismiss the Pending Cases and those filings should be vacated and treated as null. In their place, for the grounds set forth in the unanswered Motion to Dismiss, this Court should enter an order dismissing the Pending Cases with prejudice.

II. The Cooperative is entitled to its fees and costs from October 19, 2017 onward.

In the Motion to Dismiss, the Cooperative put Plaintiffs on express notice that their conduct in this case had rendered them liable for the Cooperative’s fees and costs. *See* Ex. A at 15-17. Georgia law is abundantly clear on this point: “[A] court may assess reasonable and necessary attorney’s fees and expenses of litigation in any civil action [if] it finds that an attorney or party brought or defended an action, **or any part thereof, that lacked substantial justification, or that the action, or any part thereof, was interposed for delay or harassment.**” O.C.G.A. § 9-15-14(b) (emphasis added). The Motion to Dismiss established beyond doubt that Plaintiffs’ last-minute decision to revoke consent to a stipulation of dismissal was baseless and done in bad faith. Their bait and switch forced the Cooperative to wait on them for months, only then to draft and file a

Motion to Dismiss that should have been wholly unnecessary given that the verdict in *Rigby*, the dispositive test case, rendered the Pending Cases *res judicata*. See, e.g., *Beinert v. Dickerson*, 624, S.E.2d 245, 258 (Ga. App. 2005) (establishing that a claim “lacks substantial justification” when it is “substantially frivolous, substantially groundless, or substantially vexatious.”). Accordingly, the Cooperative is entitled to fees and costs related to the Motion to Dismiss.

Unfortunately, Plaintiffs’ bad-faith conduct did not stop at forcing the Cooperative to prepare and file the Motion to Dismiss. Instead of filing an opposition to the Motion to Dismiss that would permit this Court to resolve the issue on the facts and law, Plaintiffs resorted to filing invalid voluntary dismissals without prejudice. That maneuver, too, ran counter to Plaintiffs’ previous representations that they would “respond” to any motion to dismiss. On October 19, 2017, Plaintiffs’ counsel informed the Cooperative that Plaintiffs would no longer consent to dismissal with prejudice and stated: “I understand that you will have to file your motions(s). ***We will respond accordingly.***” See Ex. A at 6-7 (citing to Ex. R) (emphasis added). Rather than “respond accordingly,” however, Plaintiffs unilaterally dismissed the Pending Cases without prejudice. Their latest gamesmanship has forced the Cooperative to prepare the instant Motion. Like Plaintiffs’ last-minute refusal to stipulate to dismissal in the first place, this action was completely unnecessary. Given the clear law establishing that a case may not be voluntarily dismissed in these circumstances, see *supra* Part I, the only reasonable conclusion is that the voluntary dismissals were “interposed for delay or harassment.” O.C.G.A. § § 9-15-14(b). It is telling that Plaintiffs offered no indication that they intended to file for voluntary dismissal, and waited until the last day for filing any opposition to the Motion to Dismiss to do so.

Accordingly, the Cooperative respectfully requests that the Court award it its fees and costs incurred in preparing both the Motion to Dismiss and the instant Motion. The Cooperative will prepare and submit an application for its fees and costs upon this Court's order.

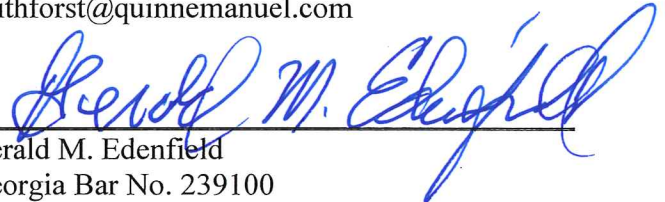
CONCLUSION

For the foregoing reasons, the Cooperative respectfully requests that this Court enter an order vacating Plaintiffs' voluntary dismissals, dismissing the Pending Cases with prejudice, and awarding the Cooperative its costs and fees.

Respectfully submitted, this December 11, 2017



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*Attorneys for Defendant Flue-Cured Tobacco
Cooperative Stabilization Corporation*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO VACATE VOLUNTARY DISMISSAL, ENTER DISMISSAL WITH PREJUDICE, AND AWARD FEES AND COSTS was served upon all other parties by e-mail and by first-class mail, postage pre-paid, addressed as follows:

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This December 11, 2017.



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EXHIBIT L

----- Original message -----

From: Marie VanderBrink

Date: 11/27/17 8:53 AM (GMT-05:00)

To: Keith Forst

Subject: Lewis/Fisher - Depositions

SENT ON BEHALF OF BOB CHERRY

Re: Lewis/Fisher – Depositions

Dear Keith:

I have received your email dated November 14, 2017 along with an additional email from Matthew Wasserman dated November 20, 2017.

In your email you have indicated that you wish to take a significant number of depositions. I would point out to you that the Cooperative has been engaged in discovery for twelve (12) years concerning the Plaintiffs. All of the named Plaintiff representatives have been deposed. The only other depositions that you referenced were Dr. Glenn W. Harrison and James H. Smith.

I am confident that we can work on some dates for those individuals to be deposed after the first of the year.

BOB CHERRY

Sent By:

Marie VanderBrink

Legal Assistant to

William Robert Cherry, Jr.

Marshall, Williams & Gorham, L.L.P.

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EXHIBIT M

SUPREME COURT OF NORTH CAROLINA

KAYE W. FISHER, DAN LEWIS,)
GEORGE ABBOT, ROBERT C.)
BOYETTE, KYLE A. COX, C.)
MONROE ENZOR, JR., Executor)
of the Estate of Crawford Monroe)
Enzor, Sr., ARCHIE HILL,)
KENDALL HILL, WHITNEY E.)
KING, CRAY MILLIGAN,)
RICHARD RENEGAR, LINWOOD)
SCOTT, JR., ORVILLE WIGGINS,)
ALFORD JAMES WORLEY,)
Executor of the Estate of Dennis)
Anderson, CHANDLER WORLEY,)
HAROLD WRIGHT, and)
OTHERS SIMILARLY SITUATED)

Plaintiffs,)

v.)

FLUE-CURED TOBACCO)
COOPERATIVE STABILIZATION)
CORPORATION)

Defendant.)

From Wake County

No. 05 CVS 188

No. 05 CVS 1938

No. COA14-609

BRIEF OF DEFENDANT-APPELLANT

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NO. 374A14-1

TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

* * * * *

KAYE W. FISHER, DAN LEWIS,)
GEORGE ABBOT, ROBERT C.)
BOYETTE, KYLE A. COX, C.)
MONROE ENZOR, JR., Executor)
of the Estate of Crawford Monroe)
Enzor, Sr., ARCHIE HILL,)
KENDALL HILL, WHITNEY E.)
KING, CRAY MILLIGAN,)
RICHARD RENEGAR, LINWOOD)
SCOTT, JR., ORVILLE WIGGINS,)
ALFORD JAMES WORLEY,)
Executor of the Estate of Dennis)
Anderson, CHANDLER WORLEY,)
HAROLD WRIGHT, and)
OTHERS SIMILARLY SITUATED)
)
Plaintiffs,)
)
v.)
)
FLUE-CURED TOBACCO)
COOPERATIVE STABILIZATION)
CORPORATION)
)
Defendant.)

From Wake County
No. 05 CVS 188
No. 05 CVS 1938

No. COA14-609

ISSUE PRESENTED

I. WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY CERTIFYING THE CLASS

INTRODUCTION

This appeal concerns a plaintiff class the likes of which no North Carolina court has hitherto contemplated, much less certified. For the reasons explained herein and in the *amicus curiae* brief filed by the North Carolina Chamber of Commerce (“NCCC Am. Br.”), affirming the grant of class certification in this case would eradicate any limit on a trial court’s discretion to certify a class pursuant to Rule 23 in North Carolina.

As certified, the class encompasses some 800,000 past and present tobacco farmers (plus family and heirs thereof) across five States who press nine assorted claims spanning several decades.¹ These hundreds of thousands of class members are all aligned, per the operative certification order, against an agricultural cooperative that has served flue-cured tobacco growers since 1946 pursuant to its statutory charter from North Carolina and direction from the Governor, who appoints a chosen Board member. Apart from seeking money from the same Defendant, however, these class members are more different than they are alike: some are still actively farming tobacco and relying on the Cooperative to buy their

¹ The class as certified encompasses plaintiffs (current and former members of the Cooperative) in North Carolina, South Carolina, Florida, Georgia, and Virginia.

crop, whereas others ceased farming decades ago (or, indeed, never farmed tobacco but are mere relations of those who once did); some sold tobacco to the Cooperative under one federal statutory regime, whereas others sold to the Cooperative under a substantially different, later regime; some sold tobacco for less than the Cooperative resold it for, whereas the vast majority did not; some have obtained (and redeemed) Certificates of Interest for tobacco they sold to the Cooperative, whereas others never did. The lines of distinction and division go on and on.

Such a sprawling, disparate class appears not only unprecedented but altogether irreconcilable with this Court's instruction earlier this year that a plaintiff class should not be certified where "800 [property] owners within the [transportation] corridor are [not] affected in the same way and to the same extent" by a defendant's conduct. *Beroth Oil Co. v. N.C. Dept. of Transp.*, ___ N.C. ___, ___, 757 S.E.2d 466, 474 (2014). Here, hundreds of thousands of plaintiffs press what amounts to a grab-bag of different claims, arising at different times, based on different facts and legal theories, translating to alleged damages that must be separately calculated individually, then distributed across estates of an untold number of persons now deceased. What is more, all these class members have been herded into a *single* class definition, without benefit of *any* sub-class or

separate representation, even though they divide into fundamentally different groups whose interests oppose one another. It is inconceivable that the disparate theories, proofs, and interests that run through this class could be tried and adjudicated together.

Although reasonable minds often disagree about the propriety and contours of a particular class, certification of *this* class is unsustainable under *any* sound view of North Carolina law, particularly after *Beroth*. Were this certification nonetheless to stand, trial courts would be free to disregard essential limits on class actions. If nothing else, a trial court confronting a class of such expansive, divergent, unwieldy proportions should be required to explain how and why it considers class treatment appropriate to decide the specific merits issues pending before it. Here, the trial judge not only omitted such explanation but ignored defects as glaring as outright adversity between class members.

This Court has previously held that an order granting class certification is not always immediately appealable, *see Frost v. Mazda Motor of Am*, 353 N.C. 188, 193, 540 S.E.2d 324, 327-28 (2000), but may take this occasion to correct an imbalance in the procedural law. *See* NCCC Am. Br. at 2-16. Otherwise, orders *denying* class certification may automatically be appealed (and thus potentially reversed) on an interlocutory basis while orders *granting* class certification may

not be. *See Stetser v. TAP Pharm. Prods., Inc.*, 165 N.C. App. 1, 10-11, 598 S.E.2d 570, 577-78 (2004); *see also Neil v. Kuester Real Estate Servs., Inc.*, No. 12-677, slip op. at 14 (N.C. Ct. App. Nov. 4, 2014) (unpublished) (App'x at A99). Whatever the default rule may be, however, the Cooperative has substantial rights at stake in this case so as to ground interlocutory appeal—particularly the right to face a non-conflicted class susceptible to a binding, final judgment as contemplated by Rule 23 and to be afforded the opportunity to resolve internal membership disputes in orderly fashion as contemplated by statute. Moreover, in a parallel petition for certiorari filed today, we elaborate upon why this Court should in any event exercise its discretion to decide the merits of this appeal. In sum, we respectfully ask this Court to review and reverse certification of the instant class.

STATEMENT OF THE CASE

The cases bound up in this appeal began in 2005. Plaintiffs-Appellees (“Plaintiffs”) originally filed separate actions (*Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corp.* & *Fisher v. Flue-Cured Tobacco Cooperative Stabilization Corp.*) but later combined them en route to a consolidated, amended complaint that now states nine separate claims: conversion, breach of contract (one count complaining of monies withheld and another complaining of loss of membership), imposition of constructive trust, accounting, distribution, declaratory judgment, *ultra vires* acts, and unfair trade practices. (R. 112-146.)

In July 2009, Defendant-Appellant the U.S. Tobacco Cooperative, Inc. (“Cooperative”) moved to dismiss Plaintiffs’ claims (then numbering 14, per the initial complaint). (R. 49-53.) Nearly three years later on March 30, 2012, the court below granted that motion in part, dismissing certain of Plaintiffs’ claims. (R. 54-62.) Thereafter, the Cooperative answered, denying liability and asserting defenses against the remaining claims, as well as counterclaims against certain named Plaintiffs. (R. 174-199.)

On July 9, 2012, Plaintiffs amended their complaint (dropping claims for dissolution) (R. 112-146) and simultaneously moved to certify the class (R. 63-64). Shortly thereafter, however, certain Plaintiffs broke away over apparent disagreements surrounding which causes of action and how much damages to pursue against the Cooperative. On October 31, 2012, an overlapping putative class represented by separate counsel (now nonetheless conscripted into the class as defined) filed a parallel action against the Cooperative in the U.S. District Court for the Eastern District of North Carolina, captioned *Speaks v. United States Tobacco Cooperative Inc.*, advancing distinct claims and seeking the Cooperative’s dissolution. (R. 204-245.) *Speaks* is currently stayed by the federal court pending resolution of this appeal. Order, *Speaks v. United States Tobacco Cooperative Inc.*, No. 12-00729 (E.D.N.C. Sep. 16, 2014), ECF No. 36.

The parties in this case undertook class discovery, followed by extensive briefing on Plaintiffs' motion for certification. (R. 63-111; R. 147-173; R. 204-245; RE. 1-891; RE. 900-3434.) In support of class certification, class counsel argued that the "primary factual question common to all class members [is] what reserve if any is reasonable such that monies in excess must be distributed." (R. 97.)

The trial court agreed in its initial order certifying a class on June 27, 2013. (R. 246-255.) Because the certification order omitted findings and conclusions essential to this Court's review, however, the court withdrew it at the parties' urging and directed Plaintiffs to submit a new proposed order. (R. 260-264.) On February 24, 2014, the trial court entered a new order largely adopting Plaintiffs' proposed class (hereinafter, the "Order"). (R. 267-282.) According to the Order, which credited Plaintiffs' framing of their core theory for purposes of obtaining class certification, the "central issue common to all Plaintiffs is whether they are entitled to share in the accumulated assets held by Defendant, which Defendant contends is held as a reasonable reserve." (R. 272.) Also according to the Order, the entire class is encompassed under a single definition, consisting of three categories:

All individuals, proprietorships, partnerships, corporations, or their heirs, representatives, executors or assigns, and other proper entities

that have been members/shareholders of the [Cooperative] at any time from its inception through the end of crop year 2004, and any heirs, representatives, executors, successors or assigns, and;

(a) had not requested cancellation of their membership and whose membership was cancelled by [the Cooperative] without a hearing, and/or

(b) were issued a certificate of interest in capital reserve by [the Cooperative] for any of the tobacco crop years between and including 1967-1973, and/or

(c) delivered, consigned for sale, or sold flue-cured tobacco and paid an assessment for deposit into the No Net Cost Tobacco Fund or No Net Cost Tobacco Account during any tobacco crop years between and including 1982-2004. (R. 282.)

Individual dissenters may opt out, but all other class members are represented by the same counsel. Thus, the breadth of the class definition is such that it includes, *e.g.*: (i) an overlapping class that is expressly dissenting and complaining of conflicts in federal court (R. 204-245); (ii) current members of the Cooperative who support and benefit from the Cooperative (RE. 1669; RE. 1674); and (iii) a named representative who is an active “board member of Defendant” and thus responsible for the very business judgments the class challenges (R. 276-277).

On March 10, 2014, the Cooperative noticed an appeal to the Court of Appeals (R. 283-284), and the appellate record was timely served and filed with that court on June 2, 2014 (R. 290-291). On October 10, 2014, this Court *sua sponte* certified the Cooperative’s appeal “for review prior to determination in the

Court of Appeals.” Order, *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, No. 374A14-1 (N.C. Oct. 10, 2014).

STATEMENT OF FACTS

As matters presently stand, the Cooperative faces suit by a class consisting of all current and former tobacco farmers (and/or all of their heirs and assigns) who have ever sold flue-cured tobacco to the Cooperative since its inception. (R. 282.) According to the shared account of class counsel and the trial judge, these class members all stake claim to the reserve accumulated and retained by the Cooperative. (R. 97-99.) To grasp the dimension and thrust of this class action, it is important to consider this Cooperative’s history.

The Cooperative was formed in 1946 as an agricultural marketing association serving growers of flue-cured tobacco, authorized as such by North Carolina. (R. 269.) Pursuant to the 1921 statute under which it was formed, its mission has long been to “promote, foster, and encourage the intelligent and orderly producing and marketing of agricultural products through cooperation.” N.C. Cooperative Marketing Act, N.C. GEN. STAT. § 54-129, *et seq.* The Cooperative continues that mission today, promoting high-quality tobacco farming and marketing by pooling tobacco leaves and production in order to benefit growers

of flue-cured tobacco, help drive a fair price for flue-cured tobacco, and support North Carolina's larger economy. (RE. 2300-2302; RE. 2315-2316.)²

Membership in the Cooperative has always been predicated on selling flue-cured tobacco to the Cooperative. *See* N.C. GEN. STAT. § 54-145 (membership available "only to persons engaged in the production of agricultural products"). To become a member, a grower historically needed only to pay the Cooperative a nominal fee of \$5 and sell it some amount of tobacco meeting specified quality requirements. (RE. 2434-2435.)

For much of its history, the Cooperative helped to implement the federal price-stabilization program, which established a floor for tobacco prices. (RE. 2300.) The first Tobacco Price Support Program was part of the Agricultural Adjustment Act of 1938, which ensured a minimum price for tobacco farmers. (RE. 82.) If farmers could not find a better price elsewhere, then the Cooperative was positioned to buy their tobacco at the minimum price. (RE. 2306.) To the extent that an individual grower opted to sell to the Cooperative, the Cooperative

² Flue-cured tobacco (*i.e.*, tobacco that is cured with heat transmitted through a flue, without resort to smoke or fumes in order to achieve desired chemical and biological changes) is grown primarily in North Carolina, Georgia, South Carolina, Virginia, and Florida. North Carolina produces over 75 percent of the domestic crop each year, while Florida, Georgia, South Carolina, and Virginia combine for the remaining 25 percent. About Tobacco, CENTER FOR TOBACCO GROWER RESEARCH, <http://www.tobaccogrowerresearch.org/tobacco.html> (last visited Nov. 12, 2014).

would pay the agreed price and, in exchange, take title and possession over the tobacco it purchased. (RE. 2306; RE. 372-447.)

Flue-cured tobacco farmers who were eligible for the Cooperative had access to a prized benefit not generally available to other market participants—the option to sell at a federally guaranteed price.³ To pay them that price, the Cooperative received loans from the Commodity Credit Corporation (“CCC”), an agency of USDA; tobacco purchased by the Cooperative served as collateral on the loans. (RE. 2306.) Proceeds from the Cooperative’s sale of tobacco went first to repay outstanding loans from the CCC. (RE. 2306.)

As a general rule, the Cooperative sold tobacco for *less* than the minimum price it paid. (RE. 2306-2307.) On balance, those sales resulted in large losses for the U.S. Government, which taxpayers covered for the benefit of tobacco growers. (*Id.*) The only crop years for which the Cooperative recognized a net profit on its sales under the initial regime were 1967-73. (*Id.*) The Cooperative issued dividends to its members from these profits and issued Certificates of Interest for the balance, approximately \$27 million, which the Board voted in 1975 to retain as a reserve, just as the contracts it signed with members expressly permitted it to do. (RE. 2307-2308; RE. 372-409.) The Board has since opened redemption periods

³ In exchange, farmers committed to limit their production according to quotas enforced by the U.S. Department of Agriculture (“USDA”). (RE. 2306.)

for Certificates of Interest and has been receiving and redeeming those outstanding Certificates during specified windows. (RE. 2307; RE. 2316.)

In an effort to stem continuing losses, the U.S. Congress in 1982 passed the No Net Cost Act, which imposed an assessment fee on all tobacco remitted to the Government. These fees were accumulated to help reimburse the Government for losses resulting from the price-stabilization program. (RE. 2309.) Initially, from 1982 to 1985, the assessment fees were paid only by tobacco growers. In 1986, however, Congress amended the No Net Cost Act to require tobacco buyers as well as tobacco growers to pay assessment fees. (*Id.*) Then, in 1993, Congress passed another amendment subjecting importers of tobacco to the assessment fees. (*Id.*) Thus, the assessment funds that the Government accumulated over time largely reflected the contributions of buyers and importers, rather than those of growers alone. (*Id.*)

Despite the assessments paid under the No Net Cost Act, the Government continued to suffer overwhelming losses on the tobacco price-stabilization program—losses totaling approximately \$2 billion since 1946. (RE. 2306.) In 2004, USDA ended the price-stabilization program. At that time, the CCC had over \$200 million in assessment funds that it had accumulated to pay off outstanding balances from its loans. (RE. 2312-2313; RE. 2474-2475; RE. 2477.)

USDA then released approximately 83 million pounds of actual tobacco (which had been held as collateral on its loans) from the 2001-2004 crops to the Cooperative, and the Cooperative sold those pounds of tobacco for approximately \$81 million. (RE. 2313-2314.)

Later, in 2007, USDA separately released to the Cooperative \$7 million that it had not used to pay off balances from government loans, specifying that the Cooperative should release those funds to its member growers, which the Cooperative did. (RE. 2310-2311.) As the price-stabilization era came to a close, therefore, the Government decided to return to the Cooperative, as a gift, tobacco that the Government was otherwise entitled to retain as collateral, while separately specifying a smaller assessment refund (\$7 million) that the Cooperative was to disperse to its member growers. (RE. 2310-2311; RE. 2474.) In accordance with the Government's direction, the Cooperative's Board distributed the \$7 million in assessment refunds to relevant members. And the Cooperative's Board retained the proceeds separately resulting from the sale of gifted tobacco as a reserve, thereby ensuring that the Cooperative could continue to pursue its mission of providing a good price for farmers, now without government subsidies. (RE. 2313.)

Since 2005, the Cooperative's reserves have reached the neighborhood of \$340 million. (RE. 2314.) That reserve derives primarily from three different sources: (1) net gains from the 1967-1973 crop years, while the federal price-stabilization program remained in place in its initial form; (2) left-over tobacco from the 1982-1984 crop years that USDA released to the Cooperative in the early 1990s in order to clear out accumulated inventory under the No Net Cost Act, at which point the Cooperative sold the tobacco for approximately \$110 million; and (3) the 83 million pounds of tobacco from the 2001-2004 crops that served as collateral until the USDA released it back to the Cooperative at the close of federal price stabilization. (RE. 2311; RE 2314.)

The Cooperative has been putting its robust reserve to good use. When the price-stabilization program ended, the Cooperative reinvented itself to become a global, competitive, vertically-integrated player within the international tobacco market. And it has necessarily done so on its own dime, without further support from the U.S. Treasury. This has been neither easy nor cheap. Purchasing, processing, storing, and marketing entails up-front investments and substantial waits before returns are achieved. In the meantime, the reserve enables the Cooperative to pay its growers, sustain its operations, and continue building and improving them. (RE. 1691-1692; RE. 2315.)

The Cooperative is governed by growers, for growers. Its Board of Directors, like its membership, is comprised of growers who actively farm and sell to the Cooperative. (RE. 1345.) One Director is appointed directly by the Governor. (*Id.*) The others are elected from districts representing roughly similar volumes of tobacco production. (*Id.*)

As of 2004, the Cooperative's roster of members had grown to 800,000. (RE. 2302.) This number was not an accurate reflection of the Cooperative's active membership. Instead, it was an artifact of the Cooperative's long history dating back to 1946, throughout which the Cooperative freely assigned membership numbers to families, assignees, partnership participants, *etc.*, all without limit and without ever updating its rolls. (RE. 2302-2303; RE. 2320-2322.) In 2004, the Board recognized the need to update its membership to limit it to those who were actually selling to the Cooperative (R. 185; RE. 704)—consistent with the governing statute that limits its membership. *See* N.C. GEN. STAT. § 54-145.

As a result of that process, some 800,000 names came off the rolls—all of which are now included, by definition, within this class as certified. (R. 282.) Today, the Cooperative has some 1,000 active members, representing at least a quarter of all active flue-cured tobacco farmers nationwide. (RE. 908.) These

farmers work hard to grow their crop each year, just as the Cooperative works hard to enable them to sell their crop at a fair price each year. Only with the benefit of its reserve can the Cooperative successfully promote, process, and sell its members' flue-cured tobacco within the competitive global marketplace.

GROUND FOR APPELLATE REVIEW

Although this Court has held that grant of class certification is not always subject to interlocutory appeal, *see Frost*, 353 N.C. at 193, 540 S.E.2d at 327-28, there is good reason here to overturn that rule and permit appeal from orders granting class certification no less than from orders denying class certification: Doing so would correct asymmetry that has developed in the procedural law, *see Stetser*, 165 N.C. App. at 10-11, 598 S.E.2d at 577-78, and prevent a skewing effect whereby *grants* of class certification are effectively *avored* over *denials*—with only the latter likely to be reviewed (and thus potentially reversed) by interlocutory appeal. *See* NCCC Am. Br. at 12-14. In any event, even if grants of class certification are not immediately appealable as a matter of course, *this* Order is extraordinary in multiple respects that implicate substantial rights and otherwise warrant urgent attention. This Court has taken a salutary step in these respects by taking this appeal up for itself. *See* N.C. GEN. STAT. § 7A-31 (specifying that this Court will grant review prior to determination by the Court of Appeals in cases where “(1) [t]he subject matter of the appeal has significant public interest, or (2)

[t]he cause involves legal principles of major significance to the jurisprudence of the State, or (3) [d]elay in final adjudication is likely to result from failure to certify and thereby cause substantial harm, or (4) [t]he work load of the courts of the appellate division is such that the expeditious administration of justice requires certification”).

In particular, the Order under appeal threatens the Cooperative’s substantial rights. A “substantial” right is “a legal right affecting or involving a matter of substance as distinguished from matters of form.” *Oestreicher v. Am. Nat’l Stores, Inc.*, 290 N.C. 118, 130, 225 S.E.2d 797, 805 (1976). “The decision of whether an interlocutory appeal affects a substantial right is made on a case-by-case basis,” including for class actions. *Dunn v. State*, 179 N.C. App. 753, 757, 635 S.E.2d 604, 606 (2006) (citing *Milton v. Thompson*, 170 N.C. App. 176, 178, 611 S.E.2d 474, 476 (2005)). Interlocutory orders are appealable whenever a substantial right would otherwise be “lost, prejudiced or . . . less than adequately protected by exception to entry of the interlocutory order.” *J & B Slurry Seal Co. v. Mid-South Aviation, Inc.*, 88 N.C. App. 1, 6, 362 S.E.2d 812, 815 (1987) (citations omitted). In this case, the prospect of ultimate appeal from final judgment somewhere down the road affords no succor.

A. The Order Disregards Fundamental Safeguards Under Rule 23

The grant of class certification in this case transgresses basic protections of Rule 23 (*see infra* at 27-49) in ways that cannot be adequately vindicated via an appeal from final judgment. In particular, the class is racked by fundamental conflicts that foreclose proper conduct of this litigation by class counsel, injure the interests of growers whom the named Plaintiffs supposedly represent (including current members of the Cooperative and even Directors on the Board), and stand to call into question *any* judgment favoring the Cooperative. Those conflicts cannot be cured following final judgment. To the contrary, continuing to litigate in the current posture exposes the Cooperative to the risk of an adverse class-wide judgment *against* it even while any favorable class-wide judgment *for* it would arguably violate the due-process rights of absent, aggrieved plaintiffs whose interests ostensibly conflict. *See, e.g., Gonzales v. Cassidy*, 474 F.2d 67, 74 (5th Cir. 1973). Proceeding in this posture unfairly subjects the Cooperative to a “heads you lose, tails it’s a do-over” coin flip. It also denies absent “members of the class” much the same “right to . . . representation” that animates interlocutory review of orders *denying* class certification. *Perry v. Cullipher*, 69 N.C. App. 761, 762, 318 S.E.2d 354, 356 (1984).

In addition, the class is so unmanageable that this case cannot be resolved any time in the foreseeable future. With a class that numbers in the hundreds of

thousands, facts that span decades, various liability theories that run in parallel, and proof that will differ for *both* liability *and* damages across this class, there is every reason to question whether and how this case can *ever* be litigated through final judgment. Any prospect of final judgment could be more than a decade away, if ever attainable, given the numerosity and variability of the individualized issues now slated for merits adjudication across this class. To delay review under Rule 23 in these circumstances would prejudice substantial rights, including those of absent class members. *Cf. EQT Prod. Co. v. Adair*, 764 F.3d 347, 357 (4th Cir. 2014) (explaining that interlocutory review of class certification should be granted where “manifestly erroneous and virtually certain to be reversed on appeal”) (internal quotations and citation omitted); *Schmidt v. Fuller Brush Co.*, 527 F.2d 532, 535 (8th Cir. 1975) (collecting cases that reviewed interlocutory orders granting class certification, recognizing “that class actions place an enormous burden of costs and expense upon the parties”).⁴

Notably, even prior to FED. R. CIV. P. 23(f), federal courts of appeals undertook interlocutory review of problematic certifications. *See In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298 (7th Cir. 1995) (Posner, J.) (“Judge

⁴ As the Court of Appeals has explained, “the reasoning in [federal class action] cases can be instructive,” even though “North Carolina’s [Rule 23] . . . is quite different from the present federal Rule 23.” *Scarvey v. First Fed. Sav. & Loan Ass’n.*, 146 N.C. App. 33, 41, 552 S.E.2d 655, 660 (2001) (citations omitted).

Friendly, who was not given to hyperbole, called settlements induced by a small probability of an immense judgment in a class action ‘blackmail settlements.’ Judicial concern about them is legitimate”) (citation omitted); *see also Stillmock v. Weis Markets, Inc.*, 385 F. App’x 267, 281 (4th Cir. 2010) (Wilkinson, J., concurring) (“[H]ere we face the risk of forcing a defendant to settle in the face of billions in liability for actions that resulted in not a single instance of identity theft.”). The Court should similarly police class certification orders that stretch Rule 23 past the breaking point, as this one so clearly does.

B. The Order Denies Special Statutory Protections

Furthermore, the rights of this particular Cooperative deserve special scrutiny. The Cooperative possesses, just as “ordinary corporations” do, N.C. GEN. STAT. § 54-151(7), an absolute right to be free from lawsuits based on derivative claims that have not been presented to its Board as required by law. North Carolina prohibits shareholders from so much as commencing a derivative proceeding until 90 days after “[a] written demand has been made upon the corporation to take suitable action.” N.C. GEN. STAT. § 55-7-42. This enables the Cooperative to investigate any such membership grievance before confronting a lawsuit over it. Notably, the North Carolina Legislature took care to omit the common-law futility exception to the demand requirement in order to forestall what it saw as “excessive and unnecessary litigation on a preliminary point.” *Allen*

ex rel. Allen & Brock Const. Co., Inc. v. Ferrera, 141 N.C. App. 284, 289, 540 S.E.2d 761, 765 (2000) (citation omitted). Moreover, any such suit must be dismissed if the Board “determines in good faith after conducting a reasonable inquiry . . . that the maintenance of the derivative proceeding is not in the best interest of the corporation.” N.C. GEN. STAT. § 55-7-44. Thus, the Cooperative is immune from any derivative suit not routed through the Board, much as the State is immune from any suit as to which it has not waived immunity. *See Hedrick v. Rains*, 121 N.C. App. 466, 468, 466 S.E.2d 281, 283 (1996), *aff’d per curiam*, 344 N.C. 729, 477 S.E.2d 171 (1996).

By Plaintiffs’ own account, the theory underlying the class is one of derivative liability, even though they presented no such claim to the Board. With their initial fourteen claims, Plaintiffs largely disguised their derivative theory. (R. 10-48.) But their façade collapsed when they framed their arguments for class certification: Plaintiffs argued (R. 97), and the trial court agreed (R. 272), that the “central issue common to all Plaintiffs is whether they are entitled to share in the accumulated assets held by Defendant, which Defendant contends is held as a reasonable reserve.” *Id.* To challenge the reasonableness of the Board’s maintenance of the reserve is to challenge the Board’s business judgment—and such challenge constitutes a prototypical derivative claim. *See* N.C. GEN. STAT.

§§ 55-6-40, 55-7-42; *see also* *Jordan v. Hartness*, 230 N.C. 718, 719, 55 S.E.2d 484, 485 (1949) (claims concerning disposition of corporate assets are derivative); 11 WILLIAM MEADE FLETCHER ET AL., THE FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 5326.10 (West 2014) (“Courts have generally treated the right of shareholders to bring suit to compel the declaration and payment of a dividend as derivative in nature.”). Considering that the Cooperative has an absolute right to be free from *any* derivative suit that does not comply with statutory requirements, it surely deserves protection against a *class-wide* derivative suit. *See Ferrera*, 141 N.C. App. at 289, 540 S.E.2d at 765.

Notably, this very problem proved fatal to a sister suit in Tennessee in which, as here, a putative class of current and former tobacco farmers unsuccessfully challenged the ongoing operation and accumulated reserve of the Burley Stabilization Corporation (“BSC”). *See Lay v. Burley Stabilization Corp.* (*Lay I*), No. 06-CV-111, 2007 WL 788316 (E.D. Tenn. Mar. 14, 2007) (dismissing complaint brought by members of BSC that sought recovery of BSC’s accumulated funds because (i) the claims of the putative class were derivative, and (ii) the putative class had failed to satisfy mandatory, procedural requirements for bringing any such claim) (unpublished) (App’x at A38); *see also Lay v. Burley Stabilization Corp.*, No. 07-CV-259, 2007 WL 3120800 (E.D. Tenn. Oct. 23, 2007) (dismissing

based on collateral estoppel similar complaint that sought distribution of accumulated funds from the BSC) (unpublished) (App'x at A42), *aff'd*, 312 F. App'x. 752 (6th Cir. Feb. 12, 2009).

The trial court's only answer to this problem has been to disavow analysis of the merits (R. 271), while hanging class certification on its view that the merits boil down to the theory, derivative in nature, that Plaintiffs "are entitled to share in the accumulated assets held by Defendant, which Defendant contends is held as a reasonable reserve." (R. 272.) Having gone so far as to embrace an assertedly unifying merits theory for class certification, the court should have assessed whether the theory is plausible. It cannot adopt a class-wide theory of commonality—*i.e.*, that the Cooperative is retaining an unreasonable reserve—as justification for certifying the class, while looking past the obvious reason why any such theory is foreclosed as derivative. Indeed, the court lacks jurisdiction even to entertain an improper derivative theory because Plaintiffs lack standing to bring it. *See Gusinsky v. Flanders Corp.*, Nos. 12-CVS-337, 12-CVS-463, 2013 WL 5435788, at *6 n.30 (N.C. Super. Ct. Sep. 25, 2013) (unpublished) (App'x at A28). If nothing else, however, the propriety of an interlocutory appeal should be clear: the Cooperative faces tortuously complex litigation, freighted with bet-the-

cooperative stakes, notwithstanding its absolute right not to be sued on such a claim. Only interlocutory appeal can vindicate the statutory right at stake.

What is more, the certification Order implicates other statutory protections applicable to the Cooperative. By statute, the Cooperative is expressly authorized to “engage in any activity in connection with the producing, marketing, [or] selling . . . of any agricultural products produced or delivered to it by its members and other farmers,” and to “do each and everything necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein.” N.C. GEN. STAT. § 54-151(1)-(7). On the strength of this statute, this Court long ago foreclosed any such collateral attack against an agricultural cooperative. *See Pittman v. Tobacco Growers’ Co-Op. Ass’n*, 187 N.C. 340, 340, 121 S.E. 634, 635 (1924) (holding that the validity of a cooperative organized under the North Carolina agricultural marketing association statute “cannot be assailed” via collateral attack). Members who may be aggrieved by the Cooperative’s decision-making should be taking that up with the Board, following statutorily prescribed channels. *See* N.C. GEN. STAT. §§ 55-7-42, 55-7-44; *see also* N.C. GEN. STAT. § 54-150 (members may approve or reject agricultural cooperative’s actions if “one third of the entire board of directors” refers the matter to the members); N.C. GEN. STAT. § 54-166 (providing mode of challenge by a

member ultimately aggrieved by agricultural cooperative's "merger, consolidation and other fundamental changes").

Such a catalogue of individual grievances never presented to the Board cannot be pursued as a class action, much less accepted as good grounds for class certification. *See Lay I*, 2007 WL 788316, at *3-4; *see also Woodford v. Ngo*, 548 U.S. 81, 85 (2006); *Thomas v. Union Carbide Ag. Prods. Co.*, 473 U.S. 568 (1985); *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 722 (1945); *In re MyFord Touch Consumer Litig.*, No. C-13-3072, 2014 WL 2451291, at *35 (N.D. Cal. May 30, 2014) (unpublished) (App'x at A50); *Hoffman v. Colo. State Bd. of Assessment Appeals*, 683 P.2d 783, 786-87 (Colo. 1984); *Lilian v. Commonwealth*, 354 A.2d 250, 252-53 (Pa. 1976). In sum, against the backdrop of governing North Carolina statutes, grant of class certification in this case specially implicates the Cooperative's substantial rights so as to justify its interlocutory appeal.

STANDARD OF REVIEW

Grant of class certification is reviewed for abuse of discretion, *Beroth*, ____ N.C. at ____, 757 S.E.2d at 470, and reversed if "manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *Harrison v. Wal-Mart Stores, Inc.*, 170 N.C. App. 545, 547, 613 S.E.2d 322, 325 (2005) (citing *Nobles v. First Carolina Comms., Inc.*, 108 N.C. App. 127, 132, 423 S.E.2d 312, 315 (1992)). Underlying conclusions of law are reviewed *de novo*,

Beroth, ___ N.C. at ___, 757 S.E.2d at 471, and a court that misapprehends governing law necessarily abuses its discretion, *see, e.g., Ruff v. Parex, Inc.*, 131 N.C. App. 534, 538, 508 S.E.2d 524, 527 (1998).

Factual findings must be “made with sufficient specificity to allow effective appellate review,” *Nobles*, 108 N.C. App. at 133, 423 S.E.2d at 316, and “supported by competent evidence.” *Beroth*, ___ N.C. at ___, 757 S.E.2d at 471 (quoting *Blitz v. Agean, Inc.*, 197 N.C. App. 296, 300-01, 677 S.E.2d 1, 4 (2009)). By design, the “competent evidence” standard demands more than the “clear error” standard that federal courts apply. *Beroth*, ___ N.C. at ___, 757 S.E.2d at 471 n.3.

In order specifically to justify class certification pursuant to N.C. Rule of Procedure 23, N.C. GEN. STAT. § 1A-1-23, plaintiffs must “establish the existence of a class” by showing that “each of the members has an interest in either the same issue of law or fact,” and that those “common issues of fact or of law” “predominate[] over issues affecting only individual class members.” *Beroth*, ___ N.C. at ___, 757 S.E.2d at 470, 476 (citing *Crow v. Citicorp Acceptance Co.*, 319 N.C. 274, 277, 282, 354 S.E.2d 459, 462, 465 (1987)). From there, plaintiffs also bear the burden of showing, among other things, “that named representatives will fairly and adequately represent the interests of all members of the class” and that there is “no conflict of interest between the named representatives and members of

the class.” *Id.* (citations omitted). At that point, a trial court’s discretionary decision to certify should turn upon “whether a class action is superior to other available methods for the adjudication of th[e] controversy,” as informed by, *e.g.*, balancing the “usefulness of the class action . . . against inefficiency or other drawbacks.” *Id.* (citing *Crow*, 319 N.C. at 284, 354 S.E.2d at 466).

ARGUMENT

Once this Court reaches the merits of the class certification order, we respectfully submit that the legal errors the Order reflects, the practical problems it poses, and the abuse of discretion it perpetrates are clear. After serving growers for nearly 70 years, the Cooperative faces an existential threat from this litigation. Although a request for dissolution has technically been dismissed from this case, the class’s persisting claims continue to strike, *en masse*, at the heart of this Cooperative. They seek, among other things, to deplete the Cooperative’s reserve in the name of hundreds of thousands of individuals who ceased many years ago to have any interest or involvement (if ever they had it) in farming flue-cured tobacco, and to call into question business judgments, particularly the Board’s decision to retain a reserve, dating back to the 1960s. Even worse, the interests of former members (or, in many cases, their heirs and assigns) in making a one-time money grab from the Cooperative’s reserve have been lumped together with those of current members who continue to rely upon the Cooperative for their livelihood.

As already noted *supra* at 20-23, the trial court has identified one theory that supposedly unifies these plaintiffs and supports class treatment—and it is one of derivative liability that is altogether foreclosed, especially as against this agricultural Cooperative. For each of the reasons (incorporated by reference as stated *supra*) that the Order deprives the Cooperative of substantial rights, it should be reversed to vindicate those rights. Nor does the class certification withstand review under Rule 23 itself.

Indeed, the need for reversal in this case follows *a fortiori* from this Court's recent decision in *Beroth*. There, the putative class was pursuing takings claims on the common theory that the N.C. Department of Transportation had harmed their properties by including them in a transportation corridor. ___ N.C. at ___, 757 S.E.2d at 469-70. Even though the class was complaining of the same basic action (identification of transportation corridors), this Court held that class certification was foreclosed and that the takings claim could not be adjudicated on a class-wide basis because it required a property-by-property analysis. "While [the defendant's] generalized actions may be common to all, the Court of Appeals correctly determined that 'liability can be established only after extensive examination of the circumstances surrounding each of the affected properties.'" *Id.* at 474. The claims were too variable because "[n]ot all of these 800 property owners have the

same property interests and expectations”: for instance, the affected properties included improved and unimproved properties, as well as residential and commercial properties. *Id.* Nor was it appropriate “for this Court to narrow plaintiffs’ allegations to conform to the requisites of a proper class. Here plaintiffs’ proposed class is of such breadth that, despite some overlapping issues, a trial on the merits would require far too many individualized, fact-intensive determinations for class certification to be proper.” *Id.* at 476; *see also EQT Prod.*, 764 F.3d at 367-69 (reversing lower court for abusing its discretion by certifying a class whose claims required individualized determinations based on individualized evidence, and faulting lower court for emphasizing sheer number of common practices without evaluating the extent to which those practices would ultimately bear on liability); *Neil*, slip op. at 16, 17 (endorsing the trial court’s consideration of “evidentiary facts” in denying class certification where “the claims of individual tenants would necessarily require a series of separate trials”).

Simply stated, there is no way the instant class might be certified consistent with established precedent and principle. Accordingly, this Court should reverse and hold that class certification is foreclosed in this case. Alternatively, at the very least, it should remand with detailed instruction regarding what proper analysis of class certification entails.

A. The Trial Court Erred By Ignoring Conflicts Of Interest That Preclude Adequate Representation

The trial court erred as a matter of law by disregarding fundamental conflicts that divide the class. As a result, the class definition combines under a single heading, unattended by any sub-class or separate representation, different sets of Plaintiffs who have opposing interests—and even goes so far as pitting a named representative who remains on the Cooperative’s Board against the class as a whole. *See also* NCCC Am. Br. at 3, 17-19. To understand the dimensions of this problem, it is important to keep in mind what the trial court elides: The operative claims of this class span *nearly 70 years* and further call out some *30 different crop years*, most of which saw the Cooperative selling at a *loss* and *only a few* of which yielded returns arguably contributing to the current reserve. In addition, the class definition draws no distinction whatsoever between ex-members of the Cooperative (who typically have nothing to do with tobacco farming) and active members (even *Board* members) of the Cooperative.

It seems impossible for a single set of plaintiffs’ counsel to provide zealous or even coherent representation to all of these class members. In multiple respects, the claims of these legions of plaintiffs are certain to diverge and conflict with one another, with counsel necessarily neglecting some to advance others.

First, there is an obvious conflict between a named representative, Richard Renegar, a Director who sits on the Cooperative's Board and has consistently voted in favor of its decisions (RE. 2318-2320; RE. 2563-2704), and other Plaintiffs who want to argue there is unreasonableness and even impropriety reflected in the Board's recent and current actions. Such a conflict—in the form of a named representative effectively inculcating, if not suing, himself—precludes class certification. *See Radell v. Towers Perrin*, 172 F.R.D. 317, 320-21 (N.D. Ill. 1997) (named plaintiff's interests, as former board member, were necessarily antagonistic to class's interest in proving that board breached its fiduciary duty and therefore precluded class certification). Because the certification Order now obligates Mr. Renegar to conduct this action on behalf of the class as its named representative, the trial court's suggestion that he and others might simply bail on it by "opt[ing] out" (R. 278) affords no comfort.

Second, there is a marked conflict between those class members who no longer grow or sell tobacco, and therefore are glad to deplete the Cooperative's reserve, and those current members who still rely on the Cooperative to buy their tobacco and help drive a fair price, and therefore want the Cooperative to retain its reserve for the sake of sustaining its operations. *See* R. 272 (Judge Jolly acknowledging that the Cooperative is serving the "interests of a select group of

surviving members/shareholders,” while lumping those individuals into the class without any distinction). Notably, around a quarter of U.S. flue-cured tobacco farmers are members of the Cooperative. (RE. 908.) Former members extracting damages “have every right to act in accordance with their own interests, but not at the expense of other [members] who do not share their vision.” *Audio-Video World of Wilmington, Inc. v. MHI Hotels Two, Inc.*, No. 7:09–CV–39, 2011 WL 1059169, at *4 (E.D.N.C. Mar. 18, 2011) (citation omitted) (unpublished) (App’x at A1).

Such pronounced conflict between identified, rival factions of a class who “have opposing interests,” particularly such that certain “members . . . benefit from the same acts alleged to be harmful to other members of the class,” precludes certification. *Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280 (11th Cir. 2000) (reversing certification of class of farmers who entered forward contracts because it “includes those who claim harm from the very same acts from which other members of the class have benefitted”); see *Aamco Automatic Transmissions, Inc. v. Tayloe*, 67 F.R.D. 440, 446-47 (E.D. Pa. 1975) (following line of authority that forecloses certification of class inclusive of (i) members “currently maintaining a franchise relationship with Aamco,” for whom “the continued economic viability and public goodwill of Aamco is a legitimate and real concern,”

alongside (ii) “former franchisees” “who have severed their business relationship with Aamco,” who “do not share in this interest,” and who are concerned only with “recovery of maximum monetary damages without regard to the possible adverse impact of this lawsuit on the present Aamco franchise system”); *see also* Opinion and Order at 10-11, *Congleton v. Burley Tobacco Growers Coop. Ass’n*, No. 06-CI-00069 (Ky. Cir. Ct. Feb. 13, 2007) (vacating and denying class certifications based, in part, on the “definite antagonism” between named plaintiffs and “certain class members who desire to continue to being involved in tobacco production”) (unpublished) (App’x at A7).

Third, there is a marked conflict between the named representatives and class members who are on record as taking issue with conduct of this class action. Most prominently, eleven North Carolina farmers in 2012 filed *their own* putative class action in federal court in North Carolina. In that parallel case, captioned *Speaks v. United States Tobacco Cooperative Inc.*, the plaintiffs detail why their interests and those of other former members of the Cooperative are not adequately represented by these named Plaintiffs and their counsel. (R. 219-223.)

Fourth, there is a conflict between those class members who sold tobacco to the Cooperative during the years 1982-1984 and 2001-2004, and those who sold in 1985-2000: The reserves the Cooperative accumulated between 1982 and 2004 are

attributable *only* to the 1982-1984 and 2001-2004 bands within those 23 crop years.⁵ Assuming *arguendo* that any of these plaintiffs might have claim to any portion of the Cooperative's reserve, that claim would track the claims of what the trial court described as "the 1967-1973 certificate group"—namely, "each would receive only that portion of the net gains for each year that is attributable to the tobacco they delivered that year." (R. 276.) It follows that the Plaintiffs who sold tobacco to the Cooperative during the relevant sliver of years (crediting Plaintiffs' theory *arguendo*) may have claims that their fellow class members lack. Yet their distinct claims are being buried in an effort to contrive an all-encompassing theory that supposedly unifies this disparate class.⁶

This fourth conflict may be subtle by comparison to the other three but it is no less problematic: The trial court certified the class only by crediting class counsel's submission that class members would be recovering "based on the ratio that the pounds/assessments/year have to the total pounds/assessments/year from

⁵ In the early 1990s, USDA returned to the Cooperative unsold tobacco from the 1982-1984 crops, yielding approximately \$110 million as sold by the Cooperative. (RE. 2311.) Later, when Congress ended the federal Tobacco Program in 2004, USDA ceded approximately 83 million pounds of tobacco from the 2001-2004 crops for the Cooperative to use "in any manner it desires," yielding approximately \$81 million as sold by the Cooperative. (RE. 2313-2314.)

⁶ Notwithstanding that unifying façade, ultimate trial and adjudication of damages would hinge on individualized proof of how much tobacco a particular grower sold, when, at what price, and how the Cooperative's ultimate proceeds on the tobacco compares for that crop year.

1982 through 2004,” without further distinction. (R. 274.) Making things so simple, however, requires disregarding the obvious arguments of a *subset* of class members (those selling from 1982-1984 and/or 2001-2004) to the effect that *their* specific tobacco sales, and *only* their specific tobacco sales, contributed to the Cooperative’s current reserve.

Not only is the class too large, too unwieldy, too disparate, therefore, but it is forcing the court as well as class counsel to sacrifice the interests of certain class members for those of others in a concerted effort to achieve facile, artificial equivalency amongst all. This is contrary to basic tenets governing class actions. *See, e.g., Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 858 (1999) (vacating class settlement due to concerns about “inequity” and “fairness”); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 (1997) (“In significant respects, the interests of those within the single class [were] not aligned.”).

The trial court did nothing to address these conflicts beyond noting individuals may “opt out of the Class.” (R. 278.) That was legal error. Identified conflicts cannot be ignored when analyzing whether an opt-out class is or is not adequately represented; otherwise, the requirement of adequacy would be drained of meaning, because the ability of any and all *inadequately* represented class members to “opt out,” which is common across class actions, would always be a

complete answer. The necessary premise of class certification is that the class as defined is—at least absent a sub-class—similarly interested in pressing a common question, as to which the same counsel can adequately represent all. Here, that premise does not hold; the identified conflicts are such that portions of the class are *inherently adverse* to one another.

The prospect of individuals opting out is no solution to fundamental conflicts dividing the class, especially for a class that includes countless unidentified heirs and assigns who will likely go unaware that they are class members—and therefore remain out of the loop and in the dark. Indeed, to the extent a trial court would count on an *entire set* of class members to opt out, it should ensure that result by *excluding* the set from its class definition—or at least differentiating the set as a distinct, separately represented sub-class.⁷ Similarly, to the extent that a named representative is compromised by interests on the opposite side of the caption, the solution is to have him replaced with a *non*-conflicted representative—not to count on absent class members to protect themselves by opting out.

⁷ Any anticipation of wide swathes of the class opting out also undermines the trial court's determination that a class action is a superior method of adjudication—for it follows that waves of separate litigation should be expected regardless.

As best we can tell, no court agrees that ability to opt out, by itself, cures fundamental conflicts that otherwise compromise adequacy. To the contrary, the Fourth Circuit has affirmed a trial court's denial of class certification when faced with one such conflict. *See Lukenas v. Bryce's Mountain Resort, Inc.*, 66 F.R.D. 69, 72 (W.D. Va. 1975), *aff'd*, 538 F.2d 594 (4th Cir. 1976) (“[T]he opt-out provisions of Rule 23(c)(2) may not be used to achieve compliance with the [adequacy] prerequisites of 23(a)”). Dozens of other trial courts have likewise rejected any notion that mere ability to “opt out” is the panacea the court below took it to be. Indeed, the United States District Court of the Eastern District of Pennsylvania, in *Aamco Automatic Transmissions, Inc.*, 67 F.R.D. 440, pinpointed the problem in refusing to certify a strikingly analogous putative class. There, franchisees brought a putative class action against their franchisor for breaching a franchise agreement. *Id.* at 443. First, the court noted the obvious conflict between former franchisees (wanting to maximize their damages) and current franchisees (wanting to minimize them):

For those members of the proposed class who are currently maintaining a franchise relationship with Aamco, the continued economic viability and public goodwill of Aamco is a legitimate and real concern. Those who have severed their business relationship with Aamco do not share in this interest. On the contrary, of principal concern to the class of former franchisees is the recovery of maximum monetary damages without regard to the possible adverse impact of this lawsuit on the present Aamco franchise system. This particular

conflict between present and former franchisees has been recognized and cited by other courts in refusing certification of an all-inclusive class.

Id. at 446-47 (citations omitted). Considering whether “opt out” sufficed to counterbalance this conflict, the court said it did *not*, deeming it “inappropriate” to try to solve the conflict simply “by allowing those present franchisees who are opposed to this lawsuit to exercise their ‘opt-out’ privilege”:

It is no answer to say that those franchise dealers who do not desire to be represented by plaintiff may opt out under the provisions of Rule 23(c)(2). The machinery of the Rule, with its attendant expense, should not be brought into play unless initially plaintiff, who has the burden of proof, justifies its application.

Id. at 447 (citing *Free World Foreign Cars, Inc. v. Alfa Romeo*, 55 F.R.D. 26, 29 (S.D.N.Y. 1972)).

The same result should obtain here, just as it has in case, after case, after case. *See, e.g., S. Snack Foods, Inc. v. J&J Snack Foods Corp.*, 79 F.R.D. 678, 681 (D.N.J. 1978); *Thompson v. T.F.I. Cos., Inc.*, 64 F.R.D. 140, 148-49 (N.D. Ill. 1974); *Matarazzo v. Friendly Ice Cream Corp.*, 62 F.R.D. 65, 68 (E.D.N.Y. 1974); *see also Morris v. Wachovia Sec., Inc.*, 223 F.R.D. 284, 296-97 (E.D. Va. 2004); *In re Jackson Nat’l Life Ins. Co. Premium Litig.*, 209 F.R.D. 134, 142 (W.D. Mich. 2002) (opt out cannot cure conflict because “the legal enforceability of policies purchased by [class members] who opted out would nonetheless unavoidably be

impugned,” posing “antagonism of interests”); 1 WILLIAM B. RUBENSTEIN, NEWBERG ON CLASS ACTIONS § 3:58 (5th ed. 2014) (“[C]onflicts that are fundamental to the suit and that go to the heart of the litigation prevent a plaintiff from meeting the . . . adequacy requirement.”).

Notably, insistence upon a class representative’s “undivided loyalties to absent class members” is essential to “basic due process.” *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 338 (4th Cir. 1998); *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); *Audio-Video World*, 2011 WL 1059169, at *4-5. And ability to opt out does not assuage “an overriding conflict between the named plaintiffs and more than a few potential class members, not only in remedial preferences, but far more significantly, in the decision to take up the sword in the first place.” *Audio-Video World*, 2011 WL 1059169, at *4.

Tellingly, the one case the trial judge cited in support of his view that opt out inoculates against all these conflicts—*see* R. 278 (citing *Srail v. Vill. of Lisle*, 249 F.R.D. 544, 553 (N.D. Ill. 2008))—indicates just the opposite. In *Srail*, the court analyzed conflict posed by a class comprised of residents from neighboring towns, Oak View and Meadows. *Id.* at 554-55. It recognized conflict between the named plaintiffs, Oak View residents who sought to connect Oak View to the municipal water system, and the unnamed plaintiffs, including Meadows residents who

opposed such change for fear of resulting costs. *Id.* at 553. Given this “inherent” conflict, “the named plaintiffs [did] not show[] that they [we]re adequate representatives of a class including Meadows residents.” *Id.* at 554. The court held, accordingly, that the named plaintiffs could represent *only* a *subclass* from *Oak View*, still leaving individual Oak View residents to opt out. *Id.* at 553-54. Thus, the *Srail* court accounted for categorical conflict by categorically tailoring its class definition. The court below, in contrast, did nothing of the sort. Its reliance on opt out alone was legal error; it abused its discretion by certifying the class without regard for conflicts.⁸

B. The Trial Court Erred By Ignoring The Merits As Relevant To Analyzing Class Certification

The trial court further erred as a matter of law in looking past the merits it must ultimately adjudicate in order to resolve liability and damages on each claim brought by the class. To be sure, the trial court was correct that it “should not

⁸ The putative class that brought a similar suit in Tennessee against the Burley Stabilization Corporation (BSC) also affords a telling point of comparison. That class was much smaller (consisting of roughly 140,000 people), yet it was parsed into *sub-classes* based on years in which members sold tobacco to the cooperative. It also *categorically excluded* all officers, directors, and employees of the BSC and their immediate families. Fifth Amended Complaint at 29-30, *Lay v. Burley Stabilization Corp.*, No. 06-CV-111 (E.D. Tenn. Mar. 27, 2006), ECF No. 1; Complaint at 22-25, *Lay v. Burley Stabilization Corp.*, No. 07-CV-259 (E.D. Tenn. June 29, 2007), ECF No. 2. In contrast, the trial court in this case made no such attempt to address conflicts that divide and infect the class as defined.

prematurely *determine* the merits” in deciding class certification. (R. 271 (citing *Maffei v. Alert Cable TV of N.C. Inc.*, 316 N.C. 615, 617-18, 342 S.E.2d 867, 870 (1986) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974))).) But it by no means follows that a trial court should *ignore* the merits arguments, as the court below did, when deciding whether class treatment is manageable and superior so as to commend certification.

As the U.S. Supreme Court recognizes, it is often “necessary for the court to probe behind the pleadings before coming to rest on the certification question.” *General Telephone Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982); *see also Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (explaining that the “rigorous analysis” required for class certification “will entail some overlap with the merits of the plaintiff’s underlying claim”). Likewise, the Fourth Circuit recently observed that, “[p]rior to certifying a class, a district court must definitively determine that the requirements of Rule 23 have been satisfied, even if that determination requires the court to resolve an important merits issue.” *EQT Prod.*, 764 F.3d at 361 (citation omitted). And only days ago, the North Carolina Court of Appeals emphasized the importance of such inquiry into the merits, writing “*certainly*, the trial court considered evidentiary facts” en route to upholding the denial class certification. *Neil*, slip op. at 17 (emphasis added). Any

trial court that looks past the merits will predictably miss the rubber-meets-road problem that this Court considered dispositive in *Beroth*—namely, that the “proposed class is of such breadth that, despite some overlapping issues, a trial on the merits would require far too many individualized, fact-intensive determinations for class certification to be proper.” ____ N.C. at ____, 757 S.E.2d. at 476; *see Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1432-33 (2013); *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 367 (4th Cir. 2004).

In a case like this, a court cannot conclude in a vacuum that there are “common” issues, or that named representatives are “adequate” to advance them, or that a class mechanism is “superior” to others. Rather, it must apply its discretion in full view of whatever merits questions await adjudication on a class-wide basis. “What matters to class certification . . . is not the raising of common ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.” *Wal-Mart Stores*, 131 S. Ct. at 2551 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 132 (2009)); *see Ealy v. Pinkerton Gov’t Servs., Inc.*, 514 F. App’x 299, 305-08 (4th Cir. 2013); *Beroth*, ____ N.C. at ____, 757 S.E.2d. at 474-76.

Here, the court's stated justifications for certifying are belied by variation among Plaintiffs' nine different merits claims, as well as the facts implicated by different class members' different relationships with the Cooperative over different time periods. Not only do the operative theories require consideration of different legal elements but they also require consideration of countless different facts (*e.g.*, if, when, and at what price a grower sold tobacco to the Cooperative; what communications and understandings surrounded that exchange; what relationship, if any, a potential class member has with an actual grower who previously sold tobacco to the Cooperative; whether a Certificate of Interest was obtained, and, if so, has been redeemed; what business calculus surrounded the Cooperative's retention of its reserve at a given time; when the statute of limitations began to run on a particular plaintiff's grievance).

Because it makes no sense to subject such differing legal theories and factual proof to uniform treatment across this vast class, the trial court fixated on *one* theory: according to the certification Order, the merits boil down to "whether [plaintiffs] are entitled to share in the accumulated assets held by Defendant, which Defendant contends is held as reasonable reserve." (R. 272.) But that contemplates a derivative claim that is statutorily foreclosed, *supra* at 20-23. And, even if that merits theory were otherwise viable, treatment of it on a class-wide

basis would not be, as explained *infra* at 44-49. Most important, in focusing on *that* theory, the trial court turned a blind eye to the litany of *other* merits issues that are baked into the claims of this enormous class, thereby doing what this Court has condemned as “imprudent”—namely, trying to “narrow plaintiffs’ allegations to conform to the requisites of a proper class.” *Beroth*, ___ N.C. at ___, 757 S.E.2d at 476.

The trial court compounded error upon error by disregarding the actual merits issues pending before it and positing a singular theory to unify them. Its approach licenses class counsel to contrive a supposed justification for class certification divorced from the merits actually to be tried—to, in essence, advance a “bait and switch” strategy specially formulated to obtain class certification, only later to dredge up the litany of actual merits issues that must be tried. The trial court’s failure to address the specific merits issues that are pending amounts to a separate legal error necessitating reversal.

C. The Trial Court’s Analysis Of Commonality And Superiority Is Flawed

Finally, once the actual merits issues in this case are properly accounted for, class certification becomes an impossibility. By no fair account might this class satisfy the requirements of commonality and superiority.

The trial court's listing of twelve ("a" through "l") factual issues and seven ("a" through "g") legal issues supposedly "common" to the class should be telling in this regard. (R. 273-274.) Those issues, with all due respect, are *not* in fact common across the class of 800,000 as certified; they have different application to different class members, resulting in a dizzying number of permutations for how the claims of any given class member must actually be adjudicated. To take a few examples from what the Order spotlights as "common" issues, the Certificates of Interest at issue are limited to growers who sold to the Cooperative from 1967-73; the gains and losses varied across crop years, as did the statutory framework surrounding federal price stabilization; and the Cooperative's business judgments and reserves that are being called into question have themselves varied across years and even decades. (RE. 2306-2316; R. 273-274.)

What the trial court's listing actually reflects are issues that are shared by *certain fragments* of the class, in varying combinations, iterations, and degrees. When it comes time for actual merits adjudication, however, none of these issues will be "common" in any meaningful sense. Rather, all will vary according to, for example,

- whether a Plaintiff ever sold crops as an actual patronizing member or qualifies as an heir, successor, or assign thereof,
- what crop years a Plaintiff's claimed interest arises from,

- whether the Plaintiff remains a member of the Cooperative actively engaged in tobacco farming and selling to the Cooperative,
- whether and to what extent the Plaintiff has obtained and already redeemed Certificates of Interest,
- what exact communications the individual grower received and reviewed from the Cooperative,
- what annual meetings the individual grower attended or was otherwise privy to, and what was taken up at the relevant meeting,
- what views and understandings the individual grower previously expressed about the Cooperative's retention of a reserve at a particular point in time,
- whether and to what extent a Plaintiff has already received payment from the Cooperative after the price-stabilization program ended in 2004,
- when the Plaintiff's issue(s) arose, *etc.*

Far more so than held true for the 800 property owners who were before the North Carolina Supreme Court in *Beroth*, therefore, the “proposed class is of such breadth that, despite some overlapping issues, a trial on the merits would require far too many individualized, fact-intensive determinations for class certification to be proper.” ___ N.C. at ___, 757 S.E.2d at 476.

Because Judge Jolly did not identify specific facts and law bearing on the class's various theories, he overlooked just how disparate they are. Whatever

concerns he may have about individual adjudication,⁹ he has certified an oceanic class without accounting for the full array of disparate theories of liability, disparate methods of calculating damages, and disparate proof that swirl through it. Nor has he begun to explain how he envisions trying this case en route to deciding, *e.g.*,

- what “reasonable expectations” each grower had when joining the Cooperative for purposes of the declaratory judgment Plaintiffs seek (R. 138);
- what each grower did and did not allegedly authorize the Cooperative to do with their tobacco at each relevant time for purposes of Plaintiffs’ conversion claim (R. 134), *see The N.C. State Bar v. Gilbert*, 189 N.C. App. 320, 324, 663 S.E.2d 1, 4 (2008);
- what “special relationship”¹⁰ each grower had with the Cooperative for purposes of the alleged breach of “fiduciary duty” (R. 274), *see Dalton v. Camp*, 353 N.C. 647, 650-51, 548 S.E.2d 704, 707-08 (2001); *Barger v. McCoy Hillard & Parks*, 346 N.C. 650, 658, 488 S.E.2d 215, 219 (1997);

⁹ Although Judge Jolly emphasized the impracticality of each class member pursuing “individual litigation” (R. 280), the premise that there should be *any* litigation of these issues seems misconceived. Such reasoning suggests that the more strained (even frivolous) the claims underlying a class action are, the more deserving of aggregation they are because no one would otherwise see value in bringing individual suit. In no event should class treatment be ordered absent a sensible account of how class adjudication will proceed and prove superior in practice.

¹⁰ Any notion that hundreds of thousands of members *all* enjoyed *precisely the same* “special” relationship with the Cooperative just by virtue of being members distorts beyond recognition the legal concept of a special relationship in North Carolina. Therefore, affording Plaintiffs’ operative theory of fiduciary duty every benefit of the doubt, the relevant inquiry would need to be individualized rather than common to the class.

- when each Plaintiff's claim to the reserve retained by the Cooperative first accrued for purposes of the operative statute of limitations, *see* N.C. GEN. STAT. § 1-52.

Contrary to this Court's approach in *Beroth*, the Order blends these and other individualized liability questions together without indicating how it expects to decide each across the entire class.¹¹

In a similar vein, the court obscures variations in damages by focusing on a single theory—according to which “a reasonable damages determination could be made through the application of cooperative patronage concepts”¹² to determine recovery based on that patronage.”¹³ (R. 276.) This takes no account of how the

¹¹ The trial court took comfort in manageability given “the past eight years of litigation leading up to this motion” for class certification. (R. 280.) But it has yet to make any inroads into the merits, which hardly inspires confidence in manageability of the merits moving forward.

¹² “Cooperative patronage concepts” by no means support Plaintiffs’ recovery. First, whereas only a fraction of the class still patronizes the Cooperative, such patronage is essential for any continuing claim under “cooperative patronage concepts.” What is more, growers obtained, upon sale to the Cooperative, the maximum upside any “cooperative patron” might expect (namely, payment of a fair, agreed price, typically better than what they could have obtained on the market), without any prospect of incurring the downside a “cooperative patron” would expect (namely, an ensuing bill to help cover recurring losses).

¹³ Assuming *arguendo* such a *pro rata* measure might be used to divide settlement proceeds, it does not itself fix the aggregate damages the Cooperative allegedly owes Plaintiffs after paying a *premium* for the relevant tobacco relative to the open market. Such measure of damages seems especially inappropriate because the Cooperative is committed to contesting liability and damages, including through final judgment and all appeals.

damages calculation must vary according to, say, Plaintiffs' nine different liability theories, the years in which they sold crops, whether the Cooperative sold for a profit or a loss, and the extent to which Certificates of Interest were issued and whether they have already been redeemed by certain class members (or their relations). Had the trial court drilled down on these issues, it would have identified the problems that this Court has held are preclusive of class certification. *See Beroth*, ___ N.C. at ___, 757 S.E.2d at 475-76.

Even if liability were straightforward (which it is not), and even if damages were straightforward (which they are not), administration of this case as a class presents insuperable problems. Although the trial court found that “[m]ultiple numbers for a member’s interests create no management issue that is not solved by the method used to track patronage interests” (R. 279-80), the record does not support that view: In fact, over 800,000 membership numbers were assigned (RE. 2302), and those numbers do not begin to answer the ultimate question which *persons* have a claim. Multiple numbers were assigned to the same individual, depending on whether the Cooperative bought from a person or a business, and multiple persons may now claim interest in the same membership number. (RE. 2303.) Indeed, simply *identifying* class members will be a monumental challenge, considering the need to trace lines of “heirs, representatives, executors or assign”

from hundreds of thousands of membership numbers. *See* NCCC Am. Br. at 20-24. Thus, even after attributing the right growers to the right 800,000 membership numbers, the trial court's work will be just beginning—it will then need to inquire into decades of successive interests (potentially unspecified or even disputed) for each grower in order to ascertain who is now a class member and what claim he or she holds. (R. 282.) That obviously poses difficulties all its own. *See, e.g., Simer v. Rios*, 661 F.2d 655, 678 (7th Cir. 1981) (holding that the “cost of notifying the class members . . . was a proper factor to consider in denying class certification”); *Mowry v. JP Morgan Chase Bank, N.A.*, No. 06-C-4312, 2007 WL 1772142, at *6 (N.D. Ill. June 19, 2007) (finding class unmanageable given difficulty in identifying and notifying putative class members) (unpublished) (App'x at A45).


This class is unmanageable in every sense.

CONCLUSION

For the foregoing reasons, the Court should reverse the 24 February 2014 Order certifying the class and remand with instructions that the class cannot be certified.

Respectfully submitted this the 14th day of November, 2014.

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WYRICK ROBBINS YATES & PONTON
LLP



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Tobias S. Hampson
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Post Office Drawer 17803
Raleigh, North Carolina 27619
Telephone: (919) 781-4000
Facsimile: (919) 781-4865

*Attorneys for Defendant-Appellant U.S.
Tobacco Cooperative, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date the foregoing Defendant-Appellant's Brief was served upon the attorneys for Plaintiffs-Appellees shown below by U.S. Mail, postage pre-paid and e-mail addressed to:

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pisley@bmlilaw.com
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Mr. Charles H. Williams
chwilliams@williamsattys.com
WILLIAMS & WILLIAMS
P.O. Box 1084
Orangeburg, SC 29116

This the 14th day of November, 2014.



Tobias S. Hampson

EXHIBIT N



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF INCORPORATION

OF

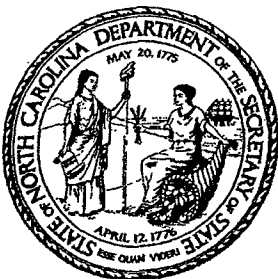
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

the original of which was filed in this office on the 1st day of June, 1946.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State



52984

CERTIFICATE OF INCORPORATION.

of

~~FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION~~
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

THIS IS TO CERTIFY that we, the undersigned, each of whom is engaged in the production of agricultural products, do hereby voluntarily associate together for the purpose of forming a non-profit cooperative association or corporation with capital stock under the Cooperative Marketing Act of the State of North Carolina, and Acts amendatory thereof, and for that purpose state the following:

ARTICLE I

Name

The name of this corporation is ~~FLUE-CURED TOBACCO~~ COOPERATIVE STABILIZATION CORPORATION.

ARTICLE II

Purposes

The purposes for which this corporation is formed are as follows:

To engage in any activity involving or relating to the business of receiving, grading, processing, drying, packing, storing, financing, marketing, selling, and/or distribution, on a cooperative basis, of flue-cured tobacco or products or by-products derived therefrom of its members, or conducive thereto, and to engage in the handling of such tobacco cooperatively either on an agency or a purchase and sale basis.

ARTICLE III

Place

The place where its business will be transacted in this State is in Raleigh, in the County of Wake, State of North Carolina, but the corporation may have one or more branch offices and places of business out of the State of North Carolina as well as in that State.

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ARTICLE IV.

Term.

The term for which this corporation is to exist is fifty (50) years.

ARTICLE V.

Directors

The number of directors of this corporation shall be not less than five (5), but the by-laws may provide for a larger number. The directors shall possess such qualifications and shall be elected for such terms of office as the by-laws may prescribe. The by-laws of the corporation shall be adopted by the directors at their first meeting. The names and addresses of those who are to serve as directors until the first annual meeting of the common stockholders, or members, of the corporation and until the election of their successors by such stockholders or members, are as follows:

<u>Name</u>	<u>Address</u>
H. G. Blalock	Basketville, Va.
D. F. Bruton	Adel, Ga.
R. S. Rogers	Dillon, S. C.
Bill Hooks	Whiteville, N. C.
T. W. Allen	Creedmoor, N. C.
J. E. Winslow	Greenville, N. C.
W. W. Eagles	Macclesfield, N. C.
George Sockwell	Rt. 1. Elon College, N. C.
Carl T. Hicks	Walstonburg, N. C.

ARTICLE VI

Capital Stock

The total authorized capital stock of this corporation is Five Million Dollars (\$5,000,000.00), divided into Five Hundred Thousand (500,000) shares of common stock of the par value of Five Dollars (\$5.00) each, and Twenty-five Thousand (25,000) shares of preferred stock of the par value of One Hundred (\$100.00) Dollars each.

The common stock of this corporation may be purchased, owned or held only by producers who shall patronize the corporation in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the corporation. In the event the board

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of directors of the corporation shall find following a hearing that any of the common stock of this corporation has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the corporation (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the corporation shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the corporation, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the corporation may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the corporation may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this corporation may be transferred only with the consent of the board of directors of the corporation and on the books of the corporation and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the corporation. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This corporation shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the corporation. No dividends shall be paid upon the common stock. The foregoing conditions with respect to common stock shall be printed on the face of each certificate for common stock issued by the corporation.

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The preferred stock of this corporation shall carry no voting rights and may be transferred only on the books of the corporation; and may be redeemed in whole or in part on a pro rata basis at par, plus any dividends declared thereon and unpaid, at any time on thirty (30) days' notice by the corporation, provided said stock is redeemed in the same order as originally issued by years, and on the failure to deliver the certificate or certificates evidencing any such stock the corporation may cancel the same on its books. Stock which has been redeemed may, in the discretion of the board of directors, be reissued or retired. All such preferred stock so redeemed shall be paid for in cash at the par value thereof, plus any dividends (declared thereon and unpaid; and such stock shall not bear dividends after it has been called for redemption. Noncumulative dividends of not to exceed six (6) percent per annum may be paid thereon when, if and as declared by the board of directors. This corporation shall have a lien on all of its issued preferred stock and on dividends declared thereon for all indebtedness of the holders thereof to the corporation. At the discretion of the board of directors, all dividends or distributions of the corporation or any part thereof may be paid in certificates of preferred stock or credits on preferred stock, or ad interim certificates representing fractional parts thereof, subject to conversion into full shares. Upon dissolution or distribution of the assets of the corporation, the holders of all preferred stock shall be entitled to receive the par value of their stock, plus any dividends declared thereon and unpaid before any distribution is made on the common stock. The foregoing conditions with respect to preferred stock shall be printed on the face of each certificate for preferred stock issued by the corporation.

ARTICLE VII

Powers

This corporation shall have the following powers:

- (a) To engage in any activity in connection with the marketing, selling,

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harvesting, preserving, drying, processing, manufacturing, packing, storing, handling, or utilization of flue-cured tobacco produced or delivered to it by its members, or received by it from other sources, or the manufacture or marketing of products or by-products derived therefrom, or in the financing of any such activity, all of which activities shall be conducted on a cooperative basis.

(b) To borrow money without limitation as to amount or corporate indebtedness or liability, and to give a lien on any of its property as security therefor in any manner permitted by law, and to make advance payments and advances to its members.

(c) To act as agent or representative of any member or members, and as agent or representative of any department, agency or corporation of the United States Government, in any of the activities mentioned in Article II hereof.

(d) To buy or lease such real or personal property, including facilities for the drying, handling, and warehousing of tobacco as may be deemed necessary or convenient for the conduct and operation of the business of the corporation and incidental thereto; and to enter into contracts with other concerns or corporations for the drying, handling and warehousing of tobacco and for other purposes in connection with carrying out the objects and purposes of this corporation.

(e) To draw, make, accept, endorse, guarantee, execute, and issue promissory notes, bills of exchange, drafts, warrants, certificates, and all kinds of obligations and negotiable and transferable instruments, for any purpose that is deemed to further the objects for which this corporation is formed, and to give a lien on any of its property as security therefor.

(f) To make rules and regulations governing the handling, standardizing, grading, marking, packing, and preparation for market of flue-cured tobacco handled or to be handled by this corporation.

(g) To have and exercise, in addition to the foregoing, all powers,

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privileges and rights conferred on ordinary corporations and cooperative marketing associations by the law of this State, and all powers and rights incidental or conducive to carrying out the purposes for which this corporation is formed, except such as are inconsistent with the express provisions of the act under which this corporation is formed, and to do any such thing anywhere; and the enumeration of the foregoing powers shall not be held to limit or restrict in any manner the general powers which may by law be possessed by this corporation, all of which are hereby expressly claimed.

ARTICLE VIII

Incorporators

The names and post office addresses of the incorporators and the original members of the corporation are as follows:

<u>Name</u>	<u>Post Office Address</u>
Carl T. Hicks	Walstonburg, N. C.
R. S. Rogers	Dillon, S. C.
J. H. Yancey	Clarksville, Va.
W. S. Adkisson, Jr.	Clover, Va.
V. G. Arnette	Kingstree, S. C.
J. E. Winslow	Greenville, N. C.
George Sockwell	Elon College, N. C., Rt. 1
Mrs. Harry B. Caldwell	Greensboro, N. C.
W. J. Eason	Tarboro, N. C.
D. F. Bruton	Adel, Ga.
W. W. Andrews	Rt. #2, Goldsboro, N. C.
Sam/ A. Holder	Rt. 1, Mt. Airy, N. C.
J. T. Squires	Latta, S. C.
P. N. Taylor	White Plains, N. C.
A. C. Edwards	Hookerton, N. C.
W. W. Eagles	Macclesfield, N. C.
J. B. Allman	Rocky Mount, Va.
W. R. West	Axton, Va.
T. W. Allen	Creedmoor, N. C.

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<u>Name</u>	<u>Address</u>
Samuel W. Land	South Hill, Va.
Walter L. Collatt	Rt. #1, Thomasville, N. C.
J. A. Jackson	Baskerville, Va.
W. A. Allen	Farmville, N. C.
H. G. Blalock, Baskerville	Baskerville, Va.

ARTICLE IX

No incorporator or member shall be responsible for or individually liable for any debts or obligations of the corporation.

ARTICLE X

The board of directors shall have power by majority vote to enact and determine the by-laws of the corporation and to amend the same from time to time.

In Witness Whereof, the undersigned, being the incorporators named herein, have hereunto set their respective hands and seals, on this the 1st day of June, 1946.

Carl T. Hicks (SEAL)
R. S. Rogers (SEAL)
J. H. Yancey (SEAL)
W. S. Addison, Jr. (SEAL)
V. H. Arnette (SEAL)
J. E. Winslow (SEAL)
Geo. Sockwell (SEAL)
Mrs. Harry B. Caldwell (SEAL)
W. J. Eason (SEAL)
D. F. Bouton (SEAL)
W. W. Andrews (SEAL)
Sam A. Holder (SEAL)

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<u>J. T. Squires</u>	<u>J. T. Squires</u>	(SEAL)
<u>P. N. Taylor</u>	<u>P. N. Taylor</u>	(SEAL)
<u>A. C. Edwards</u>	<u>A. C. Edwards</u>	(SEAL)
<u>W. W. Eagles</u>	<u>W. W. Eagles</u>	(SEAL)
<u>J. B. Allman</u>	<u>J. B. Allman</u>	(SEAL)
<u>W. R. West</u>	<u>W. R. West</u>	(SEAL)
<u>T. W. Allen</u>	<u>T. W. Allen</u>	(SEAL)
<u>Samuel W. Land</u>	<u>Samuel W. Land</u>	(SEAL)
<u>Walter L. Collett</u>	<u>Walter L. Collett</u>	(SEAL)
<u>J. A. Jackson</u>	<u>J. A. Jackson</u>	(SEAL)
<u>W. A. Allen</u>	<u>W. A. Allen</u>	(SEAL)
<u>H. G. Blalock</u>	<u>H. G. Blalock</u>	(SEAL)

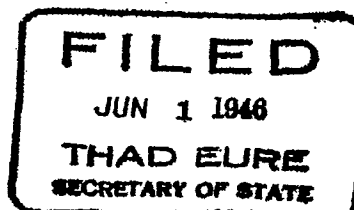
North Carolina)
Wake County ,)

This is to certify that on this 1st day of June, 1946, before me, a Notary Public in and for the county and state aforesaid, personally appeared Carl T. Hicks, R. S. Rogers, J. H. Yancey, W. S. Adkisson, Jr., V. G. Arnette, J. E. Winslow, George Sockwell, Mrs. Harry B. Caldwell, W. J. Eason, D. F. Bruton, W. W. Andrews, Sam A. Holder, J. T. Squires, P. N. Taylor, A. C. Edwards, W. W. Eagles, J. B. Allman, W. R. West, T. W. Allen, Samuel W. Land, Walter L. Collett, J. A. Jackson, W. A. Allen and H. G. Blalock, who, I am satisfied are the persons named in and who executed the foregoing certificate of incorporation of Flue-Cured Tobacco Stabilization Corporation; and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal, this the 1st day of June, 1946.

Kate Humphrey
Notary Public

My commission expires: May 11, 1948



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NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF AMENDMENT

OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

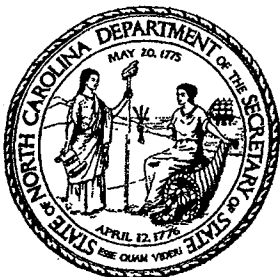
the original of which was filed in this office on the 18th day of July, 1947.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State

Certification# 86827710-1 Reference# 8679603-ACH Page: 1 of 4
Verify this certificate online at www.secretary.state.nc.us/verification



CERTIFICATE OF AMENDMENT TO THE CHARTER

OF

~~TYPE~~ FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The location of the principal office in this State is at No. 411 Fayetteville Street,
in the City of Raleigh, County Wake.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is L. T. Weeks, Secretary-Treasurer

RESOLUTION OF DIRECTORS

The Board of Directors of ~~the~~ Flue-Cured Tobacco Cooperative Stabilization Corporation

a corporation of North Carolina, on this 3rd day of June, A.D. 1947,
do hereby resolve and declare that it is advisable that the charter of the corporation be
amended in the following respects:

I.

That Article V of the charter of the corporation be amended by adding at the end thereof the following sentence:

"That in addition to the Directors herein provided for or hereafter appointed by the common stockholders or members of the corporation, there shall at all times be a public Director, who shall be appointed by the Governor of the State of North Carolina, to serve for the same term as other named Directors of the corporation, and such Director so appointed need not be a member or stockholder of the corporation but shall have the same powers and rights as other Directors, in accordance with the provisions of the General Statutes of North Carolina, section 54-146."

II.

That Article X of the charter be amended as follows: By striking out all of said Article X as it appears in the original Certificate of Incorporation and inserting in lieu thereof the following:

"The by-laws of the corporation may be altered or amended by a majority vote of a quorum of the common stockholders attending an annual or special meeting of the common stockholders of the corporation: Provided, that notice of any proposed amendment to the by-laws shall be included in the notice calling such annual or special meeting."

and they do hereby call a meeting of the stockholders, to be held at the company's office in the
City of Raleigh, on Tuesday
the 3rd day of June, 1947, at 10 A. M., to take action upon the
above resolution.

CERTIFICATE OF CHANGE

~~THE~~ Flue-Cured Tobacco Cooperative Stabilization Corporation

quorum

a corporation of North Carolina, doth hereby certify that pursuant to said resolution, and upon notice duly given to all voting stockholders, as provided by law and the by-laws of this corporation, a meeting of the stockholders was held at the time and place specified, and at least a ~~majority~~ ~~interest~~ ~~quorum~~ of the stockholders of said corporation having voting powers being represented in person or by proxy, a resolution was unanimously adopted approving the amendment proposed by the Board of Directors, as follows:

RESOLVED that the resolution adopted by a meeting of the Board of Directors of the corporation held on the 3rd day of June, 1947, with respect to amendments to the Charter of the corporation be, and the same is, hereby in all respects ratified and approved, and that in accordance therewith the charter of the corporation be amended in the following particulars:

I.

That Article V of the Charter of the corporation be amended by adding at the end thereof the following sentence:

"That in addition to the Directors herein provided for or hereafter appointed by the common stockholders or members of the corporation, there shall at all times be a public Director, who shall be appointed by the Governor of the State of North Carolina, to serve for the same term as other named Directors of the corporation, and such Director so appointed need not be a member or stockholder of the corporation but shall have the same powers and rights as other Directors, in accordance with the provisions of the General Statutes of North Carolina, section 54-146."

II.

That Article X of the charter be amended as follows: By striking out all of said Article X as it appears in the original Certificate of Incorporation and inserting in lieu thereof the following:

"The by-laws of the corporation may be altered or amended by a majority vote of a quorum of the common stockholders attending an annual or special meeting of the common stockholders of the corporation: Provided, that notice of any proposed amendment to the by-laws shall be included in the notice calling such annual or special meeting."

That the foregoing amendments were first approved by at least two-thirds of the Directors and were thereafter adopted by a vote representing a majority of a quorum of the members attending a meeting, in the notice of which meeting notice of the proposed amendments had been duly given.

~~That the resolution was adopted by at least a majority of the interest of stockholders having voting powers and thereafter approved~~

In witness whereof, said corporation has caused this certificate to be signed by its President and Secretary, and its corporate seal to be hereto affixed, the 3rd day of June, A.D. 19 47.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

(L. S.)

Attest:

L. S. Weeks

Secretary

James D. Fitch

President



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF AMENDMENT

OF

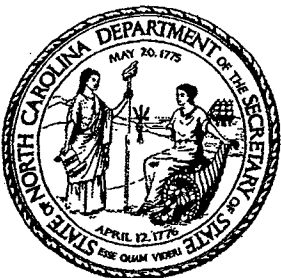
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

the original of which was filed in this office on the 7th day of July, 1952.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State



67551

CERTIFICATE OF AMENDMENT TO THE CHARTER
OF
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The location of the principal office in this State is in the City of Raleigh, County of Wake.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is Lloyd T. Weeks.

RESOLUTION OF BOARD OF DIRECTORS

The Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation, a stock cooperative marketing organization, organized and created under the provisions of Sub-chapter V of Chapter 54 of the General Statutes of North Carolina, on this 14th day of March, 1952, does hereby resolve and declare that it is advisable that the Certificate of Incorporation of Flue-Cured Tobacco Cooperative Stabilization Corporation be amended as follows:

In Article VI, "Capital Stock", strike out the first paragraph of said Article and substitute in lieu thereof the following:

"The total authorized capital stock of this corporation is Six Million Five Hundred Thousand Dollars (\$ 6,500,000.00), divided into Eight Hundred Thousand (800,000) shares of common stock of the par value of Five Dollars (\$5.00) each, and Twenty-Five Thousand shares (25,000) of preferred stock at the par value of One Hundred Dollars (\$100.00) each."

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More than two-thirds of the Directors having approved and voted affirmatively for the foregoing resolution of amendment, the Board does hereby refer said proposed amendment for consideration and adoption by the members of this corporation at the regular annual meeting of the members to be held on Friday, June 27, 1952, in accordance with the provisions of G. S. 54-135; and the Board does hereby direct the General Manager of this corporation to cause to be included in the required notice to members of annual meeting a special provision giving notice of the above proposed amendment to the Articles of Incorporation.

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CERTIFICATE OF CHANGE

Flue-Cured Tobacco Cooperative Stabilization Corporation, a stock cooperative marketing association organized under the provisions of Sub-chapter V of Chapter 54 of the General Statutes of North Carolina, does hereby certify that the foregoing resolution was duly and properly adopted by the Board of Directors of this corporation at a regular meeting properly held in Raleigh on the 14th day of March, 1952 and that more than two-thirds of the Directors voted for and approved said resolution; that the Directors took such further action with respect to referring the matters to the members as is shown by the foregoing excerpt from the minutes of this corporation; that thereafter proper notice was given to all of the members of this corporation as required by the by-laws setting forth the time and place of the annual meeting and giving notice that there would be presented to the annual meeting the proposed amendment to the Articles of Incorporation set forth in the foregoing attachment; that thereafter the regular meeting of the members of this corporation was properly held pursuant to such notice and pursuant to the charter and by-laws of this corporation at Raleigh, N. C. on June 27, 1952; that at such regular annual meeting there was in attendance a quorum of the members as specified and required by the by-laws of this corporation and that a majority of such quorum of the members attending such regular annual meeting adopted by proper vote and resolution the proposed amendment to the Articles of Incorporation set forth in the foregoing attachment. The following is a copy of a portion of the minutes of said

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meeting of the members disclosing the action taken.

"BE IT RESOLVED that due and proper notice having been given of this annual meeting of the members of Flue-Cured Tobacco Cooperative Stabilization Corporation held at Raleigh on June 27, 1952, and there having been included in said notice of said meeting a notice of a proposal to amend the Articles of Incorporation of this corporation as is set forth in this resolution, and a quorum of the members being in attendance at this meeting,

NOW, THEREFORE, be it resolved that the Articles of Incorporation of this corporation be amended as follows:

✓ "In Article VI, "Capital Stock", strike out the first paragraph of said Article and substitute in lieu thereof the following:

"The total authorized capital stock of this corporation is Six Million Five Hundred Thousand Dollars (\$ 6,500,000), divided into Eight Hundred Thousand (800,000) shares of common stock of the par value of Five Dollars (\$5.00) each, and Twenty-Five Thousand shares (25,000) of preferred stock at the par value of One Hundred Dollars (\$100.00) each."

There is attached hereto the written assent of all of the members of the Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by its President and by its Secretary and has caused its corporate seal to be hereto

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affixed, this the 27th day of June, 1952

Carl V. Hicks
President

ATTEST:

P. J. Webb
Secretary

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SUBJECT TO PROTECTIVE ORDER

STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

Be it remembered, that on this 27th day of June, 1952 before me, the undersigned Notary Public in and for the State of North Carolina, personally appeared L. J. Weeks, Secretary of the Flue-Cured Tobacco Cooperative Stabilization Corporation, the corporation mentioned in and which executed the foregoing certificate, who, being by me duly sworn, on this oath says that he is such Secretary, and that the seal affixed to said certificate is the corporate seal of said corporation, the same being well known to him; that Carl T. Hicks is President of said corporation, and signed said certificate and affixed said seal thereto, and delivered said certificate by authority of the Board of Directors and with the assent of at least two-thirds of the members of said Board of Directors, and for their voluntary act and deed and the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

And he further says that the assent hereto appended is signed by at least two-thirds of the members of the Board of Directors of said corporation.

Eva Langston
Notary Public

~~My Commission Expires~~
MY COMMISSION EXPIRES OCT. 7, 1953.

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ASSENT TO CHANGE

We, the undersigned, being all of the members of the Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation, do hereby give our written assent to the foregoing change in the Articles of Incorporation of this corporation.

Witness our hands this 27th day of June, 1952.

E. Y. Floyd

Raleigh, N.C.

Geo. L. Pate

Rowland, N.C.

L. W. Allen

Creedmore, N.C.

Geo. Lockwood

Elon College, N.C.

J. F. Benton

Odell, Ga

R. E. Blacklock

Baskerville, Va Baskerville

Joe Blount

Loris, S.C. Loris

J. E. Winslow J. E. Winslow

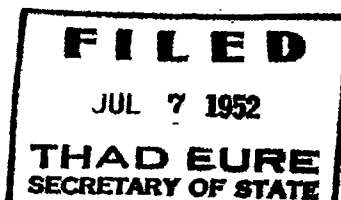
Greenville, N.C.

Lawrence Hicks

Wakarusa, N.C.

W. W. Eagles

Macesfield, N.C.



CONFIDENTIAL



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF AMENDMENT

OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

the original of which was filed in this office on the 3rd day of July, 1972.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State

Certification# 86827712-1 Reference# 8679603-ACH Page: 1 of 4
Verify this certificate online at www.secretary.state.nc.us/verification



FILED

JUL 3 12 00 PM '72

THADDEUS
SECRETARY OF STATE
NORTH CAROLINA

ARTICLES OF AMENDMENT

TO THE CHARTER OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 54-135 and Section 54-136 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At a regularly convened annual meeting of the member-stockholders of the corporation held on the 30th day of June, A.D., 1972, the following amendment to the Articles of Incorporation of the corporation was adopted by vote of the member-stockholders:

RESOLVED that the Articles of Incorporation of Flue-Cured Tobacco Cooperative Stabilization Corporation be amended by adding to Article X thereof the following sentence:

Any by-law or by-laws of the corporation may be amended or repealed or any new by-law may be enacted by the Board of Directors of the corporation; subject, however, to any statutory limitation.

Article X, as amended, reads as follows:

The by-laws of the corporation may be altered or amended by a majority vote of a quorum of the common stockholders attending an annual or special meeting of the common stockholders of the corporation: Provided, that notice of any proposed amendment to the by-laws shall be included in the notice calling such annual or special meeting. Any by-law or

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by-laws of the corporation may be amended or repealed or any new by-law may be enacted by the Board of Directors of the corporation; subject, however, to any statutory limitation.

3. On the 14th day of April, A.D., 1972, the Board of Directors, at its regular April monthly meeting, approved such Amendment and directed that it be presented to the annual meeting of the member-stockholders to be held on June 30, A.D., 1972. At such meeting of the Directors all of the 11 Directors of the corporation were present and such Amendment was approved by a favorable vote by each of the 11 Directors.

4. The regular annual meeting of the member-stockholders of the corporation was held at Raleigh, North Carolina, on June 30, A.D., 1972. There was proper published notice of such meeting and there was included in such publication, notice of the proposed Amendment. A quorum of the member-stockholders was present at such meeting. Such Amendment received at least a majority of the votes entitled to be cast by the member-stockholders present or represented by proxy at such meeting.

IN TESTIMONY WHEREOF, THIS statement is signed by the President and Secretary this the 3rd day of July, A.D., 1972.

James T. Hicks
President
Fred G. Bond
Secretary

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This is to certify that on this the 3rd day of July, A.D., 1972, personally appeared before me Carl T. Hicks and Fred G. Bond, each of whom, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" in the capacity indicated, that he was authorized so to sign, and that the

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SUBJECT TO PROTECTIVE ORDER

statements therein contained are true.

Eva Langston
Notary Public

My Commission Expires:

My Commission Expires October 7, 1974

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF AMENDMENT

OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

the original of which was filed in this office on the 20th day of June, 1979.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State



255085
JAN 21 1980
JIM LUKS
SECRETARY OF STATE
NORTH CAROLINA

ARTICLES OF AMENDMENT
TO THE CHARTER OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 and §54-136 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At the regularly convened annual meeting of the member-stockholders of the corporation held on the 25 day of May, 1979, by unanimous vote of the member-stockholders the Articles of Incorporation were amended by adding thereto a new Article XI, as follows:

ARTICLE XI

"The corporation shall have the right to establish and maintain a capital reserve for the future conduct of its business. All amounts contributed by members to the association's capital (or capital reserve), including all amounts properly withheld from amounts derived from the patronage of members, shall be evidenced by the issuance of a non-transferable certificate of interest which shall carry no rights of dividend, interest or other income or appreciation. Certificates of interest shall be redeemable (in whole or in part) out of the capital reserve only upon such terms and at such times as may be determined from time to time by the Board of Directors. The death, withdrawal or expulsion of a member shall not give rise to any right to receive any payment from the capital reserve or to receive any payment on account of other equity credits except capital stock of the corporation. Whenever

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partial or full redemption of certificates of interest, or the payment of other equity credits, is authorized by the Board of Directors such payments shall be made as follows: 1) to the registered owner if living; or 2) to the registered owner's estate if such owner be deceased and his estate then be in the process of administration; or 3) to those entitled by law thereto as determined by the laws of such owner's last domicile if such owner be deceased and his estate not then be in the process of administration."

3. On the 11 day of May, 1979, the Board of Directors, at its regular monthly meeting, approved an amendment to the Articles of Incorporation substantially verbatim to that set forth in paragraph 2 above and directed that it be presented to the annual meeting of the member-stockholders to be held on May 25, 1979. At a special meeting of the Board of Directors which was held at 8:00 A.M. on the 25 day of May, 1979, technical amendments not materially affecting the substance of the originally proposed amendment were approved by said Board and said Board directed that the originally proposed amendment, as so amended, and as set forth in paragraph 2 above, be submitted to a vote of the member-stockholders at said annual meeting. At both meetings of the Directors all of the 11 Directors of the corporation were present and in each case the action taken was approved by a favorable vote by each of the 11 Directors.

4. The regular annual meeting of the member-stockholders of the corporation was held at Raleigh, North Carolina, on May 25, 1979, at 9:45 A.M. There was proper published notice of such meeting and there was included in such publication a summary of the changes to be effected

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SUBJECT TO PROTECTIVE ORDER

by the amendment set forth in paragraph 2 above. A quorum of the member-stockholders was present at such meeting. Such Amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 19 day of June, 1979.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

By: Billy W. Hill
President

By: Fred G. Bond
Secretary

STATE OF FLORIDA
COUNTY OF Hamilton

This is to certify that on the 11 day of June, 1979, before me personally appeared BILLY W. HILL, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

Lavonne McCall
Notary Public
My Commission expires:

Notary Public, State of Florida at Large
My commission expires Aug. 29, 1982
Bonded with Florida Farm Bureau Ins. Co.

NORTH CAROLINA
WAKE COUNTY

This is to certify that on the 19th day of June, 1979, before me personally appeared FRED G. BOND, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public
My Commission expires:

My Commission Expires October 7, 1979

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF AMENDMENT

OF

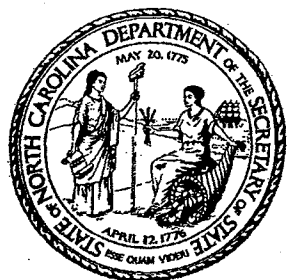
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

the original of which was filed in this office on the 1st day of June, 1982.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State



Certification# 86827714-1 Reference# 8679603-ACH Page: 1 of 3
Verify this certificate online at www.secretary.state.nc.us/verification

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FILED

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THAD EURE
SECRETARY OF STATE TO THE CHARTER OF
NORTH CAROLINA

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 and §54-136 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At the annual meeting of the member-stockholders of the corporation held on the 28 day of May, 1982, the following two amendments to the Articles of Incorporation were unanimously adopted.

a. Amend Article III - Place, to read as follows:

The place where its business will be transacted in this State is in Raleigh (or its immediate environs), in the County of Wake, State of North Carolina, but the corporation may have one or more branch offices and places of business out of the State of North Carolina as well as in that State.

b. Amend Article VII - Powers, by adding subparagraph (h) as follows:

(h) To retain and apply the net gains of any crop pool to offset the net losses of any other crop pool if and to the extent that such may be required by any creditor of the corporation.

3. On the 9 day of April, 1982, the Board of Directors, at its regular monthly meeting, approved amendments to the Articles of Incorporation verbatim to those set forth in paragraph 2 above and directed that they be presented to the annual meeting of the member-stockholders to be held on May 28, 1982. A quorum of the directors was present at such meeting and such approvals received a vote of at least two thirds of all of the members of the Board.

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4. The annual meeting of the member-stockholders of the corporation was held on May 28, 1982, at 10:00 A.M. There was included in the notice of said meeting a summary of the changes to be effected by the amendments set forth in paragraph 2 above. A quorum of the member-stockholders was present at such meeting. Each Amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 28 day of May, 1982.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

By: Billy W. Hill
President

By: Fred G. Bond
Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This is to certify that on the 28 day of May, 1982, before me personally appeared BILLY W. HILL, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public
My Commission expires:

My Commission Expires October 7, 1984.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This is to certify that on the 28 day of May, 1982, before me personally appeared FRED G. BOND, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public
My Commission expires:

My Commission Expires October 7, 1984.

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF AMENDMENT

OF

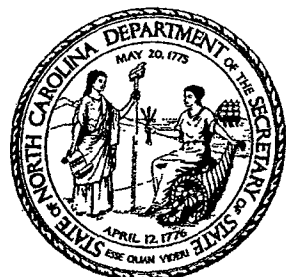
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

the original of which was filed in this office on the 13th day of September, 1982.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State



Certification# 86827715-1 Reference# 8679603-ACH Page: 1 of 3
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FILED

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THAD EURE
SECRETARY OF STATE
NORTH CAROLINA

ARTICLES OF AMENDMENT

TO THE CHARTER OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 and §54-136 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At a special meeting of the member-stockholders of the corporation held on the 10 day of September, 1982, the following two amendments to the Articles of Incorporation were unanimously adopted.

- A. Amend Article VI by deleting therefrom all of the first and third paragraphs and by substituting in their place the following paragraphs:

(First paragraph)

The total authorized capital stock of this corporation is One Hundred Five Million (\$105,000,000) Dollars, divided into 1,000,000 shares of common stock of a par value of \$5 and 100,000,000 shares of preferred stock of a par value of \$1 each.

(Third paragraph)

The preferred stock of this corporation may be acquired by any producer who markets quota tobacco and, effective with the 1983 and subsequent crops, by each owner and operator of any farm who leases all or any part of an acreage allotment or marketing quota for flue-cured tobacco. Fractional shares may be issued. The preferred stock shall carry no voting rights and no dividends shall be payable thereon. Preferred stock may be redeemed at no more than par value at such times and upon such terms as may be set forth in the By-Laws of the corporation. The transfer of preferred stock may be restricted in such manner as may be set forth in the By-Laws of the corporation. Upon dissolution and liquidation the holders of preferred stock shall be entitled to receive par value of their stock before any distribution is made on the common stock.

- B. Amend Article XI by changing the term "capital stock" appearing in the fourth sentence to the term "common stock".

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3. On the 13 day of August, 1982, the Board of Directors, at its regular monthly meeting, approved amendments to the Articles of Incorporation verbatim to those set forth in paragraph 2 above and directed that they be presented to a special meeting of the member-stockholders to be held on September 10, 1982. A quorum of the directors was present at such meeting and such approvals received a vote of at least two thirds of all of the members of the Board.

4. The special meeting of the member-stockholders of the corporation was held on September 10, 1982, at 1:00 p.m. There was included in the notice of said meeting a summary of the changes to be effected by the amendments set forth in paragraph 2 above. A quorum of the member-stockholders was present at such meeting. Each Amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 10 day of September, 1982.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

By: Billy W. Hill

President

By: Fred G. Bond

Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This is to certify that on the 10 day of September, 1982, before me personally appeared BILLY W. HILL, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public

My Commission expires:

My Commission Expires October 7, 1984

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This is to certify that on the 10 day of September, 1982, before me personally appeared FRED G. BOND, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public

My Commission expires:

My Commission Expires October 7, 1984

My Commission Expires October 7, 1984



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

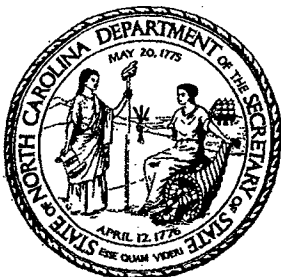
I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF AMENDMENT

OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

the original of which was filed in this office on the 19th day of December, 1983.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State

Certification# 86827716-1 Reference# 8679603-ACH Page: 1 of 4
Verify this certificate online at www.secretary.state.nc.us/verification

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ARTICLES OF AMENDMENT
TO THE CHARTER OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

THAD EURE
SECRETARY OF STATE
NORTH CAROLINA

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At a special meeting of the member-stockholders of the corporation held on the 16 day of December, 1983, the following amendment to the Articles of Incorporation was unanimously adopted:

Delete the last sentence of Article VI - Capital Stock - which now reads, "Upon dissolution and liquidation the holders of preferred stock shall be entitled to receive par value of their stock before any distribution is made on the common stock", and insert in lieu thereof the following sentence:

"Additional limitations on and rights of the holders of preferred stock, including rights in the event of dissolution and liquidation, shall be as specified in the by-laws of the association."

3. On the 14 day of October, 1983, the Board of Directors, at its regular monthly meeting, approved an amendment to the Articles of Incorporation verbatim to that set forth in paragraph 2 above and the Board of Directors, at its meeting on November 15, 1983, directed that it be presented to a special meeting of the member-stockholders to be held on December 16, 1983. A quorum of the directors was present at each meeting and the action so taken at each meeting received a vote of not less than two-thirds of all of the members of the Board.

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SUBJECT TO PROTECTIVE ORDER

4. The special meeting of the member-stockholders of the corporation was held on December 16, 1983, The amendment set forth in paragraph 2 above was set forth in the printed notice of said meeting. A quorum of the member-stockholders was present at such meeting and said amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 16 day of December, 1983.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

BY: Billy W. Hill
President
BY: Thos. E. Bond
Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, Billy W. Hill, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

This 16 day of December, 1983.

Billy W. Hill
BILLY W. HILL

Sworn and subscribed to before
me this 16th day of December, 1983.

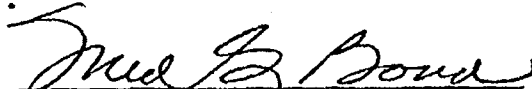
Eva Longston
Notary Public
My Commission expires:
My Commission Expires October 7, 1984

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SUBJECT TO PROTECTIVE ORDER

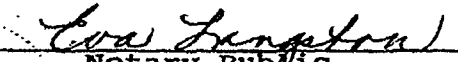
STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, Fred G. Bond, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

This 16 day of December, 1983.


FRED G. BOND

Sworn and subscribed to before me
this 16th day of December, 1983.


Notary Public
My Commission expires:

My Commission Expires October 7, 1984

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF AMENDMENT

OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

the original of which was filed in this office on the 30th day of May, 1984.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State

Certification# 86827717-1 Reference# 8679603-ACH Page: 1 of 3
Verify this certificate online at www.secretary.state.nc.us/verification



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FILED
THAD EURE
SECRETARY OF STATE
NORTH CAROLINA

ARTICLES OF AMENDMENT

TO THE CHARTER OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At the annual meeting of the member-stockholders of the corporation held on the 25 day of May, 1984, the following amendment to the Articles of Incorporation (Charter) was unanimously adopted.

To amend the first sentence of Article VI of the Articles of Incorporation (Charter) to provide that "The total authorized capital stock of this corporation is \$505,000,000 divided into one million shares of common stock of a par value of \$5.00 and 500,000 shares of preferred stock of a par value of \$1.00 each."

3. On the 13 day of April, 1984, the Board of Directors, at its regular monthly meeting, approved the amendment to the Articles of Incorporation verbatim to that set forth in paragraph 2 above and directed that same be presented to the annual meeting of the member-stockholders to be held on May 25, 1984. A quorum of the directors was present at such meeting and such approval received a vote of at least two-thirds of all of the members of the Board.

4. The annual meeting of the member-stockholders of the corporation was held on May 25, 1984 at 10:00 a.m. The amendment set forth in paragraph 2 above was set forth in the printed notice of said meeting. A quorum of the member-stockholders was present at such meeting and said amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

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SUBJECT TO PROTECTIVE ORDER

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 25 day of May, 1984.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

BY: Billy W. Hill
President

BY: Fred G. Bond
Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, BILLY W. HILL, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

This 25th day of May, 1984.

Billy W. Hill
BILLY W. HILL

Sworn to and subscribed to before
me this 25th day of May, 1984.

Eva Langston
Notary Public

My Commission expires:

My Commission Expires October 7, 1984

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, FRED G. BOND, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

This 25th day of May, 1984.

Fred G. Bond
FRED G. BOND

Sworn to and subscribed to before
me this 25th day of May, 1984.

Eva Langston
Notary Public

My Commission expires:

My Commission Expires October 7, 1984

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF AMENDMENT

OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

the original of which was filed in this office on the 19th day of June, 1995.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of June, 2007.

Elaine F. Marshall

Secretary of State

Certification# 86827718-1 Reference# 8679603-ACH Page: 1 of 5
Verify this certificate online at www.secretary.state.nc.us/verification



JUN 13 1995

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ARTICLES OF AMENDMENT

EFFECTIVE
RUFUS L. EDMISTEN
SECRETARY OF STATE
NORTH CAROLINA

TO THE CHARTER OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Certificate of Incorporation and pursuant to the provisions of §54-135 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At the annual meeting of the member-stockholders of the Corporation held on the 26th day of May, 1995, the following amendment to the Certificate of Incorporation (Charter) was unanimously adopted.

That Article IV of the Corporation's Certificate of Incorporation be amended to read as follows:

"The term for which the Corporation is to exist is one hundred (100) years."

3. On the 14th day of April, 1995, the Board of Directors, at its regular monthly meeting, approved the amendment to the Certificate of Incorporation verbatim to that set forth in paragraph 2 above and directed that same be presented to the annual meeting of the member-stockholders to be held on May 26, 1995. A quorum of the directors was present at such meeting and such approval received a vote of at least two-thirds of all of the members of the Board.

4. The annual meeting of the member-stockholders of the Corporation was held on May 26, 1995 at 10:00 a.m. The amendment set forth in paragraph 2 above was summarized in the printed notice of said meeting. A quorum of the member-stockholders was present at such meeting and said amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 15th day of June, 1995.

4. The annual meeting of the member-stockholders of the Corporation was held on May 26, 1995 at 10:00 a.m. The amendment set forth in paragraph 2 above was summarized in the printed notice of said meeting. A quorum of the member-stockholders was present at such meeting and said amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 15th day of June, 1995.

**FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION**

By: Barney L. Flye
President
By: John F. Bond
Secretary

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CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, Bruce L. Flye, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

This 15th day of June, 1995.

Bruce L. Flye
BRUCE L. FLYE

Sworn to and subscribed to before
me this 15 day of June, 1995.

Peggy A. Crowe
Notary Public

My Commission Expires:

9-8-99

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CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, Fred G. Bond, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

This 15th day of June, 1995.



FRED G. BOND

Sworn to and subscribed to before
me this 15 day of June, 1995.



Notary Public

My Commission Expires:

9-8-99

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(AS AMENDED THROUGH 11/14/03)

**BY-LAWS
OF
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION**

ARTICLE I

Purposes

The purposes for which this association is formed are set forth in the Articles of Incorporation of the association.

ARTICLE II

Board of Directors

Section 1. The business of the association shall be controlled by a board of directors consisting of ten persons, each of whom shall be a common stockholder (or the designated representative of a firm, partnership or association which is a common stockholder), hereinafter referred to as member, of this association. No person shall be eligible for the office of director if he is in competition with or is affiliated with any enterprise that is in competition with the association; and if a majority of the board of directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. In addition to the directors herein provided for, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such director so appointed need not be a member or stockholder of the association but shall have the same powers and rights as other directors, in accordance with the provisions of the General Statutes of North Carolina.

Election of Directors

Section 2. (a) The territory in which the association shall operate shall be divided into such districts that the tobacco production in each district shall be substantially the same, but in forming districts counties shall not be divided, and each of Florida, Georgia, South Carolina, North Carolina and Virginia shall have at least one district, unless the board determines that the tobacco production and membership in a particular state do not warrant a separate district. Annually after the formation of such districts at least twenty days prior to the district meeting, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

(b) The common stockholders in each district shall elect a director from that district, from among the common stockholders actually residing and growing tobacco therein. Each such director shall be elected for a term of office of three years except that in case of a vacancy occurring for a reason other than expiration of term of office, the term to

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which the director shall be elected shall be the unexpired term of the director whose office has been vacated. The board of directors shall have the power and the duty of providing for the conduct of elections and determining all matters in connection therewith. Elections in the several districts need not be held on the same date.

Vacancies

Section 3. Vacancies in the elected board of directors shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of directors as may be determined by the board of directors, but no more than ten days after the annual membership meeting, the directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in Section 4, shall be mailed to each director at his last known address at least three days prior to the time of the meeting.

Quorum

Section 7. A majority of the board of directors shall constitute a quorum of the board at all times.

Compensation

Section 8. (a) For attendance at board meetings, and on other occasions where individual members of the board are requested by the board, or by the president, to represent the board, board members shall be entitled to reimbursement for reasonable lodging and travel expense incurred and to a reasonable per diem allowance as established from time to time by the board of directors for time actually covered by such attendance or representation. Directors shall receive no other remuneration for their services.

(b) No director, during the term of his office, shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting; provided, that this prohibition shall not apply to any transaction involving a seasonal employee which has been approved by the board and disclosed to Commodity Credit Corporation.

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ARTICLE III**Power of Directors****Section 1. The directors shall have power -**

(a) To conduct, manage and control the affairs and business of the association and to make rules and regulations for the guidance of the officers and the management of its affairs.

(b) To appoint and remove, at pleasure, all officers, agents, and employees of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary and they must call a meeting at any time upon written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will.

ARTICLE IV**Duties of Directors****Section 1. It shall be the duty of the board of directors -**

(a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.

(b) To supervise all officers, agents and employees and see that their duties are properly performed.

(c) To cause to be issued appropriate certificates of stock.

(d) To install such a system of bookkeeping and auditing that each member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.

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(e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.

(f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V

Officers

The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer and a General Counsel, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes.

The board may appoint assistant secretaries and an assistant treasurer, in its discretion, and may delegate to them any or all the duties of the secretary and treasurer, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors.

Only the president and vice presidents are required to be members of the board of directors.

ARTICLE VI

President

If at any time the president shall be unable to act, the vice presidents, in the order of their election, shall take his place and perform his duties; and if no vice president is able to act, the board of directors shall appoint a director to do so. The president, such vice president or director shall:

- (a) Preside over all meetings of members and directors.
- (b) Subject to the advice of the directors, direct the affairs of the association.
- (c) Call the directors together whenever necessary.
- (d) Sign, as president, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors.
- (e) Report at each annual meeting of the members, the average salaries of officers and department heads and the average salary of minor employees in each department.
- (f) Discharge such other duties as may be required of him by these by-laws or by the board of directors.

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ARTICLES VII

Secretary and Treasurer

Section 1. It shall be the duty of the secretary -

- (a) To keep a record of the proceedings of the meetings of the board of directors and of members.
- (b) To keep the corporate seal.
- (c) To keep a proper stock book.
- (d) To execute and sign contracts, notes, papers and documents as authorized by the board of directors.
- (e) To act as secretary of the executive committee.
- (f) To discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 2. It shall be the duty of the treasurer -

- (a) To perform such duties with respect to the finances of the association as may be prescribed by the board of directors.
- (b) The secretary may be the same person as the treasurer.

ARTICLE VIII

Executive Committee

The board of directors may appoint an executive committee of four members from among its members; determine its tenure of office and prescribe its powers and duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee, in addition to the four members herein provided for.

Copies of the minutes of the meetings of the executive committee and any reports thereof, must be mailed weekly to all directors.

ARTICLE IX

Auditing Committee

Section 1. The board of directors may appoint an auditing committee from among its members, determine the number thereof, its tenure of office, and the manner and form in which the committee shall function; in lieu of such action by the board, the auditing committee may prescribe rules and regulations with reference to its procedure.

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Section 2. The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting.

Section 3. The audits of the association, as provided in Section 2 of this Article, shall be reported to the members at the annual meeting.

ARTICLE X

Stock Certificates

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find following a hearing that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all

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indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

"The preferred stock evidenced hereby shall carry no voting rights and no dividend shall be payable thereon. The board of directors of the association shall have the authority in its discretion to redeem all or a portion of outstanding preferred stock at no more than par value at such times and upon such terms as the board of directors deems appropriate.

"In the event of dissolution of the association the rights of holders of preferred stock shall be as specified in the by-laws of the association.

"The preferred stock evidenced hereby shall be transferable only to a transferee approved by the association."

ARTICLE XI

Books and Papers

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally.

ARTICLE XII

MEETINGS OF MEMBERS

Regular Meetings

Section 1. Regular meetings of the members shall be held in the City of Raleigh (or its immediate environs), North Carolina, at such hour and place as the Board shall determine, on the second Friday in June of each year for the purpose of hearing the report from the president and for transacting such other business as may come before the meeting.

Special Meetings

Section 2. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president, or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meeting. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

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Notice of Meetings

Section 3. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy of the notice of each special and regular meeting shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publication in a newspaper circulating in each district in which the association has members, such notices to appear on two occasions in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

Quorum

Section 4. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 common stockholders present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws.

Election of Directors

Section 5. Following the formation of districts the members of each district shall meet for the election of a director to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director therefrom. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

Voting

Section 6. At any meeting of the members of the association or any district only those who are registered owners of common stock shall be entitled to vote. The holders of preferred shares will have the privilege of the floor but without right to vote.

ARTICLE XIII

Members

Section 1. Any person, firm, partnership, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of flue-cured tobacco in the territory in which the association is engaged in business may become a member of the association by acquiring a share of the common stock and signing the marketing agreement.

Any producer who markets tobacco and each owner and operator of any farm who leases all or any part of an acreage allotment or marketing quota for flue-cured tobacco may acquire preferred stock of the association.

In the event any producer of tobacco who is a non-member of the association shall make delivery of any quantity of tobacco to the Flue-Cured Tobacco Cooperative Stabilization Corporation at any warehouse and shall thereby obtain the benefit of a loan thereon, that shall be deducted by the warehouse in making settlement with such producer for the tobacco so delivered the amount of five dollars (\$5.00) to cover the par value of one share of common stock of the association, and the amount so deducted shall be remitted by the warehouse.

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along with a signed marketing agreement (if required by the association), to the association and there shall thereupon be issued to such producer one share of common stock in the association. In the event such deduction should not be made by the warehouse in settling with such non-member, or in the event such non-member shall fail to sign a required marketing agreement, then such non-member would not be entitled to any participation in the profits arising from such transaction until he has signed a marketing agreement and there has been deducted from the participating share of such non-member in the profits the amount of five dollars (\$5.00) covering the par value of one share of common stock in the association.

Voting Power of Common Stockholders

Section 2. The voting power of the common stockholders of this association shall be equal and each and every such shareholder shall have one vote.

Proxies

Section 3. Any common stockholder shall be permitted to vote at any meeting in person or he may vote by mail on a ballot to be prepared by order of the board of directors but voting by proxy is prohibited.

Board to Establish Standards and Grades

Section 4. The board of directors shall have the power to establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

ARTICLE XIV

General Manager

The board of directors may, in its discretion, appoint a general manager, who shall hold office at the pleasure of and on terms and conditions set by the board of directors. No director may be elected to serve as general manager.

ARTICLE XV

Borrowing Money

The association shall have the power by affirmative vote of a majority vote of the directors, to borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

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ARTICLE XVI**No Net Cost Tobacco Account**

The association shall cause to be established and maintained an account to be known as the No Net Cost Tobacco Account, in accordance with, and for the purposes set forth in, the provisions of Section 301 of the No Net Cost Tobacco Program Act of 1982 (Public Law 97-218), and regulations issued thereunder.

ARTICLES XVII**Capital**

Section 1. Capital Equity Credits or Certificates. This association shall establish and maintain a capital account for each member to whom capital equity credits or certificates are issued or allocated, for the purpose of acquiring and maintaining adequate capital to finance its business. Both qualified and nonqualified credits or certificates may be established to create the account evidencing such an amount of capital as may be deemed necessary by the board of directors from time to time, and for redeeming such capital as is no longer necessary.

All qualified capital equity credits or certificates shall satisfy the definition of a "qualified written notice of allocation" (40) or a "qualified per unit retain certificate" as defined in Section 1388 of the 1954 Internal Revenue Code. All nonqualified capital equity credits or certificates shall likewise satisfy the definition of a "nonqualified written notice of allocation" or a "nonqualified per unit retain certificate" as set forth in Section 1388 of the 1954 Code. Capital equity credits or certificates shall not bear interest.

Patronage dividends and per unit capital retains may be allocated and disclosed on either a qualified or nonqualified basis as solely determined by the board of directors, and such determination by the board of directors shall be made prior to the end of the association's fiscal year.

A record of all holders of capital equity credits or certificates shall be kept and maintained by the association. Such credits however evidenced shall be transferable only to the association.

All debts of the association, both secured and unsecured, shall be entitled to priority over all outstanding capital equity credits or certificates.

Section 2. Capital from Members. All business transacted by the association with or for members shall be transacted on a cost basis. The board of directors may determine an amount to be retained from net margins arising from all business transacted by the association with or for members. All such net margins shall be allocated to members on a patronage basis at the end of each fiscal year and shall be paid to such members in cash, or by credit to the capital accounts of each member, or partly in cash and partly in credit, within 8-1/2 months following the close of the fiscal year. Such patronage dividends may be paid in either qualified or nonqualified form as determined by the board of directors.

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The board of directors may also determine a per unit capital retain to be deducted from the tobacco proceeds due members. Such per unit capital retain shall be evidenced by capital equity credits or certificates, and allocation and notification of such per unit capital retains to members shall be made within 8-1/2 months following the close of the fiscal year. Such per unit capital retains may be evidenced (paid) in either qualified or nonqualified form as determined by the board of directors.

Section 3. Losses from Member Business. In the event the association suffers a loss in any fiscal year in handling members' products or in the sale of supplies to or rendering of services for members, the board of directors shall have full authority and discretion to handle such loss so that it will be borne by members in the manner determined by the board to be most equitable and practicable.

Without limitation upon the authority hereby conferred, such loss may be charged to the members' accounts, or may be charged pro rata to such member's outstanding capital credits or certificates and any unabsorbed loss after the exhaustion of all outstanding credits or certificates may be charged against net margins of future years resulting from business handled with members.

In the event any loss be charged against capital equity credits or certificates, each credit or certificate shall be reduced by its proportionate part of the loss and the records pertaining thereto charged accordingly; and any thing to the contrary in these by-laws elsewhere contained notwithstanding, there shall be payable in respect of any capital equity credits or certificates against which a loss has been charged, only the difference between the amount of the credit or certificate as originally entered and the portion of the loss charged thereto.

Section 4. Capital from Sources Other Than Member Patronage. Each fiscal year, the association may set aside and retain as capital for use in the business of the association the net earnings (determined in accordance with sound corporate practices and sound accounting principles and after the payment of applicable Federal and State income taxes) derived by the association from sources other than patronage transactions with the members. Amounts so set aside and retained may be used for such purposes of the association as shall be determined by the board of directors.

Section 5. Losses from Nonmember Business. Any losses from sources other than members' patronage in any fiscal year after exhausting carrybacks and carryforwards relative to income from sources other than member patronage may be charged to any accumulated capital derived at any time from such sources (such charges to be made against the oldest such unexhausted accumulated capital).

Section 6. The Retirement of Capital Equity Credits. All capital equity credits issued to member or nonmember patrons shall be issued in annual series, each credit in each series being identified by the year in which it is issued. Each series shall be retired fully or on a pro rata basis, only at the discretion of the board of directors of the association, in order of issuance by years, but subject to priority as outlined herein, as funds are available for that purpose.

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The check constituting a part of a nonqualified capital equity credit or certificate resulting from a "qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid" may be redeemed upon the presentation of such a check irrespective of the series or the year in which it is issued. Such redemption of the check portion of the nonqualified capital equity credit or certificate shall in no way affect the balance of the nonqualified capital equity credit or certificate of which the check is a part.

Notwithstanding any other provisions of these by-laws, the board of directors at its discretion shall have the power at any time to pay off or retire or secure a release or satisfaction of any capital equity credits, both qualified and nonqualified, to compromise or settle a legal dispute between the owner thereof and the association.

Section 7. Member's Consent to Take into Income All Qualified Patronage Dividend and Per Unit Retain Allocations. Each person who hereafter applies for and is accepted to membership in this association after July 13, 1979, and each member of this association as of July 13, 1979, who continues as a member after such date shall, by such act alone, consent and agree that the amount of any distributions or allocations with respect to his patronage occurring after July 13, 1979, which are made in written notices of allocation either as patronage dividends or as per unit retain allocations (as defined in 26 U.S.C. Section 1388) and which are received by him from this association, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. Section 1385(a) in the taxable year in which such written notices of allocation are received by him.

Section 8. Evidence of Capital Equity. The records of the association shall be conclusive evidence of the capital equity of a member or nonmember. Capital equity credit or certificate notices shall be only memorandum records of such equity and therefore such credits or certificates of notice memorandums need not be endorsed and returned to the association upon any payment thereon, redemption thereof, or cancellation thereof.

Section 9. Set-off. The association shall be entitled to set off against any claims which any member may have against the association, any amounts which the member may owe the association.

Section 10. Public Law 97-218. For 1982 and subsequent crop years, the provisions of Sections 1, 2, 3, 4, and 6 above are subject to the provisions of Public Law 97-218, any amendments thereto, regulations issued thereunder, and the by-laws of the association adopted to implement said law, amendments and regulations.

ARTICLE XVIII

These by-laws may be altered or amended by a majority vote of a quorum of the common stockholders attending a meeting of which notice of the proposed by-law or by-laws shall have been given. Any by-law or by-laws of the association may be amended or repealed or any new by-law may be enacted by the board of directors of the association; subject, however, to any statutory limitation.

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ARTICLE XIX**Indemnification**

Section 1. The association shall indemnify each member of the board of directors, each officer and employee of the association, and the estate, executor, administrator, heirs, legatees and devisees of any such person, against all judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys fees, and any other liability that may be incurred as a result of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the association, and with respect to any criminal actions or proceedings, in addition, had not reasonable cause to believe that his conduct was unlawful; provided, however, that if any such claim, action, suit or proceeding is compromised or settled, it must be done so with the prior and express approval of the board of directors of the association.

Section 2. Such indemnification shall not depend upon whether or not such person is a member of the board of directors or is an officer or employee at the time such claim, action, suit or proceeding is begun, prosecuted or threatened, nor on whether or not the liability to be indemnified was incurred or the act or omission occurred prior to the adoption of this section.

Section 3. In each instance in which a question of indemnification hereunder arises, determination of the right to indemnification hereunder, and of the time, manner, and amount of payment thereof, shall be made by the board of directors; provided however, in the event that a majority of the members of the board of directors are seeking indemnification hereunder as a result of the same occurrence, such determination shall be subject to the approval of the members of the association at any regular or special meeting called therefor; and provided further, such membership approval shall not be necessary in those cases where a court of competent jurisdiction has found that the conduct of such board members fairly and equitably merits such indemnity.

Section 4. Nothing hereinabove appearing shall be construed as permitting or requiring indemnity where such is prohibited by law. #

ARTICLE XX**Dissolution and Liquidation**

In the event of dissolution of the association in any manner, the monies and properties of the association shall be distributed and applied as follows:

First: The payment of all debts, liabilities and obligations of the association (other than the indebtedness, liability or obligations evidenced by capital equity credits or certificates or any other special capital credits of the association).

Second: The redemption of qualified capital equity credits in full or on a pro rata basis.

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Third: The redemption of nonqualified capital equity credits in full or on a pro rata basis.

Fourth: The redemption of the preferred stock and common stock of the association, at par, in full or on a pro rata basis.

Fifth: Any amounts reflected on the association's books and records as "additional paid-in capital" and not previously distributed shall be distributed to patrons (as defined herein) of the association living at the time of dissolution and liquidation on the basis of the respective assessments paid in by each patron, relative to all assessments paid in, during the 1982-84 crop years. As used in this Article XX, "patron" shall mean any person who grew flue-cured tobacco and paid assessments in any crop year, for which the association's entire crop inventory for such crop year was later sold and the proceeds added to the association's reserves.

Sixth: Any balance remaining shall be distributed to the persons who are or have been members during the twenty (20) years immediately preceding dissolution and liquidation on a pro rata basis for the number of years each such person actively participated as member during such period.

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RESOLUTION

WHEREAS, Flue-Cured Tobacco Cooperative Stabilization Corporation (the "Corporation") and Wachovia Bank, N.A. ("Wachovia") entered into a Credit Agreement dated as of August 5, 2005 (the "Credit Agreement") and various related documents to establish a line of credit (the "Credit Facility") pursuant to which Wachovia provided an \$80,000,000 line of credit to the Corporation, secured by cash or marketable securities owned by the Corporation (the "Collateral"); and

WHEREAS, the management of the Corporation has proposed that the Credit Facility be modified to (i) increase the maximum amount from \$80,000,000 to \$120,000,000 (ii) extend the maturity date to July 31, 2008, and (iii) modify the Collateral; and

WHEREAS, Wachovia has agreed to modify the Credit Facility as proposed by the management of the Corporation, and has submitted to the Corporation certain documentation to evidence such proposed modifications, including, but not limited to the following (collectively, the "Modification Documents"): (i) First Amendment to Credit Agreement, (ii) Amended and Restated Promissory Note, (iii) Amended and Restated Account Control Agreement, and (iv) Amended and Restated Security Agreement; and

WHEREAS, the Board of Directors of the Corporation has determined that the modifications to the Credit Facility as proposed by the management of the Corporation and evidenced by the Modification Documents are in the best interest of the Corporation.

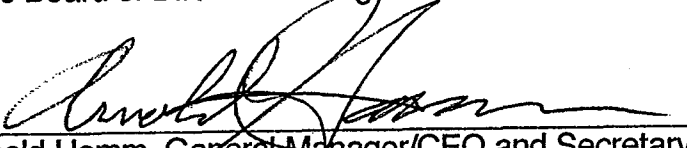
NOW, THEREFORE, BE IT RESOLVED, that each officer of the Corporation be, and hereby is, authorized and empowered to conduct such due diligence and to make all necessary investigation and review, in connection with negotiating and finalizing the Modification Documents and all agreements, certificates and other documents required thereunder, to pay all such necessary costs and expenses as in such officer's judgment shall be necessary or appropriate to carry out the intent and accomplish the purposes of these resolutions.

RESOLVED, FURTHER, that any and all acts taken and any and all agreements or other instruments executed by the officers of the Corporation, prior to the execution hereof in furtherance of the foregoing resolutions, be, and they hereby are, ratified, confirmed, adopted and approved.

RESOLVED, FURTHER, that Arnold Hamm, General Manager/CEO and Secretary, and Kenneth M. Bopp, Treasurer, are each hereby authorized and directed to execute and deliver the Modification Documents in such form as such officers deem necessary and appropriate.

RESOLVED, FURTHER, that each officer of the Corporation be, and each officer hereby is, authorized, directed and empowered to take all such further actions as such officer may deem necessary or advisable in order to carry out and perform the purposes of these resolutions.

I, Arnold Hamm, hereby certify that the above resolution was approved by Flue-Cured Tobacco Cooperative Stabilization Corporation's Board of Directors during the June 7, 2007 Board meeting.



 Arnold Hamm, General Manager/CEO and Secretary

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

EXHIBIT O

Jan 19
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(7/20/67)

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P
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As Amended Through
6/30/67

BY - LAWS
of
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

* * * * *

ARTICLE I

Purposes

The purposes for which this association is formed are set forth in the articles of incorporation of the association.

ARTICLE II

Board of Directors

Section 1. The business of the association shall be controlled by a board of directors consisting of ten persons, each of whom shall be a common stockholder, hereinafter referred to as member, of this association. No person shall be eligible for the office of director if he is in competition with it or is affiliated with any enterprise that is in competition with the association; and if a majority of the board of directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. The directors named in the articles of incorporation shall hold office for the first term or until the election and qualification of their successors. In addition to the Directors herein provided for or hereafter appointed by the common stockholders or members of the Corporation, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such Director so appointed need not be a member or stockholder of the corporation but shall have the same powers and rights as other Directors, in accordance with the provisions of the General Statutes of North Carolina, section 54-146.

Election of Directors

Section 2. (a) The directors shall be elected annually at the annual meeting of the association by its members from the membership until the Board of Directors divides the territory in which the Association operates into districts. All directors shall hold office until their successors shall have been elected and shall have qualified. The term of office of the directors so elected shall, from and after the adoption of this resolution, be as follows: At the Annual Meeting in 1948, three directors shall be elected for a term of one year, three directors shall be elected for a term of two years, and three directors shall be elected for a term of three years. At the Annual Meeting in 1949, three directors shall be elected for a term of three years and thereafter, three directors shall be elected at each Annual Meeting for a term of three years. At the annual meeting in 1958, the director elected as the tenth director shall be elected for a term of one year and thereafter his successor shall be elected for a term of three years.

At any time that the Board of Directors of the association deems it advisable the board shall divide the territory in which the association is operating or

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expecting to operate into districts for the election of directors. So far as practicable the territory in which the association shall operate shall be divided into such districts that the tobacco production in each district shall be substantially the same, but in forming districts counties shall not be divided.

(b) Following the formation of such districts the members in each district shall elect a director from that district, from among members actually residing and growing tobacco therein.

(c) As soon as may be practicable after the annual meeting in 1958, the directors shall divide the territory into ten Districts and shall provide that thereafter each vacancy occurring on the Board of Directors by reason of the expiration of the term of office of a director or for other reason, shall be filled by an election in the proper District. Each such director shall be elected for a term of office of three years except that in case of a vacancy occurring for a reason other than expiration of term of office, the term to which the director shall be elected shall be the unexpired term of the director whose office has been vacated. The Board of Directors shall have the power and the duty of providing for the conduct of elections and determining all matters in connection therewith. Elections in the several Districts need not be held on the same date.

Annually after the formation of such districts at least twenty days prior to the district meetings, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

Vacancies

Section 3. Prior to the formation of districts, vacancies in the board of directors shall be filled by remaining members; but after the formation of districts vacancies shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of Directors as may be determined by the board of directors, but not more than ten days after the annual membership meeting, the directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in section 4, shall be mailed to each director at his last known address at least three days prior to the time of such meeting.

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Quorum

Section 7. A majority of the board of directors shall constitute a quorum of the board at all meetings.

Compensation

Section 8. (a) The directors shall receive no compensation for their services other than reimbursement for any necessary transportation and hotel expenses incurred by them in attending the meetings of the board of directors and a per diem allowance of \$5.00 for the time actually covered by attendance at meetings.

(b) No director, during the term of his office shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting.

ARTICLE III

Power of Directors

Section 1. The directors shall have power -

(a) To conduct, manage and control the affairs and business of the association; and to make rules and regulations for the guidance of the officers and the management of its affairs.

(b) To appoint and remove, at pleasure, all officers, agents, and employees of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary; and they must call a meeting at any time upon the written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will,

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ARTICLE IV

Duties of Directors

Section 1. It shall be the duty of the board of directors -

(a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.

(b) To supervise all officers, agents and employees and see that their duties are properly performed.

(c) To cause to be issued appropriate certificates of stock.

(d) To install such a system of bookkeeping and auditing that each member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.

(e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.

(f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V

Officers

The officers of the association shall be a president, one or more vice presidents, a secretary and a treasurer, and a General Counsel, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes.

The board may appoint assistant secretaries, in its discretion, and may delegate to them any or all of the duties of the secretary, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors.

Only the president and vice presidents are required to be members of the board of directors.

ARTICLE VI

President

If at any time the president shall be unable to act, the vice presidents, in the order of their election, shall take his place and perform his duties; and if no vice president is able to act, the board of directors shall appoint a director to do so. The president, such vice president or director shall:

- (a) Preside over all meetings of members (and directors).
- (b) Subject to the advice of the directors, direct the affairs of the association.
- (c) Call the directors together whenever necessary.
- (d) Sign, as president, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors.
- (e) Report at each annual meeting of the members, the salaries of officers and department heads, and the average salary of minor employees in each department.
- (f) Discharge such other duties as may be required of him by these by-laws or by the board of directors.

ARTICLE VII

Secretary and Treasurer

Section 1. It shall be the duty of the secretary:

- (a) To keep a record of the proceedings of the meetings of the board of directors and of members.
- (b) To keep the corporate seal.
- (c) To keep a proper stock book.
- (d) To execute and sign contracts, notes, papers and documents as authorized by the board of directors.
- (e) To act as secretary of the executive committee.
- (f) To discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 2. It shall be the duty of the treasurer:

- (a) To perform such duties with respect to the finances of the association as may be prescribed by the board of directors.
- (b) To furnish bond in such form and in such amount as the board of directors may, from time to time, require.
- (c) The secretary may be the same person as the treasurer. The treasurer need not be a natural person, but may be a corporation, preferably a banking corporation.

ARTICLE VIII

SC 13211

Executive Committee

The board of directors may appoint an executive committee of four members from among its members; determine its tenure of office and prescribe its powers and

duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee, in addition to the four members herein provided for.

Copies of the minutes of the meetings of the executive committee and any reports thereof, must be mailed weekly to all directors.

ARTICLE IX

Auditing Committee

Section 1. The board of directors may appoint an auditing committee from among its members, determine the number thereof, its tenure of office, and the manner and form in which the committee shall function; in lieu of such action by the board, the auditing committee may prescribe rules and regulations with reference to its procedure.

Section 2. The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting.

Section 3. The audits of the association, as provided in Section 2 of this Article, shall be reported to the members at the annual meeting.

ARTICLE X

Stock Certificates

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find following a hearing that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association and then only to persons eligible

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to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

"The preferred stock evidenced hereby shall carry no voting rights and may be transferred only on the books of the association; and may be redeemed in whole or in part on a pro rata basis at par, plus any dividends declared thereon and unpaid at any time on thirty (30) days' notice by the association, provided said stock is redeemed in the same order as originally issued by years, and on the failure to deliver the certificate or certificates evidencing any such stock the association may cancel the same on its books. Stock which has been redeemed may, in the discretion of the board of directors, be reissued or retired. All such preferred stock so redeemed shall be paid for in cash at the par value thereof, plus any dividends declared thereon and unpaid; and such stock shall not bear dividends after it has been called for redemption. Noncumulative dividends of not to exceed six (6) percent per annum may be paid thereon when, if and as declared by the board of directors. This association shall have a lien on all of its issued preferred stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. At the discretion of the board of directors, all dividends or distributions of the association or any part thereof may be paid in certificates of preferred stock or credits on preferred stock, or ad interim certificates representing fractional parts thereof, subject to conversion into full shares. Upon dissolution or distribution of the assets of the association, the holders of all preferred stock shall be entitled to receive the par value of their stock, plus any dividends declared thereon and unpaid before any distribution is made on the common stock."

ARTICLE XI

Books and Papers

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally, and any member shall be entitled at any time to know the salary of any employee.

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ARTICLE XII

MEETINGS OF MEMBERS

Regular Meetings

Section 1. Regular meetings of the members shall be held at the office of the association at Raleigh, North Carolina, on the last Friday in June of each year for the purpose of hearing the report from the president and for transacting such other business as may come before the meeting.

Special Meetings

Section 2. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meeting. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

Notice of Regular Meetings

Section 3. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy thereof shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publications in newspapers circulating in the territory in which the association has members, such notices to appear in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

QUORUM

Section 4. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 persons present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws.

Election of Directors

Section 5. Following the formation of districts the members of each district shall meet for the election of a director or directors to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director or directors therefrom. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

ARTICLE XIII

Members

Section 1. Any person, firm, partnership, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of flue-cured

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tobacco in the territory in which the association is engaged in business may become a member of the association by acquiring a share of the common stock and signing the marketing agreement.

Voting Power of Members

Section 2. The voting power of the members of this association shall be equal and each and every member hereof shall have one vote.

Proxies

Section 3. Any member shall be permitted to vote at any meeting in person or he may vote by mail on a ballot to be prepared by order of the board of directors, but voting by proxy is prohibited.

Board to Establish Standards and Grades

Section 4. The board of directors shall have the power to establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

ARTICLE XIV

General Manager

The board of directors may, in its discretion, appoint a general manager, who shall hold office at the pleasure of and on terms and conditions set by the board of directors. No director may be elected to serve as general manager.

ARTICLE XV

Borrowing Money

The association shall have the power by affirmative vote of a majority vote of the directors, to borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

ARTICLE XVI

Capital Reserves

The books and records of the association shall be kept in such a manner, by years, that the amount carried to capital reserves, which have the status of capital, accruing from patronage of each patron of the association may be ascertained at any time. Whenever in a given year the operation of the association results in a net loss, such loss, to the extent that capital reserves are available, shall be charged against the same and they shall thereby be reduced accordingly.

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The board of directors shall prescribe the basis on which the capital reserve contributions of patrons by years shall be reduced on account of any such loss, so that it will be borne by the patrons on as equitable a basis as the board of directors find practicable. Whenever in the discretion of the board of directors the capital reserves are found to be in excess of the amount deemed reasonably necessary for the sound financial operations of the association, such excess shall be applied to paying off ratably, by years, the oldest unexhausted capital reserve contributions of patrons. Upon the dissolution or winding up of the association in any manner, after the payment of all debts and the retirement at par of all outstanding capital stock, any balance remaining over shall be distributed ratably to the patrons on an equitable basis.

ARTICLE XVII

These by-laws may be altered or amended by a majority vote of a quorum of the common stockholders attending a meeting of which notice of the proposed by-law or by-laws shall have been given.

ARTICLE XVIII

In the event any producer of tobacco who is a non member of the corporation shall make delivery of any quantity of tobacco to the Flue-Cured Tobacco Co-operative Stabilization Corporation at any warehouse and shall thereby obtain the benefit of a loan thereon, there shall be deducted by the warehouse in making settlement with such producer for the tobacco so delivered the amount of five dollars (\$5.00) to cover the par value of one share of common stock of the corporation, and the amount so deducted shall be remitted by the warehouse to the corporation and there shall thereupon be issued to such producer one share of common stock in the corporation. In the event such deduction should not be made by the warehouse in settling with such non member, then such non member would not be entitled to any participation in the profits arising from such transaction until there has been deducted from the participating share of such non member in the profits the amount of five dollars (\$5.00) covering the par value of one share of common stock in the corporation.

CONFIDENTIAL

SC 13216

EXHIBIT P

(AS AMENDED THROUGH 9-10-82)

BY-LAWS
of
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

* * * * *

ARTICLE I

Purposes

The purposes for which this association is formed are set forth in the Articles of Incorporation of the association.

ARTICLE II

Board of Directors

Section 1. The business of the association shall be controlled by a board of directors consisting of ten persons, each of whom shall be a common stockholder, hereinafter referred to as member, of this association. No person shall be eligible for the office of director if he is in competition with or is affiliated with any enterprise that is in competition with the association; and if a majority of the board of directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. In addition to the directors herein provided for, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such director so appointed need not be a member or stockholder of the corporation but shall have the same powers and rights as other directors, in accordance with the provisions of the General Statutes of North Carolina.

Election of Directors

Section 2. (a) The territory in which the association shall operate shall be divided into such districts that the tobacco production in each district shall be substantially the same, but in forming districts counties shall not be divided. Annually after the formation of such districts at least twenty days prior to the district meeting, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

(b) The common stockholders in each district shall elect a director from that district, from among the common stockholders actually residing and growing tobacco therein. Each such director shall be elected for a term of office of three years except that in case of a vacancy occurring for a reason other than expiration of term of office, the term to which the director shall be elected shall be the unexpired term of the director whose office has been vacated. The board of directors shall have the power and the duty of providing for the conduct of elections and determining all matters in connection therewith. Elections in the several districts need not be held on the same date.

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Vacancies

Section 3. Vacancies in the elected board of directors, shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of directors as may be determined by the board of directors, but no more than ten days after the annual membership meeting, the directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in Section 4, shall be mailed to each director at his last known address at least three days prior to the time of the meeting.

Quorum

Section 7. A majority of the board of directors shall constitute a quorum of the board at all times.

Compensation

Section 8. (a) The directors shall receive no compensation for their services other than reimbursement for any necessary transportation and hotel expenses incurred by them in attending the meetings of the board of directors and a reasonable per diem allowance as set by the board of directors from time to time for the time actually covered by attendance at board meetings.

(b) No director, during the term of his office, shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting.

ARTICLE III

Power of Directors

Section 1. The directors shall have power -

(a) To conduct, manage and control the affairs and business of the association; and to make rules and regulations for the guidance of the officers and the management of its affairs.

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(b) To appoint and remove, at pleasure, all officers, agents, and employees of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary; and they must call a meeting at any time upon written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will.

ARTICLE IV

Duties of Directors

Section 1. It shall be the duty of the board of directors -

(a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.

(b) To supervise all officers, agents and employees and see that their duties are properly performed.

(c) To cause to be issued appropriate certificates of stock.

(d) To install such a system of bookkeeping and auditing that each member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.

(e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.

(f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V

SC 13241

Officers

The officers of the association shall be a president, one or more vice presidents,

a secretary and a treasurer, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes.

The board may appoint assistant secretaries and an assistant treasurer, in its discretion, and may delegate to them any or all of the duties of the secretary and treasurer, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors.

Only the president and vice presidents are required to be members of the board of directors.

ARTICLE VI

President

If at any time the president shall be unable to act, the vice presidents, in the order of their election, shall take his place and perform his duties; and if no vice president is able to act, the board of directors shall appoint a director to do so. The president, such vice president or director shall:

- (a) Preside over all meetings of members and directors.
- (b) Subject to the advice of the directors, direct the affairs of the association.
- (c) Call the directors together whenever necessary.
- (d) Sign, as president, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors.
- (e) Report at each annual meeting of the members, the salaries of officers and department heads, and the average salary of minor employees in each department.
- (f) Discharge such other duties as may be required of him by these by-laws or by the board of directors.

ARTICLE VII

Secretary and Treasurer

Section 1. It shall be the duty of the secretary -

- (a) To keep a record of the proceedings of the meetings of the board of directors and of members.
- (b) To keep the corporate seal.
- (c) To keep a proper stock book.

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(d) To execute and sign contracts, notes, papers and documents as authorized by the board of directors.

(e) To act as secretary of the executive committee.

(f) To discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 2. It shall be the duty of the treasurer -

(a) To perform such duties with respect to the finances of the association as may be prescribed by the board of directors.

(b) The secretary may be the same person as the treasurer.

ARTICLE VIII

Executive Committee

The board of directors may appoint an executive committee of four members from among its members; determine its tenure of office and prescribe its powers and duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee, in addition to the four members herein provided for.

Copies of the minutes of the meetings of the executive committee and any reports thereof, must be mailed weekly to all directors.

ARTICLE IX

Auditing Committee

Section 1. The board of directors may appoint an auditing committee from among its members, determine the number thereof, its tenure of office, and the manner and form in which the committee shall function; in lieu of such action by the board, the auditing committee may prescribe rules and regulations with reference to its procedure.

Section 2. The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting.

Section 3. The audits of the association, as provided in Section 2 of this Article, shall be reported to the members at the annual meeting.

ARTICLE X

Stock Certificates

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

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"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find following a hearing that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

"The preferred stock evidenced hereby shall carry no voting rights and no dividend shall be payable thereon. The preferred stock may be redeemed at no more than par value at such times and upon such terms as may be set forth in the by-laws of the corporation. Upon dissolution and liquidation the holders of preferred stock shall be entitled to receive the par value of their stock before any distribution is made on the common stock."

Section 3. The preferred stock of the corporation and all qualified per unit retain certificates issued pursuant to Public Law 97-218 shall be transferable only as set forth below:

(a) In the case of individual owners -- upon death of such owner transfer shall be effectuated in accordance with his or her Last Will and Testament, if any, and if none then in accordance with the Intestate Succession Laws of the state of such owner's last domicile;

(b) In the case of corporate or partnership owners -- transfer shall be permitted only in the event of dissolution, merger or a sale of substantially all of the assets of such corporation or partnership and to a transferee to be approved by the corporation.

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ARTICLE XI

Books and Papers

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally.

ARTICLE XII

MEETINGS OF MEMBERS

Regular Meetings

Section 1. Regular meetings of the members shall be held in the City of Raleigh (or its immediate environs), North Carolina, at such hour and place as the Board shall determine, on the last Friday in May of each year for the purpose of hearing the report from the president and for transacting such other business as may come before the meeting.

Special Meetings

Section 2. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president, or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meeting. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

Notice of Meetings

Section 3. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy of the notice of each special and regular meeting shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publication in a newspaper circulating in each district in which the association has members, such notices to appear on two occasions in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

Quorum

Section 4. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 common stockholders present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws.

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Election of Directors

Section 5. Following the formation of districts the members of each district shall meet for the election of a director to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director therefrom. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

Voting

Section 6. At any meeting of the members of the association or any district only those who are registered owners of common stock shall be entitled to vote. The holders of preferred shares will have the privilege of the floor but without right to vote.

(ARTICLE AS AMENDED 8-12-83)

ARTICLE XIII

Members

Section 1. Any person, firm, partnership, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of flue-cured tobacco in the territory in which the association is engaged in business may ~~become a member~~ acquire ~~of the association by acquiring~~ a share of the common stock and signing the marketing agreement.

Any producer who markets quota tobacco and each owner and operator of any farm who leases all or any part of an acreage allotment or marketing quota for flue-cured tobacco may become a member of the association by acquiring preferred stock of the corporation.

In the event any producer of tobacco who is a non-member of the corporation shall make delivery of any quantity of tobacco to the Flue-Cured Tobacco Cooperative Stabilization Corporation at any warehouse and shall thereby obtain the benefit of a loan thereon, there shall be deducted by the warehouse in making settlement with such producer for the tobacco so delivered the amount of five dollars (\$5.00) to cover the par value of one share of common stock of the corporation, and the amount so deducted shall be remitted by the warehouse, along with a signed marketing agreement, to the corporation and there shall thereupon be issued to such producer one share of common stock in the corporation. In the event such deduction should not be made by the warehouse in settling with such non-member, or in the event such non-member shall fail to sign a marketing agreement, then such non-member would not be entitled to any participation in the profits arising from such transaction until he has signed a marketing agreement and there has been deducted from the participating share of such non-member in the profits the amount of five dollars (\$5.00) covering the par value of one share of common stock in the corporation.

Voting Power of Common Stockholders

Section 2. The voting power of the common stockholders of this association shall be equal and each and every such shareholder shall have one vote.

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Proxies

Section 3. Any common stockholder shall be permitted to vote at any meeting in person or he may vote by mail on a ballot to be prepared by order of the board of directors but voting by proxy is prohibited.

Board to Establish Standards and Grades

Section 4. The board of directors shall have the power to establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

ARTICLE XIV

General Manager

The board of directors may, in its discretion, appoint a general manager, who shall hold office at the pleasure of and on terms and conditions set by the board of directors. No director may be elected to serve as general manager.

ARTICLE XV

Borrowing Money

The association shall have the power by affirmative vote of a majority vote of the directors, to borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

(ARTICLE AS REVISED 8-12-83)

ARTICLE XVI

No Net Cost Tobacco Fund

The corporation shall establish a separate fund to be known as the No Net Cost Tobacco Fund (hereinafter referred to as "the Fund"), the purpose of which will be to implement the provisions of Public Law 97-218 and regulations issued thereunder. The proceeds from the sale of all preferred stock, as well as amounts received for the issuance of qualified per unit retain certificates issued pursuant to said law and regulations, shall be placed in the Fund. Excess amounts in the Fund, when and if released by the Secretary of Agriculture, may be devoted to such uses as shall be determined by the Board of Directors.

Separate records shall be maintained with respect to each crop pool. In assuring that the tobacco price support and production adjustment program be carried out at no net cost to the taxpayer, the charges against the Fund with respect to any particular crop pool shall be made in the following order:

- (1) The current and accumulated earnings of the Fund;
- (2) The principal of the Fund representative of the contributions to the Fund for that crop pool;

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- (3) The principal of the Fund using, in sequential order, the principal of the oldest crop pool.

Following the closing of any crop pool the board of directors shall have the continuing authority in its discretion to declare worthless and to cancel that portion of the preferred stock and per unit retain certificates issued with respect to that crop pool as determined by a formula the denominator of which is the contributions to the Fund for that crop pool and the numerator of which is the charges against the Fund for that crop pool. Written notice of cancellation shall be mailed to each of the holders of such stock and retain certificates and it shall not be necessary for such holders to return any stock or retain certificates to the corporation or for the corporation to reissue same. Any certificates and stock so cancelled shall no longer be considered as outstanding for any purpose.

In the event that the Fund may be used or released for the purpose of redeeming outstanding preferred stock or outstanding qualified per unit retain certificates (other than in the case of dissolution and liquidation), that portion of the Fund so used or released shall be used to redeem, in whole or pro rata, the outstanding qualified per unit retain certificates and outstanding preferred stock representative of the oldest closed crop pool.

ARTICLE XVII

Capital

Section 1. Capital Equity Credits or Certificates:

This association shall establish and maintain a capital account for each member, which shall be evidenced by capital equity credits or certificates, for the purpose of acquiring and maintaining adequate capital to finance its business. Both qualified and nonqualified credits or certificates may be established to create the account evidencing such an amount of capital as may be deemed necessary by the board of directors from time to time, and for redeeming such capital as is no longer necessary.

All qualified capital equity credits or certificates shall satisfy the definition of a "qualified written notice of allocation" as defined in Section 1388 of the 1954 Internal Revenue Code. All nonqualified capital equity credits or certificates shall likewise satisfy the definition of a "nonqualified written notice of allocation" as set forth in Section 1388 of the 1954 Code. Capital equity credits or certificates shall not bear interest.

Patronage dividends and per-unit capital retains may be allocated and disclosed on either a qualified or nonqualified basis as solely determined by the board of directors, and such determination by the board of directors shall be made prior to the end of the association's fiscal year.

A record of all holders of capital equity credits shall be kept and maintained by the association. Such credits however evidenced shall be transferable only to the association.

All debts of the association, both secured and unsecured, shall be entitled to priority over all outstanding capital equity credits or certificates.

Section 2. Capital from Members:

All business transacted by the association with or for members shall be transacted on a cost basis. The board of directors may determine an amount to be retained from net margins arising from all business transacted by the association with or for members. All such net margins shall be allocated to members on a patronage basis at the end of each fiscal year and shall be paid to such members in cash, or by credit to the capital accounts of each member, or partly in cash and partly in credit, within 8-1/2 months following the close of the fiscal year. Such patronage dividends may be paid in either qualified or nonqualified form as determined by the board of directors.

The board of directors may also determine a per-unit capital retain to be deducted from the tobacco proceeds due members. Such per-unit capital retain shall be evidenced by capital equity credits or certificates, and allocation and notification of such per-unit capital retains to members shall be made within 8-1/2 months following the close of the fiscal year. Such per-unit capital retains may be evidenced (paid) in either qualified or nonqualified form as determined by the board of directors.

Section 3. Losses from Member Business:

In the event the association suffers a loss in any fiscal year in handling members' products or in the sale of supplies to or rendering of services for members, the board of directors shall have full authority and discretion to handle such loss so that it will be borne by members in the manner determined by the board to be most equitable and practicable.

Without limitation upon the authority hereby conferred, such loss may be charged to the members' accounts, or may be charged pro rata to such member's outstanding capital credits or certificates and any unabsorbed loss after the exhaustion of all outstanding credits or certificates may be charged against net margins of future years resulting from business handled with members.

In the event any loss be charged against capital equity credits or certificates, each credit or certificate shall be reduced by its proportionate part of the loss and the records pertaining thereto charged accordingly; and anything to the contrary in these by-laws elsewhere contained notwithstanding, there shall be payable in respect of any capital equity credits or certificates against which a loss has been charged, only the difference between the amount of the credit or certificate as originally entered and the portion of the loss charged thereto.

Section 4. Capital from Sources Other than Member Patronage:

Each fiscal year, the association may set aside and retain as capital for use in the business of the association the net earnings (determined in accordance with sound corporate practices and sound accounting principles and after the payment of applicable Federal and State income taxes) derived by the association from sources other than patronage transactions with the members. Amounts so set aside and retained may be used for such purposes of the association as shall be determined by the board of directors.

Section 5. Losses from Nonmember Business:

Any losses from sources other than members' patronage in any fiscal year after exhausting carrybacks and carryforwards relative to income from sources other than

member patronage may be charged to any accumulated capital derived at any time from such sources (such charges to be made against the oldest such unexhausted accumulated capital).

Section 6. The Retirement of Capital Equity Credits:

All capital equity credits issued to member or nonmember patrons shall be issued in annual series, each credit in each series being identified by the year in which it is issued. Each series shall be retired fully or on a pro rata basis, only at the discretion of the board of directors of the association, in order of issuance by years, but subject to priority as outlined herein, as funds are available for that purpose.

The check constituting a part of a nonqualified capital equity credit or certificate resulting from a "qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid" may be redeemed upon the presentation of such a check irrespective of the series or the year in which it is issued. Such redemption of the check portion of the nonqualified capital equity credit or certificate shall in no way affect the balance of the nonqualified capital equity credit or certificate of which the check is a part.

Notwithstanding any other provisions of these by-laws, the board of directors at its discretion shall have the power at any time to pay off or retire or secure a release or satisfaction of any capital equity credits, both qualified and nonqualified, to compromise or settle a legal dispute between the owner thereof and the association.

Section 7. Member's Consent to Take into Income All Qualified Patronage Dividend and Per-Unit Retain Allocations:

Each person who hereafter applies for and is accepted to membership in this Association after July 13, 1979, and each member of this Association as of July 13, 1979, who continues as a member after such date shall, by such act alone, consent and agree that the amount of any distributions or allocations with respect to his patronage occurring after July 13, 1979, which are made in written notices of allocation either as patronage dividends or as per-unit retain allocations (as defined in 26 U.S.C. Section 1388) and which are received by him from this association, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. Section 1385(a) in the taxable year in which such written notices of allocation are received by him.

Section 8. Evidence of Capital Equity:

The records of the association shall be conclusive evidence of the capital equity of a member or nonmember. Capital equity credit notices shall be only memorandum records of such equity and therefore such certificates or notice memorandums need not be endorsed and returned to the association upon any payment thereon, redemption thereof, or cancellation thereof.

Section 9. Set-off:

The association shall be entitled to set off against any claims which any member may have against the association, any amounts which the member may owe the association.

ARTICLE XVIII

These by-laws may be altered or amended by a majority vote of a quorum of the common stockholders attending a meeting of which notice of the proposed by-law or by-laws shall have been given. Any by-law or by-laws of the corporation may be amended or repealed or any new by-law may be enacted by the board of directors of the corporation; subject, however, to any statutory limitation.

ARTICLE XIX

Indemnification

Section 1. The corporation shall indemnify each member of the board of directors, each officer and employee of the corporation, and the estate, executor, administrator, heirs, legatees and devisees of any such person, against all judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys fees, and any other liability that may be incurred as a result of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the corporation, and with respect to any criminal actions or proceedings, in addition, had not reasonable cause to believe that his conduct was unlawful; provided, however, that if any such claim, action, suit or proceeding is compromised or settled, it must be done so with the prior and express approval of the board of directors of the corporation.

Section 2. Such indemnification shall not depend upon whether or not such person is a member of the board of directors or is an officer or employee at the time such claim, action, suit or proceeding is begun, prosecuted or threatened, nor on whether or not the liability to be indemnified was incurred or the act or omission occurred prior to the adoption of this section.

Section 3. In each instance in which a question of indemnification hereunder arises, determination of the right to indemnification hereunder, and of the time, manner, and amount of payment thereof, shall be made by the board of directors; provided however, in the event that a majority of the members of the board of directors are seeking indemnification hereunder as a result of the same occurrence, such determination shall be subject to the approval of the members of the corporation at any regular or special meeting called therefor; and provided further, such membership approval shall not be necessary in those cases where a court of competent jurisdiction has found that the conduct of such board members fairly and equitably merits such indemnity.

Section 4. Nothing hereinabove appearing shall be construed as permitting or requiring indemnity where such is prohibited by law.

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(ARTICLE AS REVISED 8-12-83)

ARTICLE XX

Dissolution and Liquidation

In the event of dissolution of the association in any manner, the monies and properties of the association shall be distributed and applied as follows:

- First: The payment of all debts, liabilities and obligations of the association (other than the indebtedness, liability or obligations evidenced by capital equity credits or certificates or any other special capital credits of the association); provided, all amounts owing to Commodity Credit Corporation for 1982 and subsequent crop pools shall be charged first as set forth in Article XVI above.
- Second: From the remaining balance of the Fund, there shall be redeemed in full or on a pro rata basis, the outstanding qualified per unit retain certificates and preferred stock issued with respect to Public Law 97-218.
- Third: The redemption of qualified capital equity credits, other than those issued pursuant to Public Law 97-218, in full or on a pro rata basis.
- Fourth: The redemption of nonqualified capital equity credits in full or on a pro rata basis.
- Fifth: The redemption of the common stock of the corporation, at par, in full or on a pro rata basis.
- Sixth: Any balance remaining shall be distributed to members of the association at the time of liquidation on the basis of their respective patronage of the association during the ten (10) fiscal years immediately preceding dissolution and liquidation.

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EXHIBIT Q

BY-LAWS
OF
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

ARTICLE I

Purposes

The purposes for which this association is formed are set forth in the Articles of Incorporation of the association.

ARTICLE II

Board of Directors

Section 1. The business of the association shall be controlled by a board of directors consisting of ten persons, each of whom shall be a common stockholder, hereinafter referred to as member, of this association. No person shall be eligible for the office of director if he is in competition with or is affiliated with any enterprise that is in competition with the association; and if a majority of the board of directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. In addition to the directors herein provided for, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such director so appointed need not be a member or stockholder of the association but shall have the same powers and rights as other directors, in accordance with the provisions of the General Statutes of North Carolina.

Election of Directors

Section 2. (a) The territory in which the association shall operate shall be divided into such districts that the tobacco production in each district shall be substantially the same, but in forming districts counties shall not be divided, and each of Florida, Georgia, South Carolina, North Carolina and Virginia shall have at least one district, unless the board determines that the tobacco production and membership in a particular state do not warrant a separate district. Annually after the formation of such districts at least twenty days prior to the district meeting, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

(b) The common stockholders in each district shall elect a director from that district, from among the common stockholders actually residing and growing tobacco therein. Each such director shall be elected for a term of office of three years except that in case of a vacancy occurring for a reason other than expiration of term of office, the term to which the director shall be elected shall be the unexpired term of the director whose office has been vacated. The board of directors shall have the power and the duty of providing for the conduct of elections and determining all matters in connection therewith. Elections in the several districts need not be held on the same date.

Vacancies

Section 3. Vacancies in the elected board of directors, shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of directors as may be determined by the board of directors, but no more than ten days after the annual membership meeting, the directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in Section 4, shall be mailed to each director at his last known address at least three days prior to the time of the meeting.

Quorum

Section 7. A majority of the board of directors shall constitute a quorum of the board at all times.

Compensation

Section 8. (a) For attendance at board meetings, and on other occasions where individual members of the board are requested by the board, or by the president, to represent the board, board members shall be entitled to reimbursement for reasonable lodging and travel expense incurred and to a reasonable per diem allowance as established from time to time by the board of directors for time actually covered by such attendance or representation. Directors shall receive no other remuneration for their services.

(b) No director, during the term of his office, shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting; provided, that this prohibition shall not apply to any transaction involving a seasonal employee which has been approved by the board and disclosed to Commodity Credit Corporation.

ARTICLE III

Power of Directors

Section 1. The directors shall have power -

(a) To conduct, manage and control the affairs and business of the association; and to make rules and regulations for the guidance of the officers and the management of its affairs.

(b) To appoint and remove, at pleasure, all officers, agents, and employees of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary; and they must call a meeting at any time upon written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will.

ARTICLES IV

Duties of Directors

Section 1. It shall be the duty of the board of directors -

(a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.

(b) To supervise all officers, agents and employees and see that their duties are properly performed.

(c) To cause to be issued appropriate certificates of stock.

(d) To install such a system of bookkeeping and auditing that each member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.

(e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.

(f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V

Officers

The officers of the association shall be a president, one or more vice presidents, a secretary and a treasurer, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes.

The board may appoint assistant secretaries and an assistant treasurer, in its discretion, and may delegate to them any or all the duties of the secretary and treasurer, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors.

Only the president and vice presidents are required to be members of the board of directors.

ARTICLE VI

President

If at any time the president shall be unable to act, the vice presidents, in the order of their election, shall take his place and perform his duties; and if no vice president is able to act, the board of directors shall appoint a director to do so. The president, such vice president or director shall:

- (a) Preside over all meetings of members and directors.
- (b) Subject to the advice of the directors, direct the affairs of the association.
- (c) Call the directors together whenever necessary.
- (d) Sign, as president, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors.
- (e) Report at each annual meeting of the members, the average salaries of officers and department heads and the average salary of minor employees in each department.
- (f) Discharge such other duties as may be required of him by these by-laws or by the board of directors.

ARTICLES VII

Secretary and Treasurer

Section 1. It shall be the duty of the secretary -

- (a) To keep a record of the proceedings of the meetings of the board of directors and of members.
- (b) To keep the corporate seal.
- (c) To keep a proper stock book.
- (d) To execute and sign contracts, notes, papers and documents as authorized by the board of directors.
- (e) To act as secretary of the executive committee.
- (f) To discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 2. It shall be the duty of the treasurer -

- (a) To perform such duties with respect to the finances of the association as may be prescribed by the board of directors.
- (b) The secretary may be the same person as the treasurer.

ARTICLE VIII

Executive Committee

The board of directors may appoint an executive committee of four members from among its members; determine its tenure of office and prescribe its powers and duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee, in addition to the four members herein provided for.

Copies of the minutes of the meetings of the executive committee and any reports thereof, must be mailed weekly to all directors.

ARTICLE IX

Auditing Committee

Section 1. The board of directors may appoint an auditing committee from among its members, determine the number thereof, its tenure of office, and the manner and form in which the committee shall function; in lieu of such action by the board, the auditing committee may prescribe rules and regulations with reference to its procedure.

Section 2. The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting.

Section 3. The audits of the association, as provided in Section 2 of this Article, shall be reported to the members at the annual meeting.

ARTICLE X

Stock Certificates

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find following a hearing that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with

the consent of the board of directors of the association and on the books of the association and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

"The preferred stock evidenced hereby represents an interest in a separate fund of the association known as the No Net Cost Tobacco Fund (hereinafter called "the Fund"). The fund was established in order to implement Public Law 97-218 and the regulations issued thereunder. With respect to each crop year, the proceeds from the sale of preferred stock and amounts allocated to growers as qualified per unit retain allocations are placed in the Fund. Separate records are maintained with respect to each crop year pool.

"The preferred stock evidenced hereby shall carry no voting rights and no dividend shall be payable thereon. The board of directors of the association shall have the authority in its discretion to declare worthless and cancel all or a portion of the preferred stock issued with respect to any crop pool in accordance with the by-laws of the association. Any stock so cancelled shall no longer be considered outstanding for any purpose. Excess amounts in the Fund, when and if released by the Secretary of Agriculture, may be used to redeem outstanding preferred stock at no more than par value at such times and upon such terms as may be set forth in the by-laws of the association.

"In the event of dissolution of the association the rights of holders of preferred stock shall be as specified in the by-laws of the association.

"The preferred stock evidenced hereby shall be transferable only as set forth below:

- "(a) In the case of individual owners -- upon death of such owner transfer shall be effectuated in accordance with his or her Last Will and Testament, if any, and if none then in accordance with the Intestate Succession Laws of the State of such owner's last domicile;
- "(b) In the case of corporate or partnership owners -- transfer shall be permitted only in the event of dissolution, merger or a sale of substantially all of the assets of such corporation or partnership and to a transferee to be approved by the association."

ARTICLE XI

Books and Papers

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally.

ARTICLE XII

MEETINGS OF MEMBERS

Regular Meetings

Section 1. Regular meetings of the members shall be held in the City of Raleigh (or its immediate environs), North Carolina, at such hour and place as the Board shall determine, on the last Friday in June of each year for the purpose of hearing the report from the president and for transacting such other business as may come before the meeting.

Special Meetings

Section 2. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president, or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meeting. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

Notice of Meetings

Section 3. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy of the notice of each special and regular meeting shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publication in a newspaper circulating in each district in which the association has members, such notices to appear on two occasions in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

Quorum

Section 4. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 common stockholders present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws.

Election of Directors

Section 5. Following the formation of districts the members of each district shall meet for the election of a director to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director therefrom. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

Voting

Section 6. At any meeting of the members of the association or any district only those who are registered owners of common stock shall be entitled to vote. The holders of preferred shares will have the privilege of the floor but without right to vote.

ARTICLE X111

Members

Section 1. Any person, firm, partnership, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of flue-cured tobacco in the territory in which the association is engaged in business may become a member of the association by acquiring a share of the common stock and signing the marketing agreement.

Any producer who markets tobacco and each owner and operator of any farm who leases all or any part of an acreage allotment or marketing quota for flue-cured tobacco may acquire preferred stock of the association.

In the event any producer of tobacco who is a non-member of the association shall make delivery of any quantity of tobacco to the Flue-Cured Tobacco Cooperative Stabilization Corporation at any warehouse and shall thereby obtain the benefit of a loan thereon, that shall be deducted by the warehouse in making settlement with such producer for the tobacco so delivered the amount of five dollars (\$5.00) to cover the par value of one share of common stock of the association, and the amount so deducted shall be remitted by the warehouse, along with a signed marketing agreement, to the association and there shall thereupon be issued to such producer one share of common stock in the association. In the event such deduction should not be made by the warehouse in settling with such non-member, or in the event such non-member shall fail to sign a marketing agreement, then such non-member would not be entitled to any participation in the profits arising from such transaction until he has signed a marketing agreement and there has been deducted from the participating share of such non-member in the profits the amount of five dollars (\$5.00) covering the par value of one share of common stock in the association.

Voting Power of Common Stockholders

Section 2. The voting power of the common stockholders of this association shall be equal and each and every such shareholder shall have one vote.

Proxies

Section 3. Any common stockholder shall be permitted to vote at any meeting in person or he may vote by mail on a ballot to be prepared by order of the board of directors but voting by proxy is prohibited.

Board to Establish Standards and Grades

Section 4. The board of directors shall have the power to establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

ARTICLE XIV

General Manager

The board of directors may, in its discretion, appoint a general manager, who shall hold office at the pleasure of and on terms and conditions set by the board of directors. No director may be elected to serve as general manager.

ARTICLE XV

Borrowing Money

The association shall have the power by affirmative vote of a majority vote of the directors, to borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon

such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

ARTICLE XVI

No Net Cost Tobacco Fund

The association shall establish a separate fund to be known as the No Net Cost Tobacco Fund (hereinafter referred to as "the Fund"), the purpose of which will be to implement to provisions of Public Law 97-218 and regulations issued thereunder. The proceeds from the sale of all preferred stock, as well as amounts received for the issuance of qualified per unit retain certificates issued pursuant to said law and regulations, shall be placed in the Fund. Excess amounts in the Fund, when and if released by the Secretary of Agriculture, may be devoted to such uses as shall be determined by the board of directors.

Separate records shall be maintained with respect to each crop pool. In assuring that the tobacco price support and production adjustment program be carried out at no net cost to the taxpayer, other than administrative expenses common to the operation of all price support programs, the charges against the Fund with respect to any particular crop pool shall be made in the following order:

- (1) The current and accumulated earnings of the Fund;
- (2) The principal of the Fund representative of the contributions to the Fund for that crop pool;
- (3) The principal of the Fund using, in sequential order, the principal of the oldest crop pool.

The board of directors shall have the continuing authority in its discretion to declare worthless and to cancel that portion of the preferred stock and per unit retain certificates issued with respect to any crop pool as determined by a formula the denominator of which is the contributions to the Fund for that crop pool and the numerator of which is the charges against the Fund for that crop pool. Written notice of cancellation shall be mailed to each of the holders of such stock and retain certificates and it shall not be necessary for such holders to return any stock or retain certificates to the association or for the association to reissue same. Any certificates and stock so cancelled shall no longer be considered as outstanding for any purpose.

In the event that the Fund may be used or released for the purpose of redeeming outstanding preferred stock or outstanding qualified per unit retain certificates (other than in the case of dissolution and liquidation), that portion of the Fund so used or released shall be used to redeem, in whole or pro rata, the outstanding qualified per unit retain certificates and outstanding preferred stock representative of the oldest closed crop pool.

ARTICLES XVII

Capital

Section I. Capital Equity Credits or Certificates:

This association shall establish and maintain a capital account for each member, which shall be evidenced by capital equity credits or certificates, for the purpose of acquiring and maintaining adequate capital to finance its business. Both qualified and nonqualified credits or certificates may be established to create the account evidencing such an amount of capital as may be deemed necessary by the board of directors from time to time, and for redeeming such capital as is no longer necessary.

All qualified capital equity credits or certificates shall satisfy the definition of a "qualified written notice of allocation" or a "qualified per unit retain certificate" as defined in Section 1388 of the 1954 Internal Revenue Code. All nonqualified capital equity credits or certificates shall likewise satisfy the definition of a "nonqualified written notice of allocation" or a "nonqualified per unit retain certificate" as set forth in Section 1388 of the 1954 Code. Capital equity credits or certificates shall not bear interest.

Patronage dividends and per unit capital retains may be allocated and disclosed on either a qualified or nonqualified basis as solely determined by the board of directors, and such determination by the board of directors shall be made prior to the end of the association's fiscal year.

A record of all holders of capital equity credits or certificates shall be kept and maintained by the association. Such credits however evidenced shall be transferable only to the association.

All debts of the association, both secured and unsecured, shall be entitled to priority over all outstanding capital equity credits or certificates.

Section 2. Capital from Members:

All business transacted by the association with or for members shall be transacted on a cost basis. The board of directors may determine an amount to be retained from net margins arising from all business transacted by the association with or for members. All such net margins shall be allocated to members on a patronage basis at the end of each fiscal year and shall be paid to such members in cash, or by credit to the capital accounts of each member, or partly in cash and partly in credit, within 8-1/2 months following the close of the fiscal year. Such patronage dividends may be paid in either qualified or nonqualified form as determined by the board of directors.

The board of directors may also determine a per unit capital retain to be deducted from the tobacco proceeds due members. Such per unit capital retain shall be evidenced by capital equity credits or certificates, and allocation and notification of such per unit capital retains to members shall be made with 8-1/2 months following the close of the fiscal year. Such per unit capital retains may be evidenced (paid) in either qualified or nonqualified form as determined by the board of directors.

Section 3. Losses from Member Business:

In the event the association suffers a loss in any fiscal year in handling members' products or in the sale of supplies to or rendering of services for members, the board of directors shall have full authority and discretion to handle such loss so that it will be borne by members in the manner determined by the board to be most equitable and practicable.

Without limitation upon the authority hereby conferred, such loss may be charged to the members' accounts, or may be charged pro rata to such member's outstanding capital credits or certificates and any unabsorbed loss after the exhaustion of all outstanding credits or certificates may be charged against net margins of future years resulting from business handled with members.

In the event any loss be charged against capital equity credits or certificates, each credit or certificate shall be reduced by its proportionate part of the loss and the records pertaining thereto charged accordingly; and any thing to the contrary in these by-laws elsewhere contained notwithstanding, there shall be payable in respect of any capital equity credits or certificates against which a loss has been charged, only the difference between the amount of the credit or certificate as originally entered and the portion of the loss charged thereto.

Section 4. Capital from Sources Other Than Member Patronage:

Each fiscal year, the association may set aside and retain as capital for use in the business of the association the net earnings (determined in accordance with sound corporate practices and sound accounting principles and after the payment of applicable Federal and State income taxes) derived by the association from sources other than patronage transactions with the members. Amounts so set aside and retained may be used for such purposes of the association as shall be determined by the board of directors.

Section 5. Losses from Nonmember Business:

Any losses from sources other than members' patronage in any fiscal year after exhausting carrybacks and carryforwards relative to income from sources other than member patronage may be charged to any accumulated capital derived at any time from such sources (such charges to be made against the oldest such unexhausted accumulated capital).

Section 6. The Retirement of Capital Equity Credits:

All capital equity credits issued to member or nonmember patrons shall be issued in annual series, each credit in each series being identified by the year in which it is used. Each series shall be retired fully or on a pro rata basis, only at the discretion of the board of directors of the association, in order of issuance by years, but subject to priority as outline herein, as funds are available for that purpose.

The check constituting a part of a nonqualified capital equity credit or certificate resulting from a "qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid" may be redeemed upon the presentation of such a check irrespective of the series or the year in which it is issued. Such redemption of the check portion of the nonqualified capital equity credit or certificate shall in no way affect the balance of the nonqualified capital equity credit or certificate of which the check is a part.

Notwithstanding any other provisions of these by-laws, the board of directors at its discretion shall have the power at any time to pay off or retire or secure a release or satisfaction of any capital equity credits, both qualified and nonqualified, to compromise or settle a legal dispute between the owner thereof and the association.

Section 7. Member's Consent to Take into Income All Qualified Patronage Dividend and Per Unit Retain Allocations:

Each person who hereafter applies for and is accepted to membership in this association after July 13, 1979, and each member of this association as of July 13, 1979, who continues as a member after such date shall, by such act alone, consent and agree that the amount of any distributions or allocations with respect to his patronage occurring after July 13, 1979, which are made in written notices of allocation either as patronage dividends or as per unit retain allocations (as defined in 26 U.S.C. Section 1388) and which are received by him from this association, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. Section 1385(a) in the taxable year in which such written notices of allocation are received by him.

Section 8. Evidence of Capital Equity:

The records of the association shall be conclusive evidence of the capital equity of a member or nonmember. Capital equity credit or certificate notices shall be only memorandum records of such equity and therefore such credits or certificates or notice memorandums need not be endorsed and returned to the association upon any payment thereon, redemption thereof, or cancellation thereof.

Section 9. Set-off:

The association shall be entitled to set off against any claims which any member may have against the association, any amounts which the member may owe the association.

Section 10. Public Law 97-218:

For 1982 and subsequent crop years, the provisions of Sections 1, 2, 3, 4, and 6 above are subject to the provisions of Public Law 97-218, any amendments thereto, regulations issued thereunder, and the by-laws of the association adopted to implement said law, amendments and regulations.

ARTICLE XVIII

These by-laws may be altered or amended by a majority vote of a quorum of the common stockholders attending a meeting of which notice of the proposed by-law or by-laws shall have been given. Any by-law or by-laws of the association may be amended or repealed or any new by-law may be enacted by the board of directors of the association; subject, however, to any statutory limitation.

ARTICLE XIX

Indemnification

Section 1. The association shall indemnify each member of the board of directors, each officer and employee of the association, and the estate, executor, administrator, heirs, legatees and devisees of any such person, against all judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys fees, and any other liability that may be incurred as a result of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the association, and with respect to any criminal actions or proceedings, in addition, had not reasonable cause to believe that his conduct was unlawful; provided, however, that if any such claim, action, suit or proceeding is compromised or settled, it must be done so with the prior and express approval of the board of directors of the association.

Section 2. Such indemnification shall not depend upon whether or not such person is a member of the board of directors or is an officer or employee at the time such claim, action, suit or proceeding is begun, prosecuted or threatened, nor on whether or not the liability to be indemnified was incurred or the act or omission occurred prior to the adoption of this section.

Section 3. In each instance in which a question of indemnification hereunder arises, determination of the right to indemnification hereunder, and of the time, manner, and amount of payment thereof, shall be made by the board of directors; provided however, in the event that a majority of the members of the board of directors are seeking indemnification hereunder as a result of the same occurrence, such determination shall be subject to the approval of the members of the association at any regular or special meeting called therefor; and provided further, such membership approval shall not be necessary in those cases where a court of competent jurisdiction has found that the conduct of such board members fairly and equitably merits such indemnity.

Section 4. Nothing hereinabove appearing shall be construed as permitting or requiring indemnity where such is prohibited by law.

ARTICLE XX

Dissolution and Liquidation

In the event of dissolution of the association in any manner, the monies and properties of the association shall be distributed and applied as follows:

First:

The payment of all debts, liabilities and obligations of the association (other than the indebtedness, liability or obligations evidenced by capital equity credits or certificates or any other special capital credits of the association); provided, all amounts owing to Commodity Credit Corporation for 1982 and subsequent crop pools shall be charged first as set forth in Article XVI above.

Second:

From the remaining balance of the Fund, there shall be redeemed in full or on a pro rata basis, the outstanding qualified per unit retain certificates and preferred stock issued with respect to Public Law 97-218.

Third:

The redemption of qualified capital equity credits, other than those issued pursuant to Public Law 97-218, in full or on a pro rata basis.

Fourth:

The redemption of nonqualified capital equity credits in full or on a pro rata basis.

Fifth:

The redemption of the common stock of the association, at par, in full or on a pro rata basis.

Sixth:

Any balance remaining shall be distributed to members of the association at the time of liquidation on the basis of their respective patronage of the association during the ten (10) fiscal years immediately preceding dissolution and liquidation.

EXHIBIT R

BY-LAWS
OF
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

ARTICLE I

Purposes

The purposes for which this association is formed are set forth in the Articles of Incorporation of the association.

ARTICLE II

Board of Directors

Section 1. The business of the association shall be controlled by a board of directors consisting of ten persons, each of whom shall be a common stockholder (or the designated representative of a firm, partnership or association which is a common stockholder), hereinafter referred to as member, of this association. No person shall be eligible for the office of director if he is in competition with or is affiliated with any enterprise that is in competition with the association; and if a majority of the board of directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. In addition to the directors herein provided for, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such director so appointed need not be a member or stockholder of the association but shall have the same powers and rights as other directors, in accordance with the provisions of the General Statutes of North Carolina.

Election of Directors

Section 2. (a) The territory in which the association shall operate shall be divided into such districts that the tobacco production in each district shall be substantially the same, but in forming districts counties shall not be divided, and each of Florida, Georgia, South Carolina, North Carolina and Virginia shall have at least one district, unless the board determines that the tobacco production and membership in a particular state do not warrant a separate district. Annually after the formation of such districts at least twenty days prior to the district meeting, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

(b) The common stockholders in each district shall elect a director from that district, from among the common stockholders actually residing and growing tobacco therein. Each such director shall be elected for a term of office of three years except that in case of a vacancy occurring for a reason other than expiration of term of office, the term to which the director shall be elected shall be the unexpired term of the director whose office has been vacated. The board of directors shall have the power and the duty of providing for the conduct of elections and determining all matters in connection therewith. Elections in the several districts need not be held on the same date.

Vacancies

Section 3. Vacancies in the elected board of directors shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of directors as may be determined by the board of directors, but no more than ten days after the annual membership meeting, the directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in Section 4, shall be mailed to each director at his last known address at least three days prior to the time of the meeting.

Quorum

Section 7. A majority of the board of directors shall constitute a quorum of the board at all times.

Compensation

Section 8. (a) For attendance at board meetings, and on other occasions where individual members of the board are requested by the board, or by the president, to represent the board, board members shall be entitled to reimbursement for reasonable lodging and travel expense incurred and to a reasonable per diem allowance as established from time to time by the board of directors for time actually covered by such attendance or representation. Directors shall receive no other remuneration for their services.

(b) No director, during the term of his office, shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting; provided, that this prohibition shall not apply to any transaction involving a seasonal employee which has been approved by the board and disclosed to Commodity Credit Corporation.

ARTICLE III

Power of Directors

Section 1. The directors shall have power -

(a) To conduct, manage and control the affairs and business of the association and to make rules and regulations for the guidance of the officers and the management of its affairs.

(b) To appoint and remove, at pleasure, all officers, agents, and employees of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary and they must call a meeting at any time upon written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will.

ARTICLES IV

Duties of Directors

Section 1. It shall be the duty of the board of directors -

(a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.

(b) To supervise all officers, agents and employees and see that their duties are properly performed.

(c) To cause to be issued appropriate certificates of stock.

(d) To install such a system of bookkeeping and auditing that each member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.

(e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.

(f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V

Officers

The officers of the association shall be a president, one or more vice presidents, a secretary and a treasurer, and a general counsel, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes.

The board may appoint assistant secretaries and an assistant treasurer, in its discretion, and may delegate to them any or all the duties of the secretary and treasurer, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors.

Only the president and vice presidents are required to be members of the board of directors.

ARTICLE VI

President

If at any time the president shall be unable to act, the vice presidents, in the order of their election, shall take his place and perform his duties; and if no vice president is able to act, the board of directors shall appoint a director to do so. The president, such vice president or director shall:

- (a) Preside over all meetings of members and directors.
- (b) Subject to the advice of the directors, direct the affairs of the association.
- (c) Call the directors together whenever necessary.
- (d) Sign, as president, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors.
- (e) Report at each annual meeting of the members, the average salaries of officers and department heads and the average salary of minor employees in each department.
- (f) Discharge such other duties as may be required of him by these by-laws or by the board of directors.

ARTICLES VII

Secretary and Treasurer

Section 1. It shall be the duty of the secretary -

- (a) To keep a record of the proceedings of the meetings of the board of directors and of members.
- (b) To keep the corporate seal.
- (c) To keep a proper stock book.
- (d) To execute and sign contracts, notes, papers and documents as authorized by the board of directors.
- (e) To act as secretary of the executive committee.
- (f) To discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 2. It shall be the duty of the treasurer -

- (a) To perform such duties with respect to the finances of the association as may be prescribed by the board of directors.

- (b) The secretary may be the same person as the treasurer.

ARTICLE VIII

Executive Committee

The board of directors may appoint an executive committee of four members from among its members; determine its tenure of office and prescribe its powers and duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee, in addition to the four members herein provided for.

Copies of the minutes of the meetings of the executive committee and any reports thereof, must be mailed weekly to all directors.

ARTICLE IX

Auditing Committee

Section 1. The board of directors may appoint an auditing committee from among its members, determine the number thereof, its tenure of office, and the manner and form in which the committee shall function; in lieu of such action by the board, the auditing committee may prescribe rules and regulations with reference to its procedure.

Section 2. The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting.

Section 3. The audits of the association, as provided in Section 2 of this Article, shall be reported to the members at the annual meeting.

ARTICLE X

Stock Certificates

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find following a hearing that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock,

the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

"The preferred stock evidenced hereby shall carry no voting rights and no dividend shall be payable thereon. The board of directors of the association shall have the authority in its discretion to redeem all or a portion of outstanding preferred stock at no more than par value at such times and upon such terms as the board of directors deems appropriate.

"In the event of dissolution of the association the rights of holders of preferred stock shall be as specified in the by-laws of the association.

"The preferred stock evidenced hereby shall be transferable only to a transferee approved by the association."

ARTICLE XI

Books and Papers

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally.

ARTICLE XII

MEETINGS OF MEMBERS

Regular Meetings

Section 1. Regular meetings of the members shall be held in the City of Raleigh (or its immediate environs), North Carolina, at such hour and place as the Board shall determine, on the second Friday in June of each year for the purpose of hearing the report from the president and for transacting such other business as may come before the meeting.

Special Meetings

Section 2. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president, or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meeting. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

Notice of Meetings

Section 3. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy of the notice of each special and regular meeting shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publication in a newspaper circulating in each district in which the association has members, such notices to appear on two occasions in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

Quorum

Section 4. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 common stockholders present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws.

Election of Directors

Section 5. Following the formation of districts the members of each district shall meet for the election of a director to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director therefrom. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

Voting

Section 6. At any meeting of the members of the association or any district only those who are registered owners of common stock shall be entitled to vote. The holders of preferred shares will have the privilege of the floor but without right to vote.

ARTICLE XIII

Members

Section 1. Any person, firm, partnership, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of flue-cured tobacco in the territory in which the association is engaged in business may become a member of the association by acquiring a share of the common stock and signing the marketing agreement.

Any producer who markets tobacco and each owner and operator of any farm who leases all or any part of an acreage allotment or marketing quota for flue-cured tobacco may acquire preferred stock of the association.

In the event any producer of tobacco who is a non-member of the association shall make delivery of any quantity of tobacco to the Flue-Cured Tobacco Cooperative Stabilization Corporation at any warehouse and shall thereby obtain the benefit of a loan thereon, that shall

be deducted by the warehouse in making settlement with such producer for the tobacco so delivered the amount of five dollars (\$5.00) to cover the par value of one share of common stock of the association, and the amount so deducted shall be remitted by the warehouse, along with a signed marketing agreement (if required by the association), to the association and there shall thereupon be issued to such producer one share of common stock in the association. In the event such deduction should not be made by the warehouse in settling with such non-member, or in the event such non-member shall fail to sign a required marketing agreement, then such non-member would not be entitled to any participation in the profits arising from such transaction until he has signed a marketing agreement and there has been deducted from the participating share of such non-member in the profits the amount of five dollars (\$5.00) covering the par value of one share of common stock in the association.

Voting Power of Common Stockholders

Section 2. The voting power of the common stockholders of this association shall be equal and each and every such shareholder shall have one vote.

Proxies

Section 3. Any common stockholder shall be permitted to vote at any meeting in person or he may vote by mail on a ballot to be prepared by order of the board of directors but voting by proxy is prohibited.

Board to Establish Standards and Grades

Section 4. The board of directors shall have the power to establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

ARTICLE XIV

General Manager

The board of directors may, in its discretion, appoint a general manager, who shall hold office at the pleasure of and on terms and conditions set by the board of directors. No director may be elected to serve as general manager.

ARTICLE XV

Borrowing Money

The association shall have the power by affirmative vote of a majority vote of the directors, to borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

ARTICLE XVI

No Net Cost Tobacco Account

The association shall cause to be established and maintained an account to be known as the No Net Cost Tobacco Account, in accordance with, and for the purposes set forth in, the provisions of Section 301 of the No Net Cost Tobacco Program Act of 1982 (Public Law 97-218), and regulations issued thereunder.

ARTICLES XVII**Capital****Section 1. Capital Equity Credits or Certificates:**

This association shall establish and maintain a capital account for each member to whom capital equity credits or certificates are issued or allocated, for the purpose of acquiring and maintaining adequate capital to finance its business. Both qualified and nonqualified credits or certificates may be established to create the account evidencing such an amount of capital as may be deemed necessary by the board of directors from time to time, and for redeeming such capital as is no longer necessary.

All qualified capital equity credits or certificates shall satisfy the definition of a "qualified written notice of allocation" (40) or a "qualified per unit retain certificate" as defined in Section 1388 of the 1954 Internal Revenue Code. All nonqualified capital equity credits or certificates shall likewise satisfy the definition of a "nonqualified written notice of allocation" or a "nonqualified per unit retain certificate" as set forth in Section 1388 of the 1954 Code. Capital equity credits or certificates shall not bear interest.

Patronage dividends and per unit capital retains may be allocated and disclosed on either a qualified or nonqualified basis as solely determined by the board of directors, and such determination by the board of directors shall be made prior to the end of the association's fiscal year.

A record of all holders of capital equity credits or certificates shall be kept and maintained by the association. Such credits however evidenced shall be transferable only to the association.

All debts of the association, both secured and unsecured, shall be entitled to priority over all outstanding capital equity credits or certificates.

Section 2. Capital from Members:

All business transacted by the association with or for members shall be transacted on a cost basis. The board of directors may determine an amount to be retained from net margins arising from all business transacted by the association with or for members. All such net margins shall be allocated to members on a patronage basis at the end of each fiscal year and shall be paid to such members in cash, or by credit to the capital accounts of each member, or partly in cash and partly in credit, within 8-1/2 months following the close of the fiscal year. Such patronage dividends may be paid in either qualified or nonqualified form as determined by the board of directors.

The board of directors may also determine a per unit capital retain to be deducted from the tobacco proceeds due members. Such per unit capital retain shall be evidenced by capital equity credits or certificates, and allocation and notification of such per unit capital retains to members shall be made with 8-1/2 months following the close of the fiscal year. Such per unit capital retains may be evidenced (paid) in either qualified or nonqualified form as determined by the board of directors.

Section 3. Losses from Member Business:

In the event the association suffers a loss in any fiscal year in handling members' products or in the sale of supplies to or rendering of services for members, the board of directors shall have full authority and discretion to handle such loss so that it will be borne by members in the manner determined by the board to be most equitable and practicable.

Without limitation upon the authority hereby conferred, such loss may be charged to the members' accounts, or may be charged pro rata to such member's outstanding capital credits or certificates and any unabsorbed loss after the exhaustion of all outstanding credits or certificates may be charged against net margins of future years resulting from business handled with members.

In the event any loss be charged against capital equity credits or certificates, each credit or certificate shall be reduced by its proportionate part of the loss and the records pertaining thereto charged accordingly; and any thing to the contrary in these by-laws elsewhere contained notwithstanding, there shall be payable in respect of any capital equity credits or certificates against which a loss has been charged, only the difference between the amount of the credit or certificate as originally entered and the portion of the loss charged thereto.

Section 4. Capital from Sources Other Than Member Patronage:

Each fiscal year, the association may set aside and retain as capital for use in the business of the association the net earnings (determined in accordance with sound corporate practices and sound accounting principles and after the payment of applicable Federal and State income taxes) derived by the association from sources other than patronage transactions with the members. Amounts so set aside and retained may be used for such purposes of the association as shall be determined by the board of directors.

Section 5. Losses from Nonmember Business:

Any losses from sources other than members' patronage in any fiscal year after exhausting carrybacks and carryforwards relative to income from sources other than member patronage may be charged to any accumulated capital derived at any time from such sources (such charges to be made against the oldest such unexhausted accumulated capital).

Section 6. The Retirement of Capital Equity Credits:

All capital equity credits issued to member or nonmember patrons shall be issued in annual series, each credit in each series being identified by the year in which it is issued. Each series shall be retired fully or on a pro rata basis, only at the discretion of the board of directors of the association, in order of issuance by years, but subject to priority as outline herein, as funds are available for that purpose.

The check constituting a part of a nonqualified capital equity credit or certificate resulting from a "qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid" may be redeemed upon the presentation of such a check irrespective of the series or the year in which it is issued. Such redemption of the check portion of the nonqualified capital equity credit or certificate shall in no way affect the balance of the nonqualified capital equity credit or certificate of which the check is a part.

Notwithstanding any other provisions of these by-laws, the board of directors at its discretion shall have the power at any time to pay off or retire or secure a release or satisfaction of any capital equity credits, both qualified and nonqualified, to compromise or settle a legal dispute between the owner thereof and the association.

Section 7. Member's Consent to Take into Income All Qualified Patronage Dividend and Per Unit Retain Allocations:

Each person who hereafter applies for and is accepted to membership in this association after July 13, 1979, and each member of this association as of July 13, 1979, who continues as a member after such date shall, by such act alone, consent and agree that the amount of any distributions or allocations with respect to his patronage occurring after July 13, 1979, which are made in written notices of allocation either as patronage dividends or as per unit retain allocations

(as defined in 26 U.S.C. Section 1388) and which are received by him from this association, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. Section 1385(a) in the taxable year in which such written notices of allocation are received by him.

Section 8. Evidence of Capital Equity. The records of the association shall be conclusive evidence of the capital equity of a member or nonmember. Capital equity credit or certificate notices shall be only memorandum records of such equity and therefore such credits or certificates or notice memorandums need not be endorsed and returned to the association upon any payment thereon, redemption thereof, or cancellation thereof.

Section 9. Set-off. The association shall be entitled to set off against any claims which any member may have against the association, any amounts which the member may owe the association.

Section 10. Public Law 97-218. For 1982 and subsequent crop years, the provisions of Sections 1, 2, 3, 4, and 6 above are subject to the provisions of Public Law 97-218, any amendments thereto, regulations issued thereunder, and the by-laws of the association adopted to implement said law, amendments and regulations.

ARTICLE XVIII

These by-laws may be altered or amended by a majority vote of a quorum of the common stockholders attending a meeting of which notice of the proposed by-law or by-laws shall have been given. Any by-law or by-laws of the association may be amended or repealed or any new by-law may be enacted by the board of directors of the association; subject, however, to any statutory limitation.

ARTICLE XIX

Indemnification

Section 1. The association shall indemnify each member of the board of directors, each officer and employee of the association, and the estate, executor, administrator, heirs, legatees and devisees of any such person, against all judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys fees, and any other liability that may be incurred as a result of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the association, and with respect to any criminal actions or proceedings, in addition, had not reasonable cause to believe that his conduct was unlawful; provided, however, that if any such claim, action, suit or proceeding is compromised or settled, it must be done so with the prior and express approval of the board of directors of the association.

Section 2. Such indemnification shall not depend upon whether or not such person is a member of the board of directors or is an officer or employee at the time such claim, action, suit or proceeding is begun, prosecuted or threatened, nor on whether or not the liability to be indemnified was incurred or the act or omission occurred prior to the adoption of this section.

Section 3. In each instance in which a question of indemnification hereunder arises, determination of the right to indemnification hereunder, and of the time, manner, and amount of payment thereof, shall be made by the board of directors; provided however, in the event that a majority of the members of the board of directors are seeking indemnification hereunder as a result of the same occurrence, such determination shall be subject to the approval of the members of the association at any regular or special meeting called therefor; and provided further, such

membership approval shall not be necessary in those cases where a court of competent jurisdiction has found that the conduct of such board members fairly and equitably merits such indemnity.

Section 4. Nothing hereinabove appearing shall be construed as permitting or requiring indemnity where such is prohibited by law.

ARTICLE XX

Dissolution and Liquidation

In the event of dissolution of the association in any manner, the monies and properties of the association shall be distributed and applied as follows:

First: The payment of all debts, liabilities and obligations of the association (other than the indebtedness, liability or obligations evidenced by capital equity credits or certificates or any other special capital credits of the association).

Second: The redemption of qualified capital equity credits in full or on a pro rata basis.

Third: The redemption of nonqualified capital equity credits in full or on a pro rata basis.

Fourth: The redemption of the preferred stock and common stock of the association, at par, in full or on a pro rata basis.

Fifth: Any amounts reflected on the association's books and records as "additional paid-in capital" and not previously distributed shall be distributed to patrons (as defined herein) of the association living at the time of dissolution and liquidation on the basis of the respective assessments paid in by each patron, relative to all assessments paid in, during the 1982-84 crop years. As used in this Article XX, "patron" shall mean any person who grew flue-cured tobacco and paid assessments in any crop year, for which the association's entire crop inventory for such crop year was later sold and the proceeds to the association's reserves.

Sixth: Any balance remaining shall be distributed to persons who are or have been members during the twenty (20) years immediately preceding dissolution and liquidation on a pro rata basis for the number of years each such person actively participated as a member during such period.

EXHIBIT S

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

KAY W. FISHER, ORVILLE WIGGINS,
DALE C. BONE, THOMAS N. RHOAD,
LINWOOD SCOTT, JR., ROBERT C.
BOYETTE, RICHARD RENEGAR, AND
KENDALL HILL AND OTHER SIMILARLY
SITUATED,

Plaintiffs,

v.

FLUE-CURED TOBACCO STABILIZATION
CORPORATION, KEITH BEAVERS,
MCDANIEL WYNNE, BRUCE L. FLYE,
RICHARD J. JENKS, CLAUDE B.
FRENCH, AND ANDREW Q. SHEPARD,

Defendants.

NO. 05-CVS-1938

DEPOSITION OF

KAY W. FISHER

LAW OFFICES OF SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.
2500 WACHOVIA CAPITOL CENTER
RALEIGH, NORTH CAROLINA

WEDNESDAY, SEPTEMBER 20, 2006

9:40 A.M.

VOLUME I

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9/20/06

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P R O C E E D I N G S

[FISHER EXHIBIT NO. 1 MARKED FOR IDENTIFICATION.]

whereupon, KAY W. FISHER, was
called as a witness, duly sworn,
and testified as follows:

Direct Examination

9:40 a.m.

BY MR. TUCKER:

Q. Ms. Fisher, my name is Don Tucker. We met
briefly before the deposition started. I'm one of
the lawyers representing Stabilization in the lawsuit
that's been filed against it by you and others.

We're going to have a lot of ground to
cover today and it may go for a while. If you get
tired and need a break, please let me know or let
your lawyer know. I'll generally stop every hour or
an hour-and-a-half. But if you need a break before
then, just let me know.

If you don't understand a question I've
asked, please ask me to repeat it and I'll do my best
to give it to you in a form that you can answer.

A. (Witness moves head up and down.)

Q. Have you had your deposition taken before?

A. A deposition?

Q. Do you know what a deposition is?

A. Yes. A deposition taken?

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1 Stabilization, correct?

2 A. No. General manager.

3 Q. And Lioniel Edwards was not a director of
4 Stabilization, correct?

5 A. Correct.

6 Q. And in your conversations with Mr. Edwards
7 and Mr. Hamm, what view did they express to you about
8 how stabilization's assets should be used?

9 A. Same way.

10 Q. They should be maintained as a reserve to
11 provide marketing assistance for farmers in the
12 absence of a Federal Price Support Program?

13 MR. FAIREY: I'll object to the form.

14 Q. Excuse me?

15 A. Yes.

16 Q. I didn't hear your answer. Your lawyer was
17 objecting.

18 A. Yes.

19 Q. Any -- any other view that either one of
20 these gentlemen expressed to you about how
21 stabilization's assets should be used?

22 A. In my opinion, both gentlemen, as well as
23 the board of directors -- wait a minute. Let me get
24 my thoughts together. Give me a minute -- feel that
25 as growers, here's your \$5 if you want it. The hell

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1 with the balance that you've paid in or the tobacco
2 that you've put in it.

3 Stabilization has never produced a pound of
4 tobacco. The farmers have. The growers have.

5 Q. Have you read Stabilization's articles of
6 incorporation?

7 A. I have at some point many, many years ago.

8 Q. And are you aware that the articles
9 authorize Stabilization to retain a reserve?

10 MR. FAIREY: Object to the form.

11 A. I'm aware of that.

12 Q. Okay. Have you read the bylaws of
13 Stabilization?

14 A. Many, many years ago. They've changed
15 numerous times, I'm sure, since I did.

16 Q. When do you -- when do you think you read
17 the bylaws?

18 A. Probably 1982, '83 area.

19 Q. Did you review the bylaws prior to the
20 time -- well, strike that. Let me ask it another
21 way.

22 Did you review the bylaws and/or the
23 articles as part of the process of your deciding to
24 proceed with the lawsuit against Stabilization?

25 A. No, I did not --

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1 Q. Are you familiar with --

2 A. -- because there had been -- there were
3 numerous meetings that we passed, this group of
4 people and myself, along with many, many other
5 farmers at the time. And anything that you ask --
6 and I don't remember specifics -- "but the bylaw
7 says..." "That isn't what the bylaw says."

8 The bylaws had been changed. The board of
9 directors voted to change the bylaws. It doesn't
10 matter what the bylaw says. The bylaws say what the
11 board of directors wished them to say --

12 Q. Do -- are you --

13 A. -- without the input of the members.

14 Q. Are you -- do you have any understanding as
15 to what the law is in North Carolina concerning a
16 board's right to amend or change the bylaws --

17 A. I do.

18 Q. -- without the vote of members? And what's
19 your understanding of that?

20 A. That they are given that right. They do
21 have the right.

22 Q. Okay. So you understand that the board has
23 a legal right to amend or change the bylaws without
24 any vote of the members of the cooperative?

25 A. I do.

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EXHIBIT T

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

DAN LEWIS, HAROLD WRIGHT, KYLE A.
COX, CHANDLER WORLEY, ARCHIE HILL,
CRAY MILLIGAN, WHITNEY E. KING,
ALFORD JAMES WORLEY, Executor of
the Estate of DENNIS ANDERSON,
C. MONROE ENZOR, JR., Executor of
the Estate of CRAWFORD MONROE
ENZOR, SR., and GEORGE ABBOTT,

Plaintiffs,

v.

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

NO. 05-CVS-188

DEPOSITION OF

DANIEL H. LEWIS

LAW OFFICES OF MCGOUGAN, WRIGHT, WORLEY,
HARPER & BULLARD
107 JEFFERSON STREET
WHITEVILLE, NORTH CAROLINA

THURSDAY, SEPTEMBER 14, 2006

2:03 P.M.

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P R O C E E D I N G S

[LEWIS EXHIBIT NOS. 9 & 10 MARKED FOR IDENTIFICATION.]

Whereupon, DANIEL H. LEWIS, was
called as a witness, duly sworn,
and testified as follows:

Direct Examination

2:03 p.m.

BY MR. MOORE:

Q. Mr. Lewis, could you just state your name
for the record?

A. Daniel H. Lewis.

Q. What does the "H" stand for?

A. Hal, H-a-l.

Q. Thank you.

My name is Jackson Moore, and I am an
attorney who represents Flue-Cured Tobacco
Cooperative Stabilization Corporation. Do you
understand that?

A. Yes, sir. I do.

Q. And before today, before a few minutes ago,
have you ever seen me before?

A. No, sir.

Q. And since "Flue-Cured Tobacco Cooperative
Stabilization Corporation" is such a mouthful, I'm
just going to use the word "Stabilization," if that's
okay.

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1 or 1,000 or 2,000 people, ever how many there are,
2 not cutting anybody out. If Stabilization wanted to
3 continue on with that, fine.

4 But we still said it should be dissolved
5 and started again versus -- that's why -- that's -- I
6 guess that's the main say of dissolution, because
7 stopped -- and then if Stabilization wants to start
8 over with a part or portion of -- of the funds and
9 assets, that's fine.

10 Q. Do you know that the board of directors has
11 discretion to decide whether or not to provide
12 patronage dividends back to its members?

13 A. I think I read that somewhere in the last
14 day or so, yeah. More so than before, yeah.

15 Q. Before this Complaint was filed, did you --
16 were you aware that that was -- did you know that
17 that was something that -- the power that the board
18 had?

19 A. I know it's not right maybe to assume, but
20 I would have assumed that they could do that because
21 that's what the co-op does; pay dividends, patronage
22 refunds, however you want to call it. Even though
23 for 30 years I never got one through Stabilization, I
24 still assumed that that would happen eventually.
25 Maybe, you know, but...

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1 Q. You did get the -- every time that you
2 delivered tobacco to Stabilization and received price
3 support, you did get paid that price support level;
4 is that correct?

5 A. Yes.

6 Q. Did you also know at the time that the
7 amended complaint was being filed that the board of
8 directors also had the discretion to decide to retain
9 earnings for the purposes of continuing operations of
10 the cooperative?

11 A. Yes. They could hold the money and do as
12 they saw fit, I guess, is the way I looked at that.

13 Q. Had you ever had a conversation with any of
14 these Plaintiffs about perhaps unseating Jimmy Pate
15 and putting another director in place and trying to
16 influence the operations of Stabilization in that
17 manner instead of by a lawsuit?

18 A. Honestly, before this situation of the
19 tobacco changes that I've spoken about earlier, 2000,
20 and then drastically in 2004, I never really had a
21 problem with Stabilization. I never had a problem
22 with Jimmy Pate or any of the other directors that as
23 they've changed and back and forth, no problem.

24 I mean, I'm sure that if we went back
25 through all their minutes, I could tell you something

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1 that I might disagree with. But, in general, as I've
2 stated several times, I think Stabilization did a
3 super job for those years up to 2000, even though I
4 might have disagreed with something particularly one
5 way or the other.

6 But after 2000, I think the situation
7 changed. And, therefore, I don't think that
8 upseating Jimmy Pate or upseating one person would
9 have done it. I understand that the way you change
10 something is to change the board. You put the people
11 that you want there. It takes a lot of time and --
12 and effort to get that done.

13 In this situation, I don't think it was an
14 appropriate matter. It's only been a four-year
15 stint. It's been six now. But with the situations
16 that evolved through those four years, I don't think
17 that that would have been the way to get it done.

18 Q. Did you ever discuss with anyone trying to
19 change Stabilization by changing the board of
20 directors instead of pursuing litigation?

21 A. No. Although I knew that that is a way to
22 do it also, I never -- no.

23 Q. Do you know when Jimmy Pate is up for
24 re-election?

25 A. Not now. But I do know that I have kept up

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EXHIBIT U

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

DAN LEWIS, HAROLD WRIGHT, KYLE A.
COX, CHANDLER WORLEY, ARCHIE HILL,
CRAY MILLIGAN, WHITNEY E. KING,
ALFORD JAMES WORLEY, Executor of
the Estate of DENNIS ANDERSON,
C. MONROE ENZOR, JR., Executor of
the Estate of CRAWFORD MONROE
ENZOR, SR., and GEORGE ABBOTT,

Plaintiffs,

v.

FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION
CORPORATION,

Defendant.

NO. 05-CVS-188

DEPOSITION OF

WHITNEY E. KING

LAW OFFICES OF MCGOUGAN, WRIGHT, WORLEY,
HARPER & BULLARD
130 JEFFERSON STREET
WHITEVILLE, NORTH CAROLINA

FRIDAY, SEPTEMBER 15, 2006

9:08 A.M.

VOLUME I

PAGES 1 THROUGH 181

9/15/06

VIVIAN TILLEY & ASSOCIATES

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Raleigh, NC 27609

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P R O C E E D I N G S

[KING EXHIBIT NO. 12 MARKED FOR IDENTIFICATION.]

Whereupon, WHITNEY E. KING, was
called as a witness, duly sworn,
and testified as follows:

Direct Examination

9:08 a.m.

BY MR. MOORE:

Q. Sir, could you state your name for the
record?

A. Whitney Elroy King.

Q. And, sir, what is your date of birth?

A. 11-30-68.

Q. And what is your address? Where do you
live?

A. I live at 2090 Whiteville Road. My mailing
address is PO Box 129, Ash, North Carolina, 28420.
My business address is 4872 Whiteville Road.

Q. Okay. Very good.

Do you understand that your deposition is
being taken in this case today because of a lawsuit
that you and others have filed against my client,
Flue-Cured Tobacco Cooperative Stabilization
Corporation?

A. Yes.

Q. And since that's all a mouthful, could we

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1 its members?

2 A. Correct.

3 Q. Or your contention that that's the case?

4 A. Correct.

5 Q. Thirty-two (e), whether the reasonable
6 expectations of the members have been frustrated and
7 no longer exist. Can you tell me what's being
8 alleged in that subparagraph?

9 A. Well, to me, Stabilization's role pretty
10 much ended when the tobacco -- for -- as it has
11 historically been in administering price support
12 pretty much ended when the program ended in '04.

13 And I believe that at that point, the best
14 thing would have been to dissolve the cooperative.
15 And if anybody wanted Stabilization, wanted the
16 service that they are providing now or sometime
17 provided before for something they thought they got,
18 it would be fine with me if they keep their money in
19 or take their money and put it back in. That
20 wouldn't be a problem.

21 But to me, when Stabilization -- when the
22 buyout occurred, Stabilization should have started --
23 should have distributed their money and started over,
24 if they wanted to stay in existence.

25 And, I mean, you know, just go -- it goes

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1 back to the same thing, the fairest issue. It's not
2 right for us to have to -- for stabilization to take
3 money that belongs to me or any of the other
4 Plaintiffs or any other farmer anywhere as far that
5 goes and subsidize their operations or use it to
6 borrow money against or whatever -- however they are
7 going to operate in the future to keep up 1,500 other
8 growers.

9 Q. And I know that -- I know that you disagree
10 with the decision of the board of directors.

11 A. Um-hum.

12 Q. But the board of directors are made up of
13 tobacco farmers like -- like you, right?

14 A. I understand that.

15 Q. And you know as we sit here today that the
16 board of directors has discretion regarding whether
17 it keeps money or whether it distributes it.

18 A. I'm quite aware of that.

19 Q. And I know that you disagree with the
20 decisions, but would you at least agree with me that
21 reasonable people can disagree about the decisions
22 that have been made?

23 A. Absolutely, yes.

24 Q. Let's look at paragraph 40, and just read
25 that to yourself and let me know when you've finished

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1 reading it.

2 [PAUSE.]

3 A. Okay.

4 Q. And I think we've covered some of this, but
5 can you tell me what's being alleged in paragraph 40?

6 A. That the operation of the cigarette
7 manufacturing facility and their plan to be a leaf
8 dealer essentially is at odds with those people who
9 are still members that are contracting, and that is
10 true. That is -- that is the way it is now.

11 I mean, I sell tobacco to Philip Morris and
12 their business is to sell cigarettes using my
13 tobacco. The more they sell, the more tobacco I can
14 probably grow. I'm still a member of Stabilization.
15 They're doing the same thing, so they are competing
16 against me.

17 Q. Are they competing against you or are they
18 competing against your customer?

19 A. Well, they are competing against Philip
20 Morris. But in the end, I'm the one that pays the
21 price.

22 Q. Tell me if -- let's assume for a minute
23 that 40 million pounds is being purchased by
24 Stabilization for this year. And I think you said
25 that the total flue-cured tobacco production in the

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EXHIBIT V

IN THE SUPERIOR COURT OF BERRIEN COUNTY

STATE OF GEORGIA

JULIAN A. RIGBY, TERRY ALTMAN,)
ELTON CARTER, BYRON CARTER,)
WAYNE E. LOTT, DAVID H. LEE, and)
BRYAN ALDRIDGE)
)
Plaintiffs,)
)
vs.) Civil Action File
) No. 07C236
FLUE-CURED TOBACCO)
COOPERATIVE STABILIZATION)
CORPORATION,)
)
Defendant.)

VIDEOTAPE DEPOSITION OF JULIAN A. RIGBY

Alma, Georgia

Tuesday, March 3, 2015

10:24 a.m.

Reported by:
Dennis Zambataro, CSR, RPR
Job No. 37745

1
2 APPEARANCES:

3 For the Plaintiff:

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1 APPEARANCES (continued)

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1 - PROCEEDINGS -

2 THE VIDEOGRAPHER: This begins the video
3 deposition of Mr. Julian Rigby in the matter
4 of Julian Rigby, et al. versus Flue-Cured
5 Tobacco Cooperative Stabilization
6 Corporation, to be heard in the Superior
7 Court for the County of Berrien, State of
8 Georgia.

9 This deposition is being held at
10 441 West 12th Street, in Alma, Georgia, on
11 March 3, 2015, at approximately 10:24 a.m.
12 My name is Leo Mileman from the firm of David
13 Feldman Worldwide, and I'm the legal video
14 specialist. The court reporter is Dennis
15 Zambataro in association with David Feldman
16 Worldwide.

17 Will counsel please introduce
18 themselves.

19 MR. FUTCH: Kenneth Futch for the
20 Plaintiff, Mr. Rigby.

21 MR. SHAFFER: Derek Shaffer from Quinn
22 Emanuel for the Defendant, the US Tobacco
23 Cooperative.

24 MR. FORST: Keith Forst, with Quinn
25 Emanuel as well, on behalf of the Defendant.

1 something you would have received on or around
2 January 14, 2003?

3 A I remember -- I don't know if this is
4 the right one, but I remember receiving something of
5 this nature.

6 Q Do you remember joining and supporting
7 the Contract Tobacco Growers Association?

8 A Yes.

9 Q And that was an organization that you --
10 whose views you generally agreed with?

11 A I'm not saying I agreed with them.

12 Q Why did you support them?

13 A I didn't believe they'd give me a
14 contract to start with. I wanted to see.

15 Q It was just kind of a business
16 opportunity?

17 A Right.

18 Q And did they, in fact, give you a
19 contract?

20 A No.

21 Q Did you have to pay anything to find
22 out?

23 A No.

24 Q It was a free sign-up?

25 A Uh-huh.

1 Q Is that a yes?

2 A Yes, sir.

3 MR. SHAFFER: Let me show you a document
4 we'll mark as Exhibit 6.

5 (Exhibit 6 Rigby was marked for
6 identification.)

7 BY MR. SHAFFER:

8 Q I understand this document that we've
9 marked as Exhibit 6 to be a newsletter that was
10 regularly published and distributed by the
11 Flue-Cured Tobacco Cooperative Stabilization
12 Corporation when it was called that, and I
13 understand this to be the December 1975 newsletter.

14 Do you have any different understanding of
15 the document, Mr. Rigby?

16 A No.

17 Q Do you recall having seen this document
18 or any documents like it over the course of your
19 involvement with US Tobacco --

20 A Yes.

21 Q -- Cooperative?

22 Do you know whether you would have received
23 this December 1975 newsletter?

24 A I would assume I did.

25 Q Would you take a look at the top --

1 well, let me read to you what I see in the top right
2 paragraph, and I'll just read it into the record:

3 "This may be our first opportunity to prepare to
4 stand on our feet if that should become necessary.
5 It may be not only a privilege but also the duty of
6 the board to act on this opportunity, and it is my
7 belief that a great majority of members would
8 welcome this action enthusiastically."

9 Do you see that, Mr. Rigby?

10 A Where are you reading it from?

11 Q I'm sorry. I have that on the first
12 page, right under "Newsletter." So I have this --
13 to use the Bates stamp, it's marked SCGA 3398. And
14 so this is at the beginning of that piece, and it's
15 under the heading "Capital Reserve Fund
16 Established."

17 Do you see that?

18 A Yes.

19 Q Okay. And let me actually step back and
20 read a portion earlier: "We must maintain the
21 viability of Stabilization during periods of limited
22 receipts and operations. We must look to the future
23 and prepare for the rainy days of either small
24 receipts or large receipts. If we encounter
25 difficulty in borrowing money on reasonable terms

1 for overhead expenses, we should be ready to carry
2 on with our own funds."

3 And then it continues in the portion that I
4 was reading, "This may be our first opportunity to
5 prepare to stand on our feet if that should become
6 necessary. It may not be only a privilege but also
7 the duty of the board to act on this opportunity,
8 and it is my belief that a great majority of members
9 would welcome this action enthusiastically."

10 Do you understand that, Mr. Rigby, to be
11 contemplating that the cooperative not only might
12 but should be able to carry on without external
13 federal financing?

14 A Yes.

15 Q Do you recall seeing this sort of a
16 reference in the newsletters or in any other
17 correspondence or documents that you received from
18 the cooperative?

19 A No.

20 Q Does it come as a surprise to you to
21 read this being said in December 1975?

22 A And I may have read this back in '75. I
23 just don't remember it.

24 Q Sure. And I'm just asking you in terms
25 of how you receive it now.

1 Does it come as a shock to you?

2 A No.

3 Q A lot of people felt this way, didn't
4 they?

5 A Yes.

6 Q And you knew it at the time.

7 Yes?

8 A Like I said, I wouldn't believe a word
9 Stabilization said.

10 Q Ever?

11 A Ever.

12 MR. SHAFFER: Let me show you one more
13 set of words to get your reaction to this.
14 We'll mark this Exhibit 7, I believe.

15 (Exhibit 7 Rigby was marked for
16 identification.)

17 BY MR. SHAFFER:

18 Q Oh, I'm sorry, Mr. Rigby. Could I
19 exchange that? I have to resticker it. That's my
20 copy of it, my colleague reminds me. Sorry about
21 that.

22 There you go.

23 Let me ask you, Mr. Rigby, do you recognize
24 what's been passed to you as Exhibit 7?

25 A Yes.

EXHIBIT W

IN THE SUPERIOR COURT OF BERRIEN COUNTY

STATE OF GEORGIA

JULIAN A. RIGBY, TERRY ALTMAN,)
ELTON CARTER, BYRON CARTER,)
WAYNE E. LOTT, DAVID H. LEE, and)
BRYAN ALDRIDGE)
)
Plaintiffs,)
)
vs.) Civil Action File
) No. 07C236
FLUE-CURED TOBACCO)
COOPERATIVE STABILIZATION)
CORPORATION,)
)
Defendant.)

VIDEOTAPE DEPOSITION OF DAVID HARRELL LEE

Alma, Georgia

Wednesday, March 4, 2015

10:08 a.m.

Reported by:
Dennis Zambataro, CSR, RPR
Job No. 37773

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1 - PROCEEDINGS -

2 THE VIDEOGRAPHER: This begins the video
3 deposition of Mr. David Lee in the matter of
4 Julian Rigby, et al. versus Flue-Cured
5 Tobacco Cooperative Stabilization
6 Corporation, to be heard in the Superior
7 Court for the County of Berrien, State of
8 Georgia.

9 This deposition is being held at
10 441 West 12th Street in Alma, Georgia, on
11 March 3 -- sorry -- March 4, 2015, at
12 approximately 10:08 a.m. My name is
13 Leo Mileman from the firm of David Feldman
14 Worldwide, and I'm the legal video
15 specialist. The court reporter is Dennis
16 Zambataro in association with David Feldman
17 Worldwide.

18 Will counsel please introduce
19 themselves.

20 MR. FUTCH: Kenneth Futch for the
21 Plaintiff.

22 MR. SHAFFER: Derek Shaffer from Quinn
23 Emanuel for the Defendant.

24 MR. FORST: Keith Forst, also with Quinn
25 Emanuel, for the Defendant in this case.

1 many years we have an opportunity to begin our
2 self-help accomplishment. The net gains to be
3 realized from the 1967 and 1968 crops offer this
4 opportunity. This may be our first opportunity to
5 prepare to stand on our feet if that should become
6 necessary. It may be not only a privilege but also
7 the duty of the board to act on this opportunity,
8 and it is my belief that a great majority of members
9 would welcome this action enthusiastically."

10 Do you see what I was just reading?

11 A Yes, I follow you.

12 Q Is that consistent with sentiments that
13 you heard expressed by the cooperative, the
14 cooperative's board, the cooperative's officers
15 during this period of time?

16 A I've never heard from Mr. Hicks, and I
17 don't know what opportunities they were talking
18 about. I don't know completely.

19 Q Well, reading this as you sit here
20 today, you do understand that this was a statement
21 about why the cooperative might want to build a
22 reserve in order to stand on its own two feet in the
23 future, don't you?

24 A Well, in 1975, yes.

25 Q And you don't recall hearing anything

1 different from this in 1975, do you?

2 A No.

3 Q And subsequent to 1975 did anyone ever
4 assure you that the cooperative wasn't going to
5 build and retain its reserve so that it could stand
6 on its own feet?

7 A I guess -- I mean, I think it should
8 retain some earnings.

9 Q You think it should have been retaining
10 earnings?

11 A Yes.

12 Q That was prudent; is that correct?

13 A Right. I mean, the big thing is "this
14 opportunity." You know, that's where -- for
15 refreshing my memory, thank you. This is probably
16 where we started this tobacco manufacturing facility
17 for the farmers. This probably originated in
18 something -- this opportunity to stand on your own
19 two feet was probably -- was what we read into that.
20 But, you know --

21 Q As you look back on what Mr. Hicks was
22 saying, you agree with him, don't you?

23 A Yes. In 1975 I was -- yes -- under
24 Fred G. Bond, I knew Mr. Bond a lot better, well,
25 than I knew him.

1 Q Taking the man out of it, when you read
2 his words, when you read what they're suggesting,
3 you agree with that suggestion, don't you?

4 A Yes.

5 Q And the reason you agree with it is
6 because you need a whole lot of money in order to be
7 able to, for instance, buy a manufacturing facility,
8 don't you?

9 A A lot of money and a lot of debt
10 probably.

11 Q Even with a lot of money, you're still
12 taking on debt --

13 A Right.

14 Q -- because these are expensive
15 operations; right?

16 A Yes.

17 Q And these are expensive purchases;
18 right?

19 A Yes.

20 Q Is it consistent with your recollection
21 that you heard this same sort of suggestion, this
22 same sort of sentiment coming from the cooperative
23 that it would be important to build a reserve and
24 use it for the sorts of things that we're talking
25 about?

1 A Yes.

2 Q And that was true quite independent of
3 what the federal government was or was not paying
4 for federal price support?

5 A Yes.

6 Q And I asked you if anyone had ever
7 assured you that the cooperative would be doing
8 anything different from what Mr. Hicks was here
9 suggesting, but specifically, no board member ever
10 assured you that the cooperative's way of seeing
11 things changed from what Mr. Hicks was reporting in
12 this December 1975 newsletter; is that correct?

13 A That's correct.

14 MR. SHAFFER: Let me, if I could, show
15 you what we'll mark as Exhibit 2 to today's
16 deposition.

17 (Exhibit 2 Lee was marked for
18 identification.)

19 BY MR. SHAFFER:

20 Q And, Mr. Lee, just for the sake of the
21 clarity of the record, I'll note there's actually an
22 exhibit sticker that's photocopied on here that's
23 above what's been stickered for you. So, for the
24 record, it says "Exhibit No. 17," but this has been
25 marked for today's deposition as Exhibit No. 2.

1 Is that what you have in front of you?

2 A That's what I have in front of me.

3 Q Okay. Do you recognize the document?

4 A Yes.

5 Q Is this, in fact, your signed receipt of
6 your -- your agreement and receipt for your
7 membership in the cooperative?

8 A Yes, sir.

9 Q And it's stamped "1970"; correct?

10 A Yes, sir.

11 Q Do you recall signing this document?

12 A Yes, sir.

13 Q And you're familiar with its terms?

14 A Yes, sir. It said I could get my
15 paycheck that day.

16 Q Understood. Understood. But you were
17 undertaking an agreement when you signed it?

18 A Oh, yes. Yes.

19 Q Do you see how -- and you can review any
20 portion of the document you like. It's, happily,
21 pretty short.

22 But do you see how in Nos. 2 it says,
23 "That in addition to the amount paid to the grower
24 upon delivery of tobacco, it shall distribute to him
25 his pro rata share of any net gains remaining after

EXHIBIT X

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

KAY W. FISHER, ORVILLE WIGGINS,
DALE C. BONE, THOMAS N. RHOAD,
LINWOOD SCOTT, JR., ROBERT C.
BOYETTE, RICHARD RENEGAR, AND
KENDALL HILL AND OTHER SIMILARLY
SITUATED,

Plaintiffs,

v.

FLUE-CURED TOBACCO STABILIZATION
CORPORATION, KEITH BEAVERS,
MCDANIEL WYNNE, BRUCE L. FLYE,
RICHARD J. JENKS, CLAUDE B.
FRENCH, AND ANDREW Q. SHEPARD,

Defendants.

NO. 05-CVS-1938

DEPOSITION OF

THOMAS N. RHOAD

LAW OFFICES OF SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.
2500 WACHOVIA CAPITOL CENTER
RALEIGH, NORTH CAROLINA

TUESDAY, AUGUST 29, 2006

10:00 A.M.

VOLUME I

PAGES 1 THROUGH 220

8/29/06

VIVIAN TILLEY & ASSOCIATES

Court Reporters

5813 Shawood Drive

Raleigh, NC 27609

(919) 847-5787

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Paralegal, Speights & Runyan

8/29/06

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P R O C E E D I N G S

whereupon, THOMAS N. RHOAD, was
called as a witness, duly sworn,
and testified as follows:

Direct Examination

10:00 a.m.

BY MR. MOORE:

Q. Sir, my name is Jackson Moore. It's a
pleasure to meet you this morning.

A. Nice to meet you, sir.

Q. I represent Stabilization, the Flue-Cured
Tobacco Cooperative, and six of the directors who
have been sued in a lawsuit in which you are named as
a Plaintiff.

Do you understand that, sir?

A. Yes, sir.

Q. It's my understanding that you're a
representative of --

A. -- House of Representatives of South
Carolina.

Q. For South Carolina.

Is that for the State or the Federal House,
sir?

A. State. State.

Q. Would it be all right, sir, if I called you
"Mr. Rhoad" during this deposition?

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1 Q. In this lawsuit, are you asking for the
2 Defendants to pay you money?

3 A. I guess that's what the lawsuit's about.

4 Q. How are the Defendants supposed to figure
5 out how much money they're supposed to pay you?

6 A. I don't know. I do not know.

7 Q. Why do you think that Stabilization owes
8 Thomas Rhoad money?

9 A. Well, it was my understanding that when
10 Stabilization was formed, that stipulated in there
11 that -- I don't know how much of the profits or
12 whatever, but the profits were -- whether it was all
13 or a percentage of what -- was to go back to the
14 farmer.

15 Q. And -- and what are the -- are -- what
16 facts or information do you base that understanding
17 on?

18 A. I myself always thought that when they took
19 in our tobacco -- as we used to say -- that it was a
20 loan.

21 Q. And is that --

22 A. That -- that they only stored it. And I
23 would see in the papers and they had sales that
24 Stabilization had made.

25 Q. Is -- is -- is there any other fact or

8/29/06

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1 information on which you base your understanding that
2 Stabilization was formed and a percentage of profits
3 was supposed to go back to the farmer?

4 A. That was my understanding.

5 Q. And is there any other facts or information
6 on which you base that understanding besides what
7 you've just told me?

8 A. Well, if they've sold the tobacco, surely
9 they made a profit. And it was just my belief that
10 if -- if -- when Stabilization was organized, if it
11 was stipulated in there that a portion of the profits
12 would go back to the farmer, then I never heard of
13 that being changed.

14 Q. Do you have any facts or information to
15 support your understanding that it's stipulated that
16 a portion of the money is supposed to go from
17 Stabilization to the farmer?

18 A. I do not.

19 Q. Do you have any facts or information on
20 which you base the understanding that Stabilization
21 surely made a profit on tobacco that it brought in?

22 A. I have no assurance of that. I only
23 believe that.

24 Q. And -- and can you explain to me the facts
25 and the information on which you have that belief?

8/29/06

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1 A. Well, we didn't say they -- they -- they
2 bought our tobacco. They took it in at that support
3 price, which I considered was like a loan.

4 Q. But do you have any facts or information on
5 which you base your belief that Stabilization made a
6 profit on the sale of that tobacco?

7 A. I do not.

8 Q. Have you ever had an occasion to read the
9 articles of incorporation for Stabilization?

10 A. I have not.

11 Q. Have you ever read the bylaws for
12 stabilization?

13 A. I have not.

14 Q. Did you ever attend any annual meetings of
15 Stabilization?

16 A. I went to -- to meetings several times in
17 Florence. I don't remember the date, but I'm sure
18 the people were there would -- would give us an
19 update as to how the tobacco industry looked, how the
20 outcome and what the future may be -- you know, bring
21 forth. That's -- all the tobacco farmers were
22 interested in that.

23 Q. Do you remember the --

24 A. Just like if you were laying -- if you were
25 raising -- laying chickens, you would be interested

8/29/06

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Raleigh, NC 27609

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EXHIBIT Y

IN THE SUPERIOR COURT OF BERRIEN COUNTY

STATE OF GEORGIA

JULIAN A. RIGBY, TERRY ALTMAN,)
ELTON CARTER, BYRON CARTER,)
WAYNE E. LOTT, DAVID H. LEE, and)
BRYAN ALDRIDGE)
)
Plaintiffs,)
)
vs.) Civil Action File
) No. 07C236
FLUE-CURED TOBACCO)
COOPERATIVE STABILIZATION)
CORPORATION,)
)
Defendant.)

VIDEOTAPE DEPOSITION OF HUGH ROBERTS, CPA

Savannah, Georgia

Wednesday, April 22, 2015

9:39 a.m.

REPORTED BY:
TANYA L. VERHOVEN-PAGE
JOB NO. 38664

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THE VIDEOGRAPHER: Shawn Screen

- - -

1 HUGH ROBERTS, CPA

2 SAVANNAH, GEORGIA; WEDNESDAY, APRIL 22, 2015

3 9:39 A.M.

4
5 P R O C E E D I N G S

6
7 THE VIDEOGRAPHER: This begins the
8 videotape deposition of Hugh Roberts in
9 the matter of Julian A. Rigby, et al.
10 versus Flue-Cured Tobacco Cooperative
11 Stabilization Corporation in the Superior
12 Court of Berrien County, State of
13 Georgia.

14 This deposition is being held at
15 Savage, Turner & Pinckney on April 22nd,
16 2015 at approximately 9:39 a.m.

17 My name is Shawn Screen from the
18 firm of David Feldman & Associates
19 Worldwide, and I am the legal video
20 specialist.

21 The court reporter is Tanya Page in
22 association with David Feldman Worldwide.

23 Will counsel, please, introduce
24 themselves.

25 MR. CONN: For plaintiffs, Andy

1 HUGH ROBERTS, CPA

2 contacted you?

3 A Mr. Savage.

4 Q And at that point, had you been formally
5 retained as an expert, or were you just discussing
6 the possibility of it?

7 A Well, discussing the possibility of it,
8 if they needed my services, yes.

9 Q Okay. And what was the -- that
10 conversation like?

11 A He asked me what would I charge per hour.
12 I told him, and he wanted to know my background as to
13 what -- my knowledge of cooperatives and the tobacco
14 program and the various things that pertained to this
15 case.

16 Q Okay. And was there anything else
17 that -- as you put it -- pertained to this case that
18 you guys discussed?

19 A No.

20 Q So it was your understanding of
21 cooperatives generally and the tobacco program?

22 A Correct.

23 Q Okay. And do you have expertise when it
24 comes to the operation and management of
25 cooperatives?

1 HUGH ROBERTS, CPA

2 A Let's see. I audited GFA Peanut
3 Association from 1960 to probably 2001. I've done
4 the Central Georgia Cooperative for approximately 15
5 or 20 years, the Chickasha Quality Cotton Seed
6 Cooperative for seven or eight years, and I also
7 sat -- and then later sat on the -- as a board of
8 directors of that, and that was about it.

9 Q Okay. So let's take those in turn. You
10 said you audited the peanut cooperative?

11 A The Georgia, Florida, Alabama Peanut
12 Association, which is a peanut marketing association
13 which is governed by the same department of
14 agriculture that supervised the Tobacco Stabilization
15 Program.

16 Q Okay. And what's your basis for saying
17 that the USDA supervised the Tobacco Stabilization
18 Corporation?

19 A Because it was under their directive,
20 Mr. Dallas Smith, who was the chairman of -- or
21 secretary of that division. They -- they always --
22 and, in fact, we done the audit for the -- the peanut
23 and tobacco division of the Department of Agriculture
24 because it was a compliance audit that we actually
25 made for them every year in addition to doing the

1 HUGH ROBERTS, CPA

2 audit for GFA.

3 Q I see. So that's for the Peanut
4 Association. Not the Tobacco Cooperative, right?

5 A That's right. That's correct.

6 Q And when you said it was under the
7 directive -- the Tobacco Cooperative was under the
8 directive of the USDA, what -- what is your basis for
9 making that statement?

10 A Because of being familiar with the law
11 and also having Tobacco Cooperative -- worked on --
12 I -- in addition to practicing accounting for 56
13 years, I was raised on a farm and helped set out
14 tobacco, crop tobacco, cure out tobacco and market
15 tobacco.

16 So I probably go all the way back to the
17 beginning.

18 Q Sure.

19 And when you say -- you referenced the
20 law. What law are you talking about?

21 A The Stabilization Law and the -- see, to
22 be doing a compliance audit for the USDA, you had to
23 be familiar with their rules and regulations of how
24 the peanut and tobacco and the division operated and
25 the role they played with the different cooperatives

1 HUGH ROBERTS, CPA

2 floor the tobacco; when I was about 15 years old, I
3 followed the sale and helped turn the tobacco up and
4 also wrote up the tags for the auction up and down
5 the line, I would probably be pretty familiar with
6 how it worked.

7 Q So I understand that you're familiar with
8 it from your childhood, but you're saying that
9 childhood experiences at auction floor warehouses
10 makes you an expert in their operations and
11 management?

12 A Yes.

13 Q It does.

14 Okay. And so does it follow that anybody
15 who marketed tobacco through an auction warehouse
16 would be a similar expert like you are?

17 A Well, no, because you would have to be
18 familiar with the growing of the tobacco, which I
19 was. You had to be familiar with how it was packaged
20 and ready to put on the floor to market. You had to
21 be familiar in how -- that when it was carried to the
22 warehouse, how it was floored for auction. You had
23 to be familiar with how the auction itself actually
24 worked, and then you had to be familiar with, once it
25 got sold and got inside of the office of the auction

1 HUGH ROBERTS, CPA

2 warehouse, how they was paid for the tobacco, how the
3 tobacco was shipped and things of that nature, which,
4 by virtue of my years of working in those warehouses
5 and a boy growing up and then later as a CPA auditor,
6 I think that pretty well give me a pretty good
7 Master's Degree on how to operate a tobacco
8 warehouse.

9 Q Okay. But you've never, in fact,
10 operated one, right?

11 A No.

12 Q You've never managed one, right?

13 A No.

14 Q You've never had a supervisory role in
15 connection with any auction warehouse in terms of its
16 management and operation, right?

17 A No.

18 Q Okay. So aside from your using it as a
19 patron, you have no specific experience running the
20 day-to-day operations of an auction warehouse?

21 A No.

22 Q And it follows from there, you've never
23 run a -- any kind of cooperative, correct?

24 A Yes. I was on the board of directors and
25 also -- of Quality Cotton Seed Co-op and Chickasha

1 HUGH ROBERTS, CPA

2 Cotton Oil Company of Tifton, Georgia.

3 Q Okay. Let's take those in turn.

4 You said you were on the board of
5 directors. Now, was that of both of those
6 cooperatives or just one?

7 A Both of them.

8 Q Okay. And can you repeat the name. I
9 sorry. I didn't catch that.

10 A One of them was Quality Cotton Seed, and
11 the other one was Chickasha of Georgia Southeast, and
12 then the other one that I actually managed and run
13 for five -- five years was Ocilla Cotton Gin
14 Incorp- -- Cooperative.

15 Q Okay. And this is going to prove and
16 show my ignorance, which covers a lot of areas.

17 What products fell under the Chickasha
18 Georgia Southeast Cooperative?

19 A It was a -- Chickasha Southeast, it was a
20 cotton seed oil mill where it crushed and -- cotton
21 seed.

22 Q Okay. So all three of the cooperatives,
23 on which you sat on the board, dealt with cotton
24 seed?

25 A No. Well, the gin actually --

1 HUGH ROBERTS, CPA

2 itself actually ginned and marketed the cotton for
3 the farmers.

4 Q Okay. So we'll call them cotton
5 cooperatives; is that fair?

6 A Yeah. Okay.

7 Q Okay. So you sat on the board of three
8 cotton cooperatives?

9 A That's correct.

10 Q Okay. Now, let's take, again, each in
11 turn.

12 For how long did you sit on the board of
13 the Quality Cotton Seed Cooperative?

14 A Let's see. From about 1990 to 2004.

15 Q Okay. And for the Chickasha Georgia
16 Southeast Cooperative?

17 A Same thing.

18 Q Same.

19 And for the -- again, I'm going to
20 mispronounce it. Tell me that third one again. The
21 third cooperative you sat on the board for.

22 A Ocilla Cotton Gin Cooperative.

23 Q And forgive me. Are you saying Ocilla?

24 A Ocilla, O-c-i-l-l-a.

25 Q And for how long did you sit on the board

1 HUGH ROBERTS, CPA

2 the Co-op over there, whatever period of time they
3 was a member.

4 Q But where -- are you pointing to
5 something in a governing document, a bylaw, articles
6 of incorporation that says, when you leave as a
7 member, you're entitled to your share of the reserve?

8 A Well, the law -- and Georgia law is that,
9 if the Co-op dissolves, then each member is entitled
10 to its pro rata share based on the business it done
11 and the profits and the assets that are still
12 available to be dissolved, and -- now whether North
13 Carolina says that, I don't know.

14 Q Okay.

15 A But Georgia does.

16 Q I see. So you don't have an opinion or
17 no one way or the other what North Carolina
18 prescribes, right?

19 A That's correct.

20 Q But my question to you is: If the
21 Cooperative isn't going to dissolve and liquidate but
22 continue on and a member leaves pursuant to its stock
23 agreement, you are under some understanding they
24 don't just get five dollars back? They get something
25 more than that?

1 HUGH ROBERTS, CPA

2 A That's correct.

3 Q Even separate and apart from dissolution?

4 A Oh, no, upon dissolution.

5 Q Okay. So it has to be dissolution for a
6 plaintiff to get something beyond whatever the par
7 value of their stock certificate is?

8 A That's correct.

9 Q I see. And so looking at -- I guess,
10 here is my question then: Your -- your first
11 calculation, taking the 241 and dividing by the 712,
12 that assumes dissolution?

13 A That's correct.

14 Q So you've done no exercise to say the
15 Cooperative could -- assuming, just hypothetically --
16 continue on, and this is the amount of money of
17 reserve and a reasonable amount that it would need to
18 continue on its operation?

19 A Considering what they were doing and have
20 been doing as far as actually buying tobacco,
21 processing it and marketing it themselves and based
22 on the cost of tobacco, they would need it all if
23 they was going to continue -- to legally keep doing
24 it, yes, they would have a right to retain -- it
25 would be prudent to retain it, yes.

1 HUGH ROBERTS, CPA

2 Q Okay. So if, in fact, they were correct
3 to continue operating beyond the end of the Federal
4 Price Stabilization, it's your opinion that it would
5 be prudent to keep the reserve for that future
6 operation?

7 A That's correct.

8 Q In its total amount, right?

9 A That's correct.

10 Q Okay. Let's just carry this through then
11 to the second calculation that you got to, and that
12 was 30 -- 35,000, and I think I understand what that
13 is, and -- but I'll have you explain it to me.

14 You took what number as the numerator of
15 the total dollar amount to get to that 35,000?

16 A Well, it was the -- which would be
17 338,209,697 divided by the remaining shareholders
18 that was there at that date, you know.

19 Q And that was the 1,423?

20 A Yes.

21 Q Okay. And that is current members as of
22 2004?

23 A That's correct.

24 Q Okay. But you don't know, again, if
25 that's any of the named plaintiffs in this case?

1 HUGH ROBERTS, CPA

2 A No.

3 Q So that would be your understanding of,
4 if the Cooperative would have dissolved in 2011, what
5 the current members would be owed at that point in
6 time?

7 A That's correct.

8 Q Okay. And, again, that's an average
9 number, right?

10 A That's correct.

11 Q You haven't done a calculation for any
12 specific number?

13 A As I told you, if you based it on
14 patronage, it could be considerably higher than that
15 or it could be considerably lower than that.

16 Q Okay. But the premise for these
17 calculations was upon dissolution, right?

18 A That's correct.

19 Q Now, did you -- the bylaws specify what
20 happens upon dissolution, right?

21 A Yes.

22 Q Did you proceed by that formulation in
23 the governing documents to arrive at this number?

24 A Yes.

25 Q You did. So you looked at -- you looked

EXHIBIT Z

IN THE SUPERIOR COURT OF BERRIEN COUNTY

STATE OF GEORGIA

JULIAN A. RIGBY, TERRY ALTMAN,)
ELTON CARTER, BYRON CARTER,)
WAYNE E. LOTT, DAVID H. LEE, and)
BRYAN ALDRIDGE)
)
Plaintiffs,)
)
vs.) Civil Action File
) No. 07C236
FLUE-CURED TOBACCO)
COOPERATIVE STABILIZATION)
CORPORATION,)
)
Defendant.)

VIDEOTAPE DEPOSITION OF

ADAIR CHAMBERS PETERSON

Savannah, Georgia

Friday, April 10, 2015

9:34 a.m.

REPORTED BY:
TANYA L. VERHOVEN-PAGE
JOB NO. 38658

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THE VIDEOGRAPHER: Shawn Screen

- - -

1 ADAIR C. PETERSON

2 SAVANNAH, GEORGIA; FRIDAY, APRIL 10, 2015

3 9:34 A.M.

4
5 P R O C E E D I N G S

6
7 THE VIDEOGRAPHER: This begins the
8 videotape deposition of Adair Chambers
9 Peterson in the matter of Julian A.
10 Rigby, et al. versus Flue-Cured Tobacco
11 Cooperative Stabilization Corporation in
12 the Superior Court of Berrien County,
13 State of Georgia.

14 This deposition is being held at
15 Savage Turner on April 10th, 2015 at
16 approximately 9:34 a.m.

17 My name is Shawn Screen from the
18 firm of David Feldman Worldwide, and I am
19 the legal video specialist. The court
20 reporter is Tanya Page in association
21 with David Feldman Worldwide.

22 Will counsel please introduce
23 themselves.

24 MR. SHAFFER: Derek Shaffer. I'll
25 be taking the deposition here on behalf

1 ADAIR C. PETERSON

2 reserves, and so that's what I --

3 Q Your understanding -- well, let me -- let
4 me -- let me offer you one understanding of things.
5 You tell me if it's consistent with yours.

6 In the 1967 to 1973 crop years, might it
7 have been the case that the cooperative was in the
8 fortunate position of paying less for the tobacco
9 that its growers brought to it during those crop
10 years, and what it was able to sell that tobacco for
11 it turned out to be a greater price?

12 A Right.

13 Q And so in order to account for that
14 differential, the cooperative paid a portion of it to
15 the members in that very crop year and retained the
16 remainder of it as a reserve that the board would
17 retain pursuant to its discretion until such time as
18 it invited redemption of certificates of interest for
19 the remainder.

20 Is that consistent with your
21 understanding?

22 A All right. Yes.

23 Q And is that consistent with your view
24 that, basically, the money should be paid out each
25 crop year, to the extent that there's some

1 ADAIR C. PETERSON

2 differential?

3 A Yes, and also my view is that the money
4 should be paid to the people who patronized you
5 during that period of time.

6 Q In your view, basically, to the extent
7 that the Cooperative had cash reserves that it was
8 accumulating from the 1970s, 1980s and 1990s on
9 forward, all that money was owed to the members
10 during those years, during that period of time?

11 A Yes.

12 Q And the Cooperative basically wronged the
13 members by not paying them in those years in the
14 1970s, 1980s and 1990s?

15 A Yes.

16 Q You also have experience with the U.S.
17 Highbush Blueberry Council; is that right?

18 A Uh-huh. Yes, I do.

19 Q Tell me in what capacity you serve that.

20 A I've been appointed by the U.S. Secretary
21 of Agricultural four, maybe five times now. I
22 served -- you get termed out after four terms, but I
23 served for someone who died. So I served a partial
24 term.

25 So I might be the longest serving member

1 ADAIR C. PETERSON

2 on the USHBC.

3 Q Wow. And the appointments are for how
4 long, each appointment?

5 A Three years.

6 Q Okay. So 15 years you've been on?

7 A Yes, close to.

8 Q Tell me what it is exactly.

9 A Okay. It's -- USDA allows certain
10 agricultural entities to get a marketing order.

11 So you send out a ballot to the 2000 or
12 so blueberry growers, and you say are you willing to
13 pay an assessment that will then be used for
14 promotion, research and marketing, and so we did, and
15 USDA administers it, and then we have a keeper, a
16 minder, who makes sure that we do things according to
17 the government's view of things, and we are precluded
18 from doing any political activity.

19 So I happen to serve on the research
20 committee, and we are spending about \$1.2 million a
21 year on studies to fund research into the health
22 effects of blueberries, and so we have -- we spend a
23 lot of money on promotions.

24 Q So it's thanks to you I know how good
25 blueberries are for our health?

EXHIBIT AA

NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 CVS 1888
05 CVS 1938

DAN LEWIS AND DANIEL H. LEWIS FARMS,)
INC., GEORGE ABBOT, ROBERT C. BOYETTE)
AND BOYETTE FARMS, INC., KYLE A. COX, C.)
MONROE ENZOR, JR., Executor of the Estate of)
CRAWFORD MONROE ENZOR, SR., ARCHIE)
HILL, KENDALL HILL AND TULL HILL)
FARMS, INC., WHITNEY E. KING, CRAY)
MILLIGAN, RICHARD RENEGAR, LINWOOD)
SCOTT, JR. AND SCOTT FARMS, INC.,)
ORVILLE WIGGINS, ALFORD JAMES)
WORLEY, Executor of the Estate of DENNIS)
ANDERSON, CHANDLER WORLEY, HAROLD)
WRIGHT, and OTHERS SIMILARLY)
SITUATED,)

PLAINTIFFS,)

v.)

FLUE-CURED TOBACCO COOPERATIVE)
STABILIZATION CORPORATION (n/k/a)
UNITED STATES TOBACCO COOPERATIVE)
INC.,)

DEFENDANT.)

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ SUPPLEMENTAL SUBMISSION
CONCERNING ITS MOTION FOR RULE 23(C) REVIEW OF THE SPEAKS
SETTLEMENT**

Pursuant to this Court’s direction of December 28, 2017, Defendant U.S. Tobacco Cooperative (the “Cooperative”) respectfully submits this written response to the slide deck Plaintiffs presented at the hearing on December 21, 2017 and then e-mailed to the Court on December 22, 2017.

Although Plaintiffs have couched their latest submissions in terms of “collusion” and other impropriety, it is clear that the gravamen of their grievance comes down to substantive questions of adequacy and fairness that have been properly and openly posed for Chief Judge Dever to decide, based on the record being made before him. It is true that the *Speaks* settlement, if finally approved, should dispose of this case. But that predictable, expected outcome—which is the same outcome that typically occurs whenever a parallel class action reaches final resolution—is no basis for Plaintiffs to impugn the integrity or conduct of any party or counsel. Nevertheless, Plaintiffs’ latest submission to this Court continues a series in which they have, *inter alia*:

- sought revocation of the Cooperative’s counsel’s admissions *pro hac vice* (Sept. 22, 2017 Motion at 14);
- impugned the Hon. Retired Judge Bullock’s conduct of a mediation (including by citing the results of his conflict check) (Nov. 28, 2017 Motion at ¶ 2(b) & Pls.’ Ex.¹ F); , and
- attacked the entire set of counsel (the Daughtrys along with Shipman & Wright) representing plaintiffs in *Speaks*. (Nov. 28, 2017 Motion at ¶ 7(5)).

Simply stated, Plaintiffs have gone too far, particularly in alleging impropriety and painting legitimate, good-faith, publicly-disclosed conduct as though it is nefarious. Chief Judge Dever has already found such allegations meritless when he rejected Plaintiffs’ current complaints about the purportedly “collusive” nature of the *Speaks* settlement, specifically finding they were not only untimely but “lack[ing] merit.” (*Speaks*, No. 5:12-CV-729-D, Dkt. No. 82, at 4.) Contrary to the thrust of Plaintiffs’ slide deck, review of the public record confirms that *every relevant fact* Plaintiffs now cast as a shocking, unsettling revelation had been well known to them *for years*—

¹ Citations to Plaintiffs’ Exhibits (Pls.’ Ex(s)) refer to documents filed by opposing counsel in connection with Plaintiffs’ November 28, 2017 Motion for Rule 23(c) Review of Compromise.

dating back to when Shipman & Wright splintered from Plaintiffs' counsel here and publicly filed a federal suit on behalf of an overlapping putative class in 2012.

The *Speaks* plaintiffs first filed suit in October 2012—over a year before this Court certified any class in this case and over four years before the North Carolina Supreme Court affirmed the grant of certification. In their publicly-available Complaint, the *Speaks* plaintiffs as represented by Mr. Shipman *et al.*:

- sought to “allocate and distribute certain funds to Plaintiffs . . . or . . . to judicially dissolve [the Cooperative] and thereafter to liquidate and distribute the assets thereof,” (*Speaks*, Dkt. No. 1, Compl. at ¶ 1);
- requested certification of an overlapping class consisting of “[a]ll individuals, proprietorships, partnerships, corporations and other entities that are or were shareholders and/or members of the U.S. Tobacco Cooperative, Inc. f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation from the date of its inception to the present, without exclusion; and any heirs, representatives, executors, powers-of-attorney, successors, assigns or others purporting to act for or on their behalf with respect to Stabilization and/or the claims alleged herein”, (*id.* at ¶ 69);
- set forth that Shipman & Wright had represented the *Lewis* plaintiffs in the parallel state proceeding but withdrew due to “substantial differences” with co-counsel as to how best to prosecute the action, (*id.* at ¶ 46); and
- specifically alleged both that “the Lewis and Fisher actions have not been prosecuted . . . in a manner that is in the best interests of these Plaintiffs and other Class Members,” and that the “[*Speaks*] Plaintiffs’ interests and those of other Class Members are not being adequately represented in the Fisher and Lewis action.” (*Id.* at ¶¶ 64, 65.)

This has all been public record since 2012, so none of it came as news to anyone in 2017. Yet Plaintiffs *never* sought *any* relief relative to this *Speaks* action when it was filed, nor did they after they obtained class certification from this Court in February 2014, nor did they when we (as a courtesy) disclosed the upcoming *Speaks* mediation back in April, nor did they when we confirmed that the ensuing *Speaks* settlement would have preclusive effect back in June. The record reveals that these Plaintiffs and their counsel did not bring to this Court or to the Eastern District of North

Carolina any concern whatsoever about *Speaks* **until September 15, 2017**, shortly *after* Chief Judge Dever granted his preliminary approval.

Plaintiffs' inaction cannot be attributed to a failure on their part to grasp that final approval of a *Speaks* settlement would have preclusive effect here. Any such notion would be not only farfetched, but counter-factual. Shortly after the North Carolina Supreme Court affirmed this Court's certification, Plaintiffs were made aware of the Cooperative's intent to pursue mediation in *Speaks*. It was never any secret that the Cooperative, like any rational defendant facing parallel class actions, would need to achieve total, global, lasting peace as a condition of any settlement. That is why counsel for the Cooperative provided notice of the mediation to Plaintiffs and their counsel in advance of the mediation. When the Cooperative informed Plaintiffs of the then-upcoming mediation in **April 2017**, Plaintiffs did not ask to participate. (Pls.' Ex. G.) Instead, Plaintiffs wrote to Shipman & Wright to convey their concerns, including as to the preclusive effect a *Speaks* settlement would have here. (Def.'s Ex.² H at USTC-FL012454-55 ("the interests your former clients have in this certified class may be included in the discussions involving a potential resolution of the putative class alleged in *Speaks* . . . we will assume your intent to mediate all claims that fall within the *Speaks* putative class designation").) When the Cooperative informed Judge Bullock of Plaintiffs' objection to the mediation in **May 2017**, that objection was thoroughly discussed en route to Judge Bullock and the parties agreeing it was quite proper for mediation to proceed. (*Id.*)

Lest there be any doubt that the *Speaks* settlement should be preclusive, we *expressly told* Plaintiffs and this Court as much in **June 2017**. Specifically, the Cooperative informed *this Court*

² Citations to Defendant's Exhibits (Def.'s Ex(s)) refer to documents filed by the Cooperative in connection with its December 18, 2017 Opposition to Plaintiffs' Motion.

on **June 9** and on **June 22** of the mediation and settlement shortly after it finalized a term sheet, expressly noting that *Speaks* “involve[d] a putative class coextensive with the one certified here,” and that “the preclusive effects” of a judgment in *Speaks* “should be obvious and incontestable.” (Def.’s Ex. L at 1; Def.’s Ex. M at 3-4.) On June 9, 2017, the Cooperative also disclosed in federal court that a settlement had been reached and preliminary approval would be sought. Chief Judge Dever was then specifically apprised of the “collusion” allegation when Plaintiff Lewis unsuccessfully moved to intervene and to undo preliminary approval in September 2017. (See Def.’s Ex. Q at 11 (“There is a very strong inference of collusion in this proposed settlement.”); *Speaks*, Dkt. No. 82, at 3 (denying motion to intervene because it was “untimely” and “*lack[ed] merit*”) (emphasis added). Chief Judge Dever further ruled that Plaintiffs had been on notice of the mediation *for months before seeking relief*. (See *Speaks*, Dkt. No. 82, at 3 (“Lewis sought to intervene . . . nearly five years after the initial complaint was filed, and nearly five months after learning about the mediation.”).) In the face of their longstanding and recurring notices, Plaintiffs undisputedly did not raise any concerns about the Cooperative’s purported “collusion” in this Court until they moved to sanction the Cooperative, and strip its counsel of its *pro hac*s, on September 22, 2017.

The only “new” information that surfaced when the *Speaks* plaintiffs moved for preliminary approval of the settlement in September was the **amount** of the settlement fund. That’s it. Nothing else—not a single material fact or circumstance—came as news to these Plaintiffs in September, and any contrary suggestion or insinuation is demonstrably false. Of course, the **amount** of the *Speaks* settlement—its substantive fairness and adequacy—is precisely what is now before Chief Judge Dever and set for a final fairness hearing in two weeks. In deciding that issue, Chief Judge Dever will have a substantially better-developed record before him than the one

available here. Among other things, Plaintiffs' counsel here have now formally appeared in the *Speaks* action (through non-party objector Pender Sharp) to press their substantive as well as procedural objections to the *Speaks* settlement, in submissions (including six sworn declarations) that span hundreds of pages. (*Speaks*, Dkt. No. 192.) Thus, the thrust of Plaintiffs' submission remains to urge this Court to prejudge the issues that they are right now presenting for Chief Judge Dever to decide in connection with his upcoming final fairness hearing. Lest there be any doubt, Plaintiffs have announced their impermissible goal to interfere with Chief Judge Dever's deliberations throughout prior submissions to this Court. (Sept. 22, 2017 Motion at 14 (requesting, *inter alia*, that the Cooperative "withdraw any offer made to any person or attorney other than class counsel to resolve the claims in this case" and refrain from "providing notice to certified class members other than in this case"); Nov. 28, 2017 Motion at ¶ 7(1) (seeking order "[f]inding the settlement reached in *Speaks* . . . is not approved").)³

With their slide presentation, Plaintiffs pursue a similarly wayward line of attack. They try to paint what has transpired in *Speaks* as underhanded collusion that should shock and outrage this Court. They do so, however, without regard for the public record that should foreclose any such tale from being spun. In particular, the public record reflects:

- the extraordinarily detailed public account set forth in *Speaks*, from the 2012 complaint on forward, of that putative class's relationship to this one and the role Shipman & Wright specifically played in both;
- the public persistence of the *Speaks* case for years following this Court's grant of class certification;

³ We respectfully incorporate by reference the Cooperative's December 18 Opposition as to why the relief Plaintiffs seek is unavailable under North Carolina law because (1) Rule 23 does not authorize this Court to prejudge the fairness and adequacy of the *Speaks* settlement; (2) Plaintiffs seek an advisory opinion; and (3) principles of federalism and comity counsel against granting the requested relief. Instead, the *Speaks* Court has the authority and obligation to evaluate the fairness of the proposed settlement in light of the merits and the entire record and competing submissions addressing same.

- the lengths the Cooperative went to in specially apprising Plaintiffs in April that it would be proceeding to mediate *Speaks*;
- the further lengths the Cooperative went to in May, as joined by plaintiffs' counsel in *Speaks*, in ensuring Judge Bullock was apprised of Plaintiffs' stated concerns about the *Speaks* mediation and was satisfied those had been addressed; and
- the further lengths the Cooperative went to in June by not only reporting publicly in federal court, joined by *Speaks* counsel, on the success of the *Speaks* mediation, but by separately and specially apprising this Court and these Plaintiffs, including by confirming the preclusive effects that should be expected to attend any final approval in *Speaks*.

To be clear, all of that happened in public view. None of it was pried from us. Far from hiding it, the Cooperative and its counsel voluntarily brought pertinent developments to the attention of Plaintiffs and this Court and spelled out the preclusive effect *Speaks* would have months before specific terms crystallized such that preliminary approval could then be sought from Chief Judge Dever.

Beyond ignoring the public record, Plaintiffs' attacks cross the line by improperly impugning counsel, the mediator and the federal court. At various times and in various respects, Plaintiffs' submissions to this Court have implicated:

- Judge Bullock, the retired federal judge who presided over the mediation, whose handling of a conflict check (that turned up no conflict) was called out by Plaintiffs, (Nov. 28, 2017 Motion at ¶2(b) & Pls.' Ex. F);
- Chief Judge Dever, the presiding judge in *Speaks*, whose receipt of a mediation report from Judge Bullock (with the consent of the parties) was also called out by Plaintiffs, (Nov. 28, 2017 Motion at ¶ 2(h) & Pls.' Ex. Q);
- Leo and Kelly Daughtry of Daughtry, Woodard, Lawrence & Starling, co-counsel to Shipman & Wright in *Speaks*, who have been actively representing the putative class in *Speaks* since its inception and would need to be complicit in any "collusion" along the lines imagined by Plaintiffs, (Nov. 28, 2017 Motion at ¶ 7(5)); and
- the Cooperative's counsel, whose admissions *pro hac vice* Plaintiffs sought to revoke (before withdrawing the request citing the prospect of an appeal) and who are now accused by Plaintiffs of secretly conspiring to "collude." (*Id.* at ¶ 2; Sept. 22, 2017 Motion at 14.)

These attacks are unfounded and should stop. Strong differences may exist between the parties, but those differences can be litigated zealously and in good faith without further resort to any such personal attacks.

The Cooperative Did Not Hide Its Efforts to Obtain a Preclusive Settlement (Slides 4-11, 23-24): Plaintiffs have no basis to suggest that the Cooperative’s attempt to achieve global, lasting, total peace amounts to “collusion.” As with any defendant facing multiple class-actions in multiple fora, the Cooperative’s goal has always been to resolve—successfully and definitively—*all* of the parallel litigation against it, as reflected in its filings and disclosed to all interested parties. (Opp.⁴ at 17-18 (citing, *inter alia*, *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 106 (2d Cir. 2005) (“Broad class action settlements are common, since defendants and their cohorts would otherwise face nearly limitless liability from related lawsuits in jurisdictions throughout the country. Practically speaking, class action settlements simply will not occur if the parties cannot set definitive limits on defendants’ liability.”).))

Initially, as Plaintiffs themselves emphasize, the terms of the *Speaks* settlement, including its preclusive effect, were made publicly available as soon as the *Speaks* Plaintiffs filed their Motion for preliminary approval of the Settlement on **September 8**. (See Slide 4 (*Speaks* settlement conditioned on “dismissal, with prejudice, or issuance of an appropriate order precluding further pursuit of [this action]” (quoting *Speaks*, Dkt. No. 60-1, at 8)).) Of course, the motion for preliminary approval necessarily came before the final fairness hearing, at which Plaintiffs and their counsel are invited to object to the settlement (and indeed are doing so). The public filing of the settlement belies the notion that the Cooperative and the *Speaks* plaintiffs were out to keep the settlement’s terms secret.

⁴ The Cooperative’s December 18, 2017 Opposition to Plaintiffs’ Motion.

It is also revisionist for Plaintiffs now to suggest that Mr. Shipman's May 8, 2017 letter somehow assured them that he would not seek to settle on behalf of a putative class. (*See* Slide 7.) On May 5, Mr. Cherry for Plaintiffs wrote to Mr. Shipman: "If we have not heard from you **by 5 pm on Monday** [May 8, 2017] that either the mediation will not occur as scheduled or that it will go forward but just as to the individual interests of the *Speaks* Plaintiffs, ***we will assume your intent to mediate all claims that fall within the Speaks putative class designation.***" (Def.'s Ex. H at USTC-FL012454-55.) (emphasis added). Three days later, Shipman made clear that the *Speaks* mediation would in fact proceed as planned and stated: "I am sure that you are aware and have researched the impact, if any, of class certification in the state court *Lewis* case and a competing putative class action in Federal Court, a dynamic which is not unique . . . suffice it to say that is our firm belief that both the *Lewis* case and the *Speaks* case are free to proceed ***until there is a final judgment in one of them.***" (*Id.* at USTC-FL012457 (emphasis added).) In other words, Mr. Shipman was indicating that final judgment in either case stood to be preclusive of the other, depending on which came first. By no fair reading did Mr. Shipman provide the assurance Mr. Cherry had demanded by Monday (*i.e.*, May 8, 2017) that Mr. Shipman did ***not*** "inten[d] to mediate all claims that fall within the *Speaks* putative class designation." To the contrary, Plaintiffs later expressed interest in the substantive terms (*i.e.*, amount) of the *Speaks* settlement presumably because they recognized its preclusive import. (Pls.' Ex. DD.)⁵

Plaintiffs also suggest that the Cooperative's edits to the Class Notice in *Speaks*, made on September 8, attempted to hide the anticipated preclusive effect of the settlement. (Slides 10-11). That is, with all due respect, absurd. As noted above, we had already made clear the preclusive

⁵ As we have explained, the requested terms were not shared at that nascent stage because specifics were still under discussion and had yet to be memorialized and agreed, particularly relative to how funds would be distributed.

effect the settlement should have, including as spelled out in our June 22 status report to this Court. (Def.'s Ex. M at 3-4 ("The preclusive effects of a judgment in one of several class actions, including those maintained across state and federal lines jurisdictional divides, should be obvious and incontestable.)) As we have also noted above and Plaintiffs have emphasized in their slides, the motion for preliminary approval was explicit about the preclusive effect that would obtain here. (See Slide 4 (*Speaks* settlement conditioned on "dismissal, with prejudice, or issuance of an appropriate order precluding further pursuit of [this action]" (quoting *Speaks*, Dkt. No. 60-1, at 8)).) Accordingly, Plaintiffs were clear in understanding the preclusive implications of *Speaks*, including as spelled out in Mr. Lewis's attempt to intervene in response to Chief Judge Dever's preliminary approval of the terms actually proposed. (*Speaks*, Dkt. No. 70-1 at 5 (noting *Speaks* settlement term requiring dismissal of this suit and seeking intervention because Mr. Lewis had "arguments and relevant information to offer . . . related to . . . the propriety of [the *Speaks*] action").

Indeed, the revised language of the long-form class notice went on to disclose the relationship between the *Speaks* suit and this suit. (*Speaks*, Dkt. No. 60-2 ("There are two parallel lawsuits filed against U.S. Tobacco . . . This Settlement with U.S. Tobacco could impact the class that the North Carolina Superior Court certified in the Lewis and Fisher Lawsuit. The class claims in the Lewis and Fisher Lawsuit may be discontinued if this Settlement is approved and becomes final . . . this Settlement will not become effective, and its claims will not be paid, until the class claims in the Lewis and Fisher Lawsuit are discontinued (or dismissed).") That preclusion would occur was made perfectly clear, and Plaintiffs and their counsel well understood it.

The Cooperative Was Not Acting With the "Knowledge" That Speaks Could Not Pursue a Class-Wide Settlement (Slides 12-13): Plaintiffs separately argue that the Cooperative *knew*

that the *Speaks* Plaintiffs could not settle the *Speaks* Action on a class-wide basis when proceeding with the mediation. (See Slide 13 (the Cooperative “knew *Speaks* counsel lacked authority to settle *Lewis* class member interests”).) Plaintiffs urge the Court to so find notwithstanding this Court’s contrary order, which specifically found that the Cooperative’s counsel could not have “willful[ly]” violated any applicable rule, (see Oct. 13, 2017 Order), as well as undisputed facts that:

- for five years from October 2012 to September 2017, Plaintiffs never challenged the propriety of the *Speaks* Action or Shipman & Wright’s representation of the putative class with overlapping claims;
- Judge Bullock was expressly apprised by the Cooperative of Plaintiffs’ concerns about the mediation, as set forth in Mr. Cherry’s May 5, 2017 letter to Mr. Shipman, and confirmed with the parties it was appropriate for the mediation to proceed, (Def.’s Ex. H);
- this Court, too, was expressly apprised by the Cooperative in June *both* that the Cooperative had mediated with the putative *Speaks* class as represented by Shipman & Wright and their co-counsel *and* that any final approval of the resulting settlement would have preclusive effect here, yet the Court found no fault at that time, (Def.’s Ex. L at 1; Def.’s Ex. M at 3-4);
- Chief Judge Dever was briefed in September on Plaintiffs’ concerns about impropriety and possible collusion, and he dismissed them as meritless. (*Speaks*, Dkt. No. 82, at 4.)

Without revisiting the issues this Court decided this past November, all should agree at least that the Cooperative and its counsel proceeded in good faith, consistent with parallel federal litigation and their obligations there. Plaintiffs’ renewed effort to cast what transpired in prior months in a contrary, sinister light—as though the Cooperative or its counsel “knew” better and were proceeding in bad faith—is unwarranted and offbase.

Shipman and Wright Litigated Speaks Adversely to the Cooperative (Slides 14, 17, 20-25): The Cooperative and its counsel are neither positioned nor competent to speak for Shipman & Wright in responding to Plaintiffs’ charges. That notwithstanding, it seems only appropriate to

note important facts and evidence, apparently overlooked by Plaintiffs, demonstrating how *Speaks* was litigated adversely to the Cooperative, including but not limited to the following:

- First, it bears emphasizing that Shipman & Wright’s efforts on behalf of the putative *Speaks* class, following their schism with Plaintiffs’ counsel here, were publicly and lavishly disclosed from the filing of the initial *Speaks* complaint in 2010. Indeed, few if any class-action complaints go as far as that one does to detail simultaneous strategic differences and factual overlap. (*See Speaks* Compl. at ¶¶ 46-67.) It is therefore stunning that these Plaintiffs would raise no issue for years and months, only to find fault after the fact for supposedly gross improprieties that were (by their instant account) long prejudicing the class while going unaddressed.
- Second, the *Speaks* suit deviates from this one in ways that no one could think were meant to benefit the Cooperative, or curry favor with it, or to collude with it.
 - Unlike Plaintiffs here, the *Speaks* plaintiffs made a demand on the Cooperative’s Board, thereby endeavoring to obviate a potential affirmative defense that had been prominently raised (Pls.’ Ex. T, *Speaks* Am. Compl. at ¶ 6);
 - Further, the *Speaks* plaintiffs sought dissolution, a more drastic remedy that stood to enhance their negotiating leverage and raise their ceiling on damages (*Id.* at ¶¶ 97-102.);
- Third, Shipman & Wright ***participated in two years of adversarial discovery in this case***, (*cf.* Slides 14, 20, 21), as confirmed by the October 2012 *Speaks* Complaint. (*See Speaks* Compl. at ¶ 48 (describing “thorough and comprehensive investigation,” inclusive of [e]vidence adduced through the public record, pre-trial discovery, voluntary document and information exchanges with Stabilization, Stabilization’s responses to the Lewis plaintiffs’ initial written discovery, meetings with Stabilization’s counsel and General Manager, and ongoing meetings and discussions with members of the Settlement Class occurred during this investigation” as well as “extensive consultations with experts and authorities in [relevant] field[s]”).) During Shipman & Wright’s participation in this case, the Cooperative produced thousands of pages of documents and the parties conducted twenty-nine depositions. Atop *that* came the follow-up discovery the Cooperative added to update *Speaks* counsel, per their request pre-mediation. Notably, Plaintiffs here are refusing to provide requested merits discovery on the ground that the discovery provided while Shipman & Wright were participating should suffice.⁶
- Last, when rubber met road at the two-day *Speaks* mediation, it proceeded adversarially, following disclosure to Plaintiffs here, under the supervision of Judge Bullock, with the

⁶ (*See* Def.’s Dec. 11, 2017 Motion to Compel, Ex. C, July 20, 2017 email from M. VanderBrink (“As you are aware, the Defendant engaged in merits discovery with the Plaintiffs and the Plaintiffs all appeared for depositions and provided thousands of pages of documents to the Defendant.”); *see also generally* Defs.’ Dec. 11, 2017 Motion to Compel.)

Daughtrys as well as Shipman & Wright representing the *Speaks* plaintiffs. The resulting settlement was hard fought, conscientiously hammered out down to specifics, and publicly disclosed and filed for full consideration by Chief Judge Dever, consistent with federal law and procedure. Following extensive discovery in this case into all relevant communications, consisting of some 1,100 documents, Plaintiffs have identified no real evidence of collusion, impropriety, or, for that matter, anything significant they did not already know.

The Case Timeline Does Not Otherwise Suggest Collusion (Slides 15-19, 22): Finally, Plaintiffs argue that the timelines of the parallel cases suggests improper collusion. That suggestion, too, is baseless.

Chief Judge Dever ordered the *Speaks* parties to provide a status update after the North Carolina Supreme Court affirmed class certification on January 20, 2017. (Def.'s Ex. F.) The parties at that point needed to decide how to proceed. The Cooperative has proceeded in both fora accordingly, keenly aware of the ways in which *Speaks* had expanded upon this suit, including by seeking more drastic relief. At no time did these Plaintiffs seek dismissal of *Speaks* or otherwise seek any relief relative to it or Shipman & Wright, as they surely would have done had they perceived impropriety or collusion along the lines now claimed. To reiterate, however, Plaintiffs raised no issue with the Eastern District or with this Court from **April through September 2017**, even while alert to mediation, settlement, and preclusive effect that were all envisioned in *Speaks*. Only Chief Judge Dever's preliminary approval prompted these Plaintiffs to seek any relevant relief.

Plaintiffs complain that the Cooperative objected to the notice plan here while supporting the notice plan in *Speaks*. (E.g, Slides 18, 19.) The Cooperative supported (and funded) a single notice plan in *Speaks* as a condition of settlement and final approval. In contrast, there is no settlement here and no prospect that a single set of notices might suffice.

Nor was the Cooperative ever even consulted about the notice plan in this case. When Plaintiffs unilaterally moved for approval this past March, the Cooperative was obliged to object in light of numerous, glaring deficiencies identified. Indeed, the Cooperative continues to submit respectfully that the notice provided by Plaintiffs in this case was constitutionally inadequate for the reasons set forth in the April 14, 2017 opposition spanning 23 pages, and then in a June 22, 2017 sur-reply (after Plaintiffs *sub silentio* appeared to modify the notice plan in reply and to provide an untested expert declaration as their sole evidentiary support). Even so, the Court approved the notice without holding a hearing, without permitting a deposition sought by the Cooperative, without requiring any clarification or change, and without offering meaningful analysis. (July 7, 2017 Order (“The Court . . . FINDS and CONCL[U]DES that the Plan, and its included notices and exhibits (a) are reasonably calculated under the circumstances to apprise class members . . . of the pendency of this civil action and their rights with regard to this action, (b) will provide the best notice to Class Members that is practical under the circumstances and (c) will meet and comply with standards of fundamental fairness and due process in providing appropriate and adequate notice.”).) Although the October 26 opt-out date in this case has officially passed, the Cooperative remains concerned that constitutionally adequate notice has not been provided in this case—and that, as a result, absent class members may contest any adverse judgment in this case.

* * *

For the foregoing reasons and those earlier stated, Plaintiffs’ slide deck and other submissions do not establish collusion, nor do they establish a basis for this Court to pre-judge the issues pending in *Speaks*.

Respectfully submitted,

DATED: January 5, 2018

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CERTIFICATE OF SERVICE

RE: Lewis v. Flue Cured Tobacco Coop. Stabilization Corp.,
C/A No.: 05-CVS-188; 05-CVS-1938

This is to certify that the undersigned has this date served the foregoing in the above-entitled action upon all other parties to this cause via email and by depositing a copy thereof, postage paid, in the United States mail, addressed to the party or the attorney for said party as follows:

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EXHIBIT BB

NORTH CAROLINA

COUNTY OF WAKE

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

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WAKE COUNTY, C.L.C.

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ALFORD JAMES WORLEY, Executor of the)
Estate of DENNIS ANDERSON, CHANDLER)
WORLEY, HAROLD WRIGHT, and OTHERS)
SIMILARLY SITUATED,)

PLAINTIFFS,)

v.)

FLUE-CURED TOBACCO COOPERATIVE)
STABILIZATION CORPORATION (n/k/a)
UNITED STATES TOBACCO)
COOPERATIVE, INC.),)

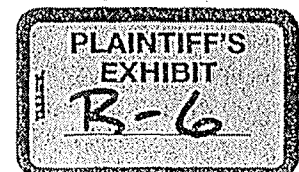
DEFENDANT.)

THIRD AMENDED AND
CONSOLIDATED COMPLAINT

NOW COME Plaintiffs, individually and on behalf of all others similarly situated, and by way of a Third Amended and Consolidated Complaint against the Defendant, FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION (n/k/a UNITED STATES TOBACCO COOPERATIVE, INC.) (hereafter "Stabilization"), say and allege as follows:

PARTIES, JURISDICTION AND VENUE

a. Dan Lewis is a tobacco farmer residing in Robeson County, North Carolina. He is the principal/owner and manager of Daniel H. Lewis Farms, Inc.



- b. George Abbot is or was a tobacco farmer residing in Darlington County, South Carolina.
- c. Robert C. Boyette is a tobacco farmer residing in Wilson County, North Carolina. He is an owner and the manager of Boyette Farms, Inc.
- d. Kyle A. Cox is or was a tobacco farmer residing in Columbus County, North Carolina.
- e. C. Monroe Enzor, Jr. is the Executor of the Estate of Crawford Monroe Enzor, Sr. who was a tobacco farmer in Columbus County, North Carolina and whose Estate is being probated in Columbus County, North Carolina.
- f. Archie Hill is or was a tobacco farmer residing in Bladen County, North Carolina.
- g. Kendall Hill is a tobacco farmer residing in Lenoir County, North Carolina.
- h. Whitney E. King is a tobacco farmer residing in Brunswick County, North Carolina.
- i. Cray Milligan is or was a tobacco farmer residing in Brunswick County, North Carolina.
- j. Richard Renegar is a tobacco farmer residing in Iredell County, North Carolina.
- k. Linwood Scott, Jr. is a tobacco farmer residing in Wilson County, North Carolina. He is the principal of and manager of Scott Farms, Inc.
- l. Orville M. Wiggins is a tobacco farmer residing in Nash County, North Carolina.
- m. Alford James Worley is the Executor of the Estate of Dennis Anderson who was a tobacco farmer in Columbus County, North Carolina whose estate is being probated in Columbus County, North Carolina.

n. Chandler Worley is or was a tobacco farmer residing in Columbus County, North Carolina.

o. Harold Wright is a citizen and resident of Bladen County, North Carolina.

p. Stabilization is a non-profit cooperative corporation organized under the laws of North Carolina with its principal place of business in Wake County, North Carolina.

q. The above-named Plaintiffs or their representatives are, or at all relevant times have been, producers of flue-cured tobacco and members of Stabilization.

Background

r. Stabilization was organized under the laws of North Carolina as a non-profit cooperative in June 1946.

s. The stated purpose of Stabilization was to involve itself on a non-profit cooperative basis in the business of receiving, grading, processing, drying, packing, storing, financing, marketing, selling, and/or distribution of flue-cured tobacco products or byproducts derived from the tobacco produced by its members and engage in the handling of such tobacco cooperatively on an agency basis. From its inception through 2005, Stabilization had the limited primary function of administering the price component of the Federal Tobacco Program pursuant to 7 U.S.C. §§ 511, 723, 1311-1316. In furtherance of that function Stabilization entered into contractual commitments and agreements with the United States Department of Agriculture ("USDA"), acting by and through the Commodity Credit Corporation ("CCC"). The stabilization program was established under the Agriculture Adjustment Act of 1938 and was intended to raise and stabilize tobacco prices and income whereby tobacco growers agreed to restrict supply *via* marketing quotas in exchange for minimum price guarantees.

t. From its inception through October of 2004, Stabilization administered the federal price support system for flue-cured tobacco. Under this system, the government, through the USDA, protected the market for flue-cured tobacco by establishing, each year, the minimum price for all grades of flue-cured tobacco and the maximum crop or "quota" of tobacco that each farmer participant was permitted to grow and sell at the protected minimum price. The "quotas" and the minimum price for each grade of tobacco were announced annually by USDA prior to each growing season.

u. To participate in the federal price support system, a flue-cured tobacco farmer was required to become a member/shareholder in Stabilization. When a farmer harvested his crop, they would bale it and bring it to a tobacco auction warehouse in their area where the tobacco would be graded by Stabilization and put up for auction. If the flue-cured tobacco brought more than the minimum price at auction it was sold to the highest bidder. If the tobacco failed to bring the minimum price at auction, Stabilization would advance the USDA set minimum price, less a fee assessed by Stabilization to administer the program, to the tobacco farmer.

v. The funds used by Stabilization in this program came from non-recourse loans from the CCC. All flue-cured tobacco that failed to sell for the minimum price at auction was processed and stored by Stabilization and pledged as collateral against the loans issued to Stabilization by the CCC which funded the advances made by Stabilization to farmers. If the tobacco from a particular year was later sold for more than the outstanding loans, these gains were to be allocated pro-rata among to the member/shareholders who participated in the program that year.

w. Member/shareholders, including Plaintiffs, all delivered and/or consigned tobacco to Stabilization for sale under the tobacco price support system.

x. Pursuant to the Articles of Incorporation ("the Articles") of Stabilization, any tobacco farmer who delivered tobacco in which the price of tobacco was protected by the federal tobacco price support was required to purchase a share of stock and become a member of Stabilization before they could participate in the price support program.

y. When joining Stabilization, flue-cured tobacco farmers entered into a contract with Stabilization which appointed Stabilization as the farmer's agent with respect to the sale of its tobacco. This contract provided:

The undersigned grower of flue-cured tobacco (hereinafter "grower") applies for membership in the Flue-Cured Tobacco Co-operative Stabilization Corporation, a non-profit co-operative organized under co-operative law with its principal office at Raleigh, North Carolina (hereinafter referred to as the "Stabilization Corporation") and herewith makes payment of \$5.00 to the undersigned agent for one (1) share of common stock.

The grower hereby appoints the Association as his agent to receive, handle and market all or such portion of the flue-cured tobacco produced by or for him as landlord, tenant or lessee as the grower may elect or choose to deliver to the Association for disposition in accordance with the terms of this contract and the Association accepts such appointment and hereby agrees to act accordingly.

The Stabilization Corporation agrees (1) to receive, handle and sell in accordance with terms of such program as it may announce for the crop of flue-cured tobacco grown in each year such tobacco as the grower may elect to deliver to the Stabilization Corporation, and (2) that in addition to the amount of paid to the grower upon delivery of tobacco, it will distribute to him his pro rata share of any net gains remaining after payment of operating and maintenance costs and expenses and a reasonable deduction for reserves as determined by the Board of Directors.

z. Throughout the years the tobacco price support program was in operation, Stabilization's member/shareholders participated in the program with Stabilization under these

terms and conditions and this was understood to be the standard course of dealing and was relied upon by shareholder/members.

aa. Once a tobacco farmer had delivered any price support tobacco to Stabilization and purchased a share of stock, that farmer was guaranteed a lifetime membership in Stabilization that could not be cancelled without a hearing. This guarantee was contractual, was required by Stabilization's Articles and was communicated in writing by managing agents of Stabilization, including but not limited to Fred Bond and later, James Stocks, to tobacco farmers who purchased shares in Stabilization. This representation was relied upon by Plaintiffs and class members.

bb. Once a shareholder obtained membership in Stabilization, that shareholder was entitled to the rights and privileges of membership as a shareholder, which included, but were not limited to, the right to nominate and vote on directors, the right to receive notice of annual and special meetings, the right to receive notice of the status of their account, the right to inspect the books of Stabilization, the right to share in the equity and/or revenue generated by Stabilization, and the right to a hearing before having these rights and privileges revoked by Stabilization.

cc. Stabilization's Articles, By-Laws and stock certificates all expressly provide that the rights of membership enjoyed by Plaintiffs and member/shareholders could not be revoked by Stabilization without a hearing.

dd. Plaintiffs herein, and other similarly situated persons, including former, deceased, and current members of Stabilization, have all either directly participated in, or had the opportunity to participate in the services of Stabilization in conjunction with the federal tobacco price support system.

ee. Stabilization was and is required by law to properly and equitably allocate capital and other funds and assets generated from the revenue derived from the sale of its member/shareholder's tobacco on an annualized basis.

ff. In or around 1979, Stabilization completed the sale of the 1967 to 1973 tobacco crop which generated revenues well in excess of the outstanding loan amounts. As a result, Stabilization held tens of millions of dollars in surplus funds. Rather than distributing all the money to its member/shareholders, Stabilization amended its Articles to permit Stabilization to hold reserve funds. Stabilization then distributed a portion of the money to its member/shareholders for the purpose of allowing the member/shareholders to pay income taxes on all the surplus funds, but maintained approximately \$26 million dollars in its reserve fund. Recognizing that this money belonged to the member/shareholders who produced it, Stabilization issued certificates of interest to its member/shareholders on a pro-rata basis. Stabilization invested this money and has used the interest to generate additional cash reserves. Stabilization continues to hold these funds today even though it has no legitimate reason to do so.

gg. Until 1982, the loans issued by the CCC to fund the tobacco price support program were completely non-recourse, meaning that all losses or defaults incurred under the program were borne by the CCC and the taxpayers of the United States.

hh. In 1982, Congress passed the No-Net Cost Tobacco Program Act ("NNCA") to insulate taxpayers from bearing the losses of the tobacco price support program. Under the NNCA, beginning in 1982, Stabilization collected an additional assessment from its member/shareholders when their tobacco was brought to the auction house. The purpose of these assessments was to establish a pool of money to off-set any losses.

ii. By statute and agreement between Stabilization and the CCC, these assessments were to be maintained in a Fund or Account and allocated among the flue-cured tobacco farmers pro-rata based upon that farmer's assessments for a given crop year and served as additional collateral against the CCC tobacco crop loans for a given year. If after the sale of all tobacco from a given crop year there were still loan amounts outstanding, the NNCA assessments were used to cover the outstanding loan amounts and insure that the government would suffer no losses from the tobacco program. If, however, there were assessments or pledged tobacco left over after the repayment of these loans, the assessments and remaining tobacco were the property of the member/shareholders who had participated in the tobacco price support program.

jj. Stabilization was the agent of its member/shareholders with respect to these assessments and the pledged tobacco.

kk. From 1982 to 1984, Stabilization collected millions of dollars in NNCA assessments and maintained them in a Fund under the Act which was held as collateral against outstanding crop loans. Under the NNCA, Stabilization was required to issue certificates of interest in the fund to its member/shareholders.

ll. Beginning in 1985, Stabilization, without the approval of its member/shareholders, converted the Fund into an Account associated with the CCC. These funds, along with unsold tobacco from 1982 to 1984, continued to serve as collateral for outstanding crop loans.

mm. Subsequently, Stabilization utilized the NNCA assessments of its member/shareholders from 1982-1984 to redeem millions of pounds of unsold tobacco that had served as collateral to the CCC's crop loans. Stabilization later sold that tobacco to tobacco manufacturers free and clear of any loans. Those sales generated revenue that resulted in a pool

of money of approximately \$110 million dollars after taxes. Stabilization allocated these revenues and created equity participation certificates which were subsequently cancelled and/or revoked at the direction of Stabilization without the consent of its shareholders. Rather than distributing these funds to the member/shareholders who owned them, Stabilization has retained these funds as additional reserve. Stabilization has invested this money and used the interest to generate additional cash reserves. Stabilization continues to hold this money, even though it is the property of its member/shareholders and no longer has any legitimate reason to do so.

nn. Up through approximately 2000, the tobacco price support system was operated through the use of the auction warehouse system through Stabilization as it had been since Stabilization's inception in 1946. However, beginning in 2000, farmers began selling their tobacco under direct contracts with tobacco purchasers at a higher price than the USDA-set minimum price levels. The marketing of flue-cured tobacco through direct contracts increased dramatically in 2001 and the following years.

oo. With the increase in direct contracting, the number of tobacco auction houses within the flue-cured geographical region decreased substantially and Stabilization's role in the tobacco price support system also decreased.

pp. In 2001, in an effort to justify its continued existence and to combat direct contracting, Stabilization began operating two buying stations for flue-cured tobacco -- one located in Wilson, North Carolina and one located in Statesboro, Georgia. The purpose of these buying stations was to encourage its member/shareholders to stay with the auction system.

qq. Stabilization has continued to operate these buying stations and has opened approximately a dozen or so more buying stations at a cost subsidized by the member/shareholders' money and assets which are being held by Stabilization.

rr. In 2002, without the approval of the member/shareholders, Stabilization disqualified a bona fide member/shareholder from running for the Board of Directors for District 7 and disqualified other member/shareholders from voting in the District election, all without a hearing. The stated basis for the disqualifications was that the member/shareholders had entered production contracts directly with tobacco manufacturers. Member/shareholder's protests to this treatment were unheeded by Stabilization. In spite of the protests of a number of member/shareholders, the election was eventually certified by Stabilization without any hearing on these protests, resulting in an illegally constituted board. The illegally constituted Board began meeting on May 24, 2002.

ss. By 2003, it became apparent that (1) direct contracting for flue-cured tobacco was growing and (2) the tobacco price support program was most probably coming to an end. In response to these threats to its existence, Stabilization began internally to devise a plan to justify its continued existence beyond the tobacco price support system. To that end, Stabilization, without the knowledge or approval of its member/shareholders, amended its by-laws and made plans to use the hundreds of millions of dollars it had "reserved" from the 1967-1973 crops and the revenue from the sale of tobacco redeemed with the 1982-1984 NNCA assessments, together with the interest, to embark on a scheme to purchase a cigarette manufacturing plant so that Stabilization could justify its existence in a direct contract market after the end of the tobacco price support program.

tt. During this same time, Stabilization undertook a program to purge hundreds of thousands of member/shareholders from its membership rolls, all without a hearing or proper notice.

uu. In October of 2004, the federal price support program came to an end. The elimination of the price support system ended the primary purpose for which Stabilization had operated for almost sixty years. At the same time, the basis upon which Plaintiffs and other class members joined and supported Stabilization no longer existed or was frustrated by Stabilization beyond the control of the member/shareholders.

vv. In conjunction with the end of the tobacco price support program, after all loans from the CCC were satisfied, the CCC released approximately 83 million pounds of processed tobacco to Stabilization as the agent of its member/shareholders. Rather than return this tobacco to its member/shareholders or sell it on their behalf, Stabilization took possession of this tobacco and sold it for its own benefit. As a result of these actions, Stabilization generated approximately \$125 million in additional revenue which it has asserted ownership of and kept to the exclusion of the member/shareholders.

ww. Also in conjunction with the end of the tobacco price support system, in a letter dated December 20, 2004 ("December 20 Notification"), Stabilization notified Plaintiffs and other member/shareholders that they would be required to enter into exclusive contracts with Stabilization for 2005, under which Plaintiffs and other member/shareholders would be required to grow tobacco exclusively for Stabilization for a set and lower price than what could otherwise be obtained and for a set and limited quantity, or they would cease to be member/shareholders of Stabilization. Subsequently, and as a direct result of these lawsuits, Stabilization amended its notice to allow member/shareholders to sign non-exclusive contracts, with no guarantee of any price or quantity purchase at the end of the growing season.

xx. The December 20 Notification also advised that any member who failed to contract with Stabilization would be paid \$5.00 for his/her stock certificate and removed as a

member/shareholder of Stabilization. Stabilization advised that no member had any interest in any other capital accounts and had no other interest in the retained earnings of the Cooperative organization in spite of Stabilization's obligation to allocate the reserves, retained earnings, and margins to the member/shareholders, including Plaintiffs. This was the first time Stabilization had openly notified its member/shareholders of its asserted dominion over the assets held by Stabilization and that member/shareholders had no rights to these funds. The effect, therefore, of the December 20 Notification, and the requirement to enter into the exclusive contract with Stabilization, was to force Plaintiffs to either enter into that contract, at reduced prices and quantities, or lose their substantial investment in Stabilization, including their share of the reserves, retained earnings, and margins.

yy. As a result of these new requirements, Stabilization continued to systematically disenfranchise Plaintiffs and other member/shareholders by purging the membership rolls and eliminating Plaintiffs as member/shareholders, all without a hearing.

zz. As a result of the foregoing scheme, Stabilization has expelled hundreds of thousands of its member/shareholders in violation of its Articles, the laws of North Carolina, its stock certificates, its By-Laws, and its prior contracts with member/shareholders. In so doing, Stabilization took control of hundreds of millions of dollars in funds and tobacco to the exclusion of hundreds of thousands of its member/shareholders.

aaa. As a direct result of the efforts of Stabilization to disenfranchise Plaintiffs and other member/shareholders, Stabilization is attempting to create a "last man standing" scenario in which a few hundred remaining member/shareholders potentially have the benefit of hundreds of millions of dollars in assets which have been created through the efforts of all member/shareholders, including Plaintiffs. As a further result of the efforts of Stabilization to

disenfranchise Plaintiffs and other member/shareholders, Stabilization has taken these actions to benefit management and to pay and maintain the substantial salaries of its officers. These efforts of Stabilization to disenfranchise the Plaintiffs were performed by directors and officers for the sole purpose of disenfranchising the Plaintiffs without providing the Plaintiffs notice. The corporation, by and through its officers and directors, purged the Plaintiffs from the membership rolls, attempted to cancel the Plaintiffs' rights and equities in the corporation, and removed the Plaintiffs for the sole purpose of enhancing the last man standing to benefit management and the few remaining member/shareholders by eliminating the Plaintiffs as member/shareholders.

bbb. On or about December 2004, Stabilization informed its member/shareholders that it would use the hundreds of millions of dollars in assets and funds to support a new marketing and manufacturing program on behalf of its remaining members. This program was designed to utilize all of the assets and funds of Stabilization to maintain its corporate existence, maintain the corporate bureaucracy and salaried positions of its officers and other employees, and eliminate the vast majority of member/shareholders leaving hundreds of millions of dollars under the control and for the benefit of the "last men standing," all to the detriment, harm, injury, loss, and against the wishes of Plaintiffs and other member/shareholders.

ccc. Stabilization began operating in 2005 as a purchaser and manufacturer of tobacco products, including specifically the operation of a facility in Timberlake, North Carolina wherein tobacco strips, cut rags, puff stems, and cigarettes allegedly were produced and marketed to consumers worldwide. The operation of such a facility has not provided an adequate market, both as to quantity and price, so as to justify the Plaintiffs and other class members' continued participation as members of Stabilization, and in fact, has caused Stabilization to compete with many of its member/shareholders, by reason of those members' contracts with tobacco

companies. In addition, Stabilization offered "advancements" to those that signed an exclusive contract, grew and brought to a marketing center exportable grade tobacco, and whose tobacco did not sell at auctions to be conducted by Stabilization. Stabilization attempted to develop an export market for the tobacco purchased by it, but has absorbed tens of millions of dollars in losses in its efforts to date. Prior to the beginning of this scheme in 2005, Stabilization attempted for many years to develop a successful export market for its members' tobacco, but its efforts in that regard were unsuccessful. Nevertheless, Stabilization's continued efforts to develop these markets with tobacco grown by the Plaintiffs and other class members has exposed the capital of Stabilization, and therefore, the contributions made by the Plaintiffs and other class members, to dissipation, loss, and waste.

ddd. Since 2005, Stabilization has utilized the additional paid-in capital, retained earnings, and other revenue derived from the sale of Plaintiffs and member/shareholders' tobacco to maintain its corporate existence, maintain the corporate bureaucracy and salaried positions of its officers and other employees, and eliminate the vast majority of member/shareholders leaving hundreds of millions of dollars under the control and for the benefit of the "last men standing," to the detriment, harm, injury, and loss of Plaintiffs and other member/shareholders.

Defendant's Acts and Omissions

eee. Throughout the years, Stabilization served as the agent for its member/shareholders, including Plaintiffs, as part of the Federal Tobacco Price Support System which was formally administered through 7 U.S.C. §§1311-1316 and 7 U.S.C. §1445.

fff. Pursuant to the Articles, the By-Laws, the Charter and other corporate documents of Stabilization, and pursuant to statutory authority and certain marketing agreements, any

revenue realized from the sale of member/shareholders' tobacco, any funds available to Stabilization in the No-Net Cost Account or Fund, any tobacco held or redeemed by Stabilization, or any other activities of Stabilization were to be held by Stabilization as an agent for the benefit of its member/shareholders, including Plaintiffs.

ggg. Stabilization had a duty to account for any such revenue and/or any excess revenues after the deduction of the cost of such activities made on behalf of its member/shareholders, which would include Plaintiffs, and to further account for each member/shareholder, including Plaintiffs, those excess revenues, profits and/or consigned portions of the inventory.

hhh. Pursuant to statutory law of North Carolina as well as the corporate Articles and By-Laws of Stabilization, any net profits and/or earnings realized by the sale of the member/shareholders' tobacco would be the property of and would belong to the member/shareholders, including Plaintiffs, based upon their ratio of tobacco delivered.

iii. Stabilization also served as an agent with respect to its member/shareholders, including Plaintiffs, with respect to the nNo-Net Cost Account and Fund. Assessments were paid by Plaintiffs and were collected by Stabilization, and these funds collateralized crop loans made by the CCC for payment under the federal tobacco program. From the period of 1982 to 1984, these assessments were maintained in a capital fund which was separate from other accounts. These assessments were continually collected from 1982 through 2004. Although Stabilization originally allocated these funds and issued equity participation certificates, it later cancelled these by action of its Board of Directors without the consent, approval or knowledge of its member/shareholders.

jjj. At the close of the tobacco program and after the satisfaction of loans from the CCC, there were hundreds of millions of dollars remaining in the No-Net Cost Account or Fund that had been collected from members of Stabilization, including Plaintiffs, beginning in 1982.

kkk. Stabilization used the hundreds of millions of dollars of these funds to redeem approximately 83 million pounds of processed and stored tobacco. Stabilization then sold this tobacco free and clear of any loans generating approximately \$125 million dollars in revenue. Stabilization has retained these funds and has converted these funds to its own behalf and to the exclusion of Plaintiffs and has refused to return these funds to the member/shareholder, including Plaintiffs, to whom they rightfully belong.

lll. Stabilization has converted and continues to convert the funds of its member/shareholders, including Plaintiffs, to its own use and has refused to pay over the proceeds owed to the member/shareholders, including Plaintiffs, as required by North Carolina statutory law, by its own By-Laws, and contrary to its duty to allocate excess revenues and profits.

mmm. Pursuant to its By-Laws and pursuant to North Carolina statutory law, Stabilization was and is required to allocate any revenues, net earnings or assets to its member/shareholders, including Plaintiffs and other member/shareholders, at least on an annual basis. Pursuant to the By-Laws, Stabilization was and is obligated to allocate these revenues, net earnings or assets to Plaintiffs at the end of each fiscal year in either cash and/or credit to the capital accounts following the close of the succeeding fiscal year.

nnn. Pursuant to North Carolina statutory law, when a member/shareholder is expelled or removed from membership, Stabilization is required to pay any amounts due for capital stock certificates of interest, reserves or other equity credits to such member/shareholders. Plaintiffs

and other member/shareholders have been removed from membership without a hearing and Stabilization has refused to pay any and all amounts due on a timely basis.

ooo. From its inception, the member/shareholders of Stabilization, including Plaintiffs, from time to time by shareholder and/or member vote, would adopt By-Laws or on occasion may amend the Articles. After the Charter, Articles, or By-Laws were amended by the member/shareholders, any further action to amend either the By-Laws and/or the Articles would require member/shareholder approval.

ppp. Stabilization has systematically amended its By-Laws to disenfranchise Plaintiffs and other member/shareholders by removing them from its membership rolls by denying membership rights, and by maintaining the position that member/shareholders who have not signed current marketing agreements have no standing to contest the actions taken by Stabilization.

qqq. Stabilization has improperly claimed ownership in tobacco that was owned by its member/shareholders and, as a result of its improper claims of ownership, has paid federal and state income taxes on the proceeds of said tobacco sales, all to the detriment of Plaintiffs and member/shareholders.

rrr. As a cooperative organization, Stabilization is not allowed to persistently subsidize member activity with non-member income. Nevertheless, Stabilization has subsidized its activities and businesses, carried out on behalf of a few hundred current members, with the interest income, reserves, capital accounts and other property generated by hundreds of thousands of member/shareholders who have been disenfranchised by the actions of Stabilization.

sss. Stabilization has consistently offset the patronage losses sustained at the Timberlake facility and other operational losses resulting from patronage with interest income which was non-patronage income. The net operating losses at Timberlake from the period of 2005 through 2008 have been in excess of \$21,000,000.

ttt. Stabilization's actions in accruing excess accumulated earnings could subject these assets to tax and penalty, all to the detriment of Plaintiffs and other member/shareholders.

uuu. Patronage losses which have occurred in the last several years have been offset with non-member non-patronage income which constitutes a substantial income tax risk by the netting of member losses with non-member income. These acts are exposing Stabilization and its member/shareholders, which include Plaintiffs, with excess retained earnings income tax risks.

vvv. Stabilization, by and through its managers, officers, and agents, has devised numerous business plans and model budget plans with extremely unreasonable assumptions and projections for the sole purpose of withholding monies owed to Plaintiffs by claiming the use of these funds is required for future economic reasons.

www. The acts and omissions complained of herein were undertaken by Stabilization without the benefit of independent or disinterested advice or judgment, without the benefit of appropriate due diligence, and in many cases, were approved or advocated by employees or decision makers with self-interest in the decisions.

xxx. As a result, Stabilization, by and through its business plans, model plans, or budgets, has created unreasonable assumptions and unreasonable factual scenarios for the sole purpose of protecting its own existence and with the goal of creating a "last man standing" or to bestow huge benefits upon its limited number of existing members to the detriment of Plaintiffs

and other member/shareholders. As a direct result of these acts, Stabilization has imperiled its assets and has taken assets generated by the disenfranchised member/shareholders, including Plaintiffs, whose patronage formed the operating capital of Stabilization, to subsidize the ever-dwindling approximately 851 active member/shareholders. As a direct result of these acts, Stabilization intends that these remaining active members, the "last men standing," would be allowed to use or divide all of the assets of the corporation to the exclusion of the disenfranchised Plaintiffs without recognition and/or payment of the capital and/or equity generated by Plaintiffs, all for the benefit of a few.

yyy. Stabilization has entered into extensive debt relationships and banking relationships with Wachovia Bank, subjecting the assets of Stabilization to undue financial risk and extensive cross-collateralization of assets owned by Plaintiffs, which has affected the credit worthiness of Stabilization. As a direct result of Stabilization's relationship with Wachovia Bank, Stabilization has been controlled by Wachovia Bank and has allowed unreasonable business restrictions to be placed upon its assets.

CLASS ACTION ALLEGATIONS

78. The class consists of:

All individuals, proprietorships, partnerships, corporations, or their heirs, representatives, executors or assigns and other proper entities that have been members/shareholders of the Flue-Cured Tobacco Cooperative Stabilization Corporation

(n/k/a; United States Tobacco Cooperative, Inc.) (hereafter "Stabilization") at any time from its inception through the end of crop year 2004, and any heirs, representatives, executors, successors or assigns, and;

- a. had not requested the cancellation of their membership and whose membership was cancelled by Stabilization without a hearing, and/or
- b. were issued a certificate of interest in capital reserve by Stabilization for any of the tobacco crop years between and including 1967-1973, and/or
- c. delivered, consigned for sale, or sold flue-cured tobacco and paid an assessment for deposit into the No Net Cost Tobacco Fund or No Net Cost Tobacco Account during any tobacco crop years between and including 1982-2004.

79. Common questions of law and fact exist as to all members of the Class, and they predominate over any questions that affect only individual Class Members. The questions of law and fact that are common to the Class, and which predominate over any individualized issues, include but are not limited to the following:

- a. Whether Stabilization failed to allocate and identify the total equity of Stabilization among the members on a yearly basis;
- b. Whether Stabilization violated and breached its contractual or other express or implied duties owed to the Plaintiffs;
- c. Whether Stabilization, by and through its corporate officers and agents, has intentionally and/or negligently violated Plaintiffs' contractual rights and interest and

property rights in violation of its By-Laws, its Articles, federal and state statutes, and North Carolina and United States Constitutional prohibitions;

d. Whether Stabilization's conduct, as set forth in the December 20 notification and the conduct flowing from that Notification and subsequent correspondence, violated Chapter 75 of the North Carolina General Statutes;

e. Whether Stabilization's unreasonable failure to allocate and distribute capital earnings, income, to its members is unlawful and in violation of Plaintiffs' common law and statutory rights, including Chapter 75 of the North Carolina General Statutes;

f. Whether Stabilization's continued use of interest income generated from the assets that are owned by Plaintiffs and other similarly situated persons to offset member patronage losses is in violation of federal tax laws;

g. Whether Stabilization's payment of income taxes on property owned by Plaintiffs, but under claims that it was owned by Stabilization, was improper;

h. Whether the disenfranchisement of the member/shareholders and the removal of Plaintiff member/shareholders from membership without a hearing was improper.

i. Whether the disenfranchisement of the member/shareholders and the removal of the Plaintiff member/shareholders from membership resulted from self-dealing and a breach of loyalty owed by the corporation to its member/shareholders.

80. Plaintiffs' claims are typical of the claims of all Class Members. They are the same

legal claims based upon the same factual predicates and course of conduct as those of any other Class Member.

81. The Class is sufficiently numerous that joinder of all members is impracticable. The Class consists of thousands of current or former tobacco farmers and their heirs who have owned or currently own shares in Stabilization.

82. Plaintiffs will fairly and adequately protect the interests of the Class. The interests of the class representatives are coincident with, and not antagonistic to, those of the other Class Members, and Plaintiffs are represented by experienced and able counsel who have previously litigated class actions and similar types of cases.

83. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy described herein, because it permits a large number of persons to prosecute their common claims in a single forum simultaneously, efficiently and without unnecessary duplication of evidence and effort. Class treatment will also permit the adjudication of claims by Class Members who could not afford to individually litigate these claims against a large corporate defendant.

84. If Class Members were required to pursue individual litigation, it would be unduly burdensome to the North Carolina Courts within which individual litigation would proceed, and it would present the possibility, if not probability, of inconsistent results. By contrast, the class action device presents less management difficulty and provides the benefit of unitary adjudication, economies of scale, and comprehensive supervision by a single Court. Concentrating this litigation into one form would aid judicial economy and efficiency, promote parity among the claims of individual Class Members, and result in judicial consistency. Notice

of the pendency of this action and any resolution thereof can be provided to Class Members by direct notice, which is the best notice practicable.

85. The prosecution of this matter as an opt-out class action would significantly reduce the possibilities of repetitive litigation thereby providing redress for Class Members who would not or could not otherwise prosecute this complex litigation on an individual basis. Plaintiffs envision no unusual difficulty in the management of this class action.

COUNT I: CONVERSION

86. Plaintiffs incorporate each allegation as if fully set forth in this Count.

87. Plaintiffs are equitable owners of the assets of Stabilization. Plaintiffs are the owners of certain tobacco that was delivered to Stabilization. Plaintiffs are owners of certain funds which were collected by Stabilization as assessments and deposited in the NNCA and NNCF as collateral to the CCC for non-recourse loans.

88. Stabilization has unlawfully misappropriated, failed to allocate, and converted the property and funds belonging to Plaintiffs for its own benefit and continues to do so with respect to the property and funds belonging to Plaintiffs.

89. Stabilization's conduct as previously described herein was the unauthorized assumption and control of the property of Plaintiffs.

90. The assets of Stabilization were owned by Plaintiffs, and Stabilization has taken exclusive control over these assets to the detriment of Plaintiffs.

91. Stabilization has unlawfully converted these assets and continues to convert these assets, and, as a direct and proximate result of the acts of Stabilization, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

COUNT II: BREACH OF CONTRACT

92. Plaintiffs incorporate each allegation as if fully set forth in this Count.

93. At all times, Stabilization was an agent for its member/shareholders with respect to the sale of tobacco and the storage and warehousing of tobacco and with respect to the CCC and the Federal Tobacco Price Support Program and the No-Net Cost Tobacco Act of 1982. The agency relationship existed as a matter of contract and by implication through course of dealing.

94. As the agent for its member/shareholders, Stabilization owed express and implied duties to its member/shareholders.

95. As alleged herein, Stabilization has converted the property of its principals to its own use without the permission or authorization of Plaintiffs.

96. As alleged herein, Stabilization has utilized its position as the agent of the Plaintiffs and class members to act against the financial interests of Plaintiffs.

97. As alleged herein, Stabilization has deprived Plaintiffs of the benefits and revenue realized by Stabilization.

98. The actions of Stabilization constitute breaches and continuing breaches of the contractual duties owed to its principals and have proximately caused damages to Plaintiffs.

COUNT III: IMPOSITION OF CONSTRUCTIVE TRUST

99. Plaintiffs incorporate each allegation as if fully set forth in this Count.

100. The breach of duties by Stabilization has resulted in the continued conversion of the goods and funds owned by Plaintiffs.

101. The actions taken by Stabilization have been illegal and unauthorized due to the disenfranchisement of Plaintiffs.

102. The unauthorized acts have changed the nature of the assets held by Stabilization and threaten to further diminish the assets and property to which the member/shareholders are entitled.

103. Upon information and belief, Stabilization will attempt to further dispose of all or part of such goods and funds in defense and frustration of this action and the rights of Plaintiffs before the Court can provide full relief.

104. Plaintiffs will suffer an immediate and irreparable loss and injury if a constructive trust is not imposed on the amounts that Plaintiffs are entitled to receive as shareholders and members of Stabilization.

COUNT IV: ACCOUNTING

105. Plaintiffs incorporate each allegation as if fully set forth in this Count.

106. Stabilization was required on an annual basis to make an allocation of the monies received.

107. Despite their status as members and shareholders of Stabilization, Plaintiffs have been, through breach of duty, conversion, or other illegality, denied their share of the revenue, surplus, or other assets held by Stabilization against their interests.

108. Stabilization was at all times the agent of Plaintiffs and owed and continues to owe a duty to account for all funds and property in its possession in which Plaintiffs have an equitable and beneficial interest.

109. In order to properly establish the allocation and distribution of the profits, surplus, and other assets held by Stabilization, it will be necessary to conduct a full accounting.

110. Plaintiffs are entitled to the appointment of an independent professional to conduct an accounting of Stabilization and all of the assets it holds.

COUNT V: DISTRIBUTION

111. Plaintiffs incorporate each allegation as if fully set forth in this Count.

112. Stabilization, acting by and through its officers, is depriving Plaintiffs and current member/shareholders of their property interests in and capital credits and equity of Stabilization by Stabilization's failure to distribute to former and current members of Stabilization the capital equity heretofore accumulated by it and which is currently maintained by Stabilization, which Plaintiffs reasonably believe to be in excess of \$240,000,000.00.

113. Stabilization was required by its By-Laws as well as by statutory authority to allocate on an annual basis its capital equity credits.

114. Plaintiffs are entitled to have Stabilization's retained earnings either fully or partially distributed among the Class Members.

115. Plaintiffs and Class Members are entitled to have all illegally or improperly retained funds distributed to the Class Members.

COUNT VI: DECLARATORY JUDGMENT

116. Plaintiffs incorporate each allegation as if fully set forth in this Count.

117. As alleged herein, Plaintiffs seek and are entitled to a Declaratory Judgment pursuant to N. C. Gen. Stat. §1-253, *et seq.* This Court has jurisdiction over the parties and there is a justifiable case and/or controversy between the parties regarding:

a. whether with the enactment of The Fair and Equitable Tobacco Reform of 2004, which eliminated the tobacco price support program, the primary function of Stabilization (administering the price component of the federal tobacco price support program under contractual agreement with the CCC) ceased to exist.

- b. whether the basis upon which Plaintiffs and other members joined and supported Stabilization since its inception came to an end and no longer exists.
- c. whether the reasonable expectations of Plaintiffs as member/shareholders of Stabilization have been frustrated, which expectations were known or assumed and concurred in by the other shareholders of Stabilization, and such frustration was without the fault and beyond the control of Plaintiffs.
- d. whether Plaintiffs are entitled to have Stabilization purchase their interests at a fair value;
- e. whether the conduct of Stabilization, as set forth in the December 20 Notification and the conduct flowing from that Notification and subsequent correspondence, violated Chapter 75 of the North Carolina General Statutes;
- f. whether Stabilization's unreasonable failure to allocate and distribute capital earnings income, revenue, and other assets to its members is unlawful and violates Plaintiffs' common law and statutory rights, including Chapter 75 of the North Carolina General Statutes;
- g. whether Plaintiffs are bona fide member/shareholders in Stabilization and are entitled to all rights, privileges, and benefits resulting therefrom, including rights to nominate and elect their own eligible Director;
- h. whether the acts of Stabilization's Board Members exceeded the authority of the Board of Directors, in that the 2002 District Seven election of director Bruce Flye was illegal and unauthorized;

i. whether the acts of Stabilization in planning and executing its scheme to purchase a cigarette manufacturing facility, dilute the membership/shareholders, and convert the assets of the membership for its own benefit were illegal and unauthorized;

j. whether the assets of Stabilization are the property of the member/shareholders who produced it;

k. Whether the disenfranchisement of the member/shareholders and the removal of member/shareholders from membership rolls without a hearing was improper; and

l. whether Plaintiffs are entitled to a distribution of their interests and investment in Stabilization.

118. Plaintiffs have the right, therefore, to have this Court issue its declaratory judgment on this and any other issues that might arise during the course of this litigation.

COUNT VII: ULTRA VIRES

119. Plaintiffs incorporate each allegation as if fully set forth in this Count.

120. Stabilization has systematically attempted to disenfranchise Plaintiffs from the membership and acted with the sole purpose of eliminating Plaintiffs as shareholders and/or members of Stabilization.

121. Stabilization intended to eliminate Plaintiffs from the membership rolls to create a "last man standing" scenario.

122. Stabilization's acts in amending its By-Laws and purging its membership rolls and its deliberate attempts to disenfranchise Plaintiffs was contrary to its By-Laws, its Charter, its Articles, and North Carolina statutory guidelines. Stabilization's acts as hereinabove set forth constituted breaches of duty by the disenfranchisement of the Plaintiffs which said acts

constituted self-dealing, were performed for bad motives, were in direct breach of the loyalties and obligations owed to the member/shareholders, were performed with conflicts of interest, all with the express purpose of injuring the vast majority of the member/shareholders.

123. Stabilization enacted policies and took the following acts which have directly impaired and damaged the interests of Plaintiffs in the Stabilization's assets:

- a. The disenfranchisement of the membership without conducting a hearing;
- b. The purging of membership rolls in direct conflict with Stabilization's By-Laws and Charter and in contradiction of North Carolina statutory law;
- c. The entering into of significant debt relationships, including the pledging of assets owned by Plaintiffs to secure those debt obligations;
- d. The failure to allocate and distribute net margins as required by Stabilization's By-Laws and North Carolina statutory guidelines;
- e. The continued use of interest income generated from the assets of Stabilization which are owned by Plaintiffs to offset member patronage losses in violation of the federal tax laws;
- f. The adoption of unreasonable and unreliable business plans and budget plans for the sole purpose of creating the false impression of a significant need for financial capital, knowing that said plans and budgets are not supported by previous economic forecasts and documentation;
- g. The adoption of a business plan and budget plan which are not commercially reasonable and are contrary to industry standards;

h. The entering into of a significant debt relationship with Wachovia Bank, including the pledging of assets and cross-collateralization of assets subjecting Stabilization to unreasonable restraints by Wachovia Bank.

i. The improper retention of earnings and failure to distribute membership patronage;

j. The removal of capital equity credits;

k. The improper payment of taxes on property owned by Plaintiffs but under claims that Stabilization owned said property;

l. The improper restraints on existing growers to obtain viable contracts, the refusal to extend contracts to growers who requested them, and the refusal to allow existing growers to obtain viable contracts all for the purpose and protection of the limited number of farmers who would directly benefit from a "last man standing;" and

m. Such other acts as shall be shown at the trial of this action.

124. The aforesaid acts are unauthorized corporate acts and said acts are *ultra vires*.

125. Plaintiffs request that the Court set aside the aforesaid acts and award damages to Plaintiffs in excess of \$10,000.00. Plaintiffs request that the Court distribute to Plaintiffs those assets in Stabilization's possession which are owned by Plaintiffs, because said assets have been impaired by the unauthorized acts of Stabilization.

COUNT VIII: BREACH OF CONTRACT

126. Plaintiffs incorporate each allegation as if fully set forth in this Count.

127. Stabilization entered into binding contracts with Plaintiffs in exchange for the purchase of shares in exchange for the delivery of their tobacco to Stabilization.

128. These contracts were made in the name of the general agent of Stabilization and promised that the shares purchased by Plaintiffs entitled them to a lifetime membership in Stabilization that could not be cancelled or taken away.

129. The promises contained in these contracts were material to Plaintiffs.

130. Stabilization has breached and continues to breach these contracts by excluding and revoking the member/shareholders' rights and privileges in Stabilization.

131. Plaintiffs have suffered and will continue to suffer damages as a result of these actions.

COUNT IX: UNFAIR TRADE PRACTICES

132. Plaintiffs incorporate each allegation as if fully set forth in this Count.

133. The December 20 Notification and the exclusive agreement which such notification required Plaintiffs to sign in order to maintain their membership in Stabilization and thereby protect their investment therein, including their share of the reserves, retained earnings, and margins, constituted an unfair and deceptive trade practice affecting commerce and was in violation of N.C.G.S. § 75-1.1 *et seq.*

134. The December 20 Notification and the exclusive agreements made a part and requirement thereof are void. Alternatively, as a direct and proximate result of the unfair conduct of Stabilization, Plaintiffs have been injured and are entitled to have and recover judgment against Stabilization in an amount in excess of TEN THOUSAND AND NO/100 (\$10,000.00) DOLLARS and to have and recover treble damages pursuant to the provisions of N.C.G.S. § 75-16 and to the recovery of their costs and attorney fees.

135. Stabilization has improperly paid taxes on property owned by Plaintiffs, but under the claims that Stabilization owned said property. The payment of said taxes was improper and has been to the direct detriment of Plaintiffs.

136. Stabilization has continued to use interest income generated from assets which are owned by Plaintiffs to offset operating losses in violation of the federal tax laws.

137. The improper payment of taxes on property owned by Plaintiffs has depleted the assets of Stabilization to the detriment of Plaintiffs.

138. The improper treatment of interest income by using the income on property owned by Plaintiffs to offset operating losses is in violation of the federal tax laws, and will subject Stabilization to additional tax liabilities, including fines, interest and penalties to the detriment of Plaintiffs.

139. The aforesaid acts constitute unfair and deceptive trade practices affecting commerce and are in violation of N.C.G.S. § 75-1.1 *et seq.*

140. As a direct and proximate result of the unfair conduct of Stabilization and the unfair and deceptive practices committed by Stabilization, Plaintiffs have been injured and are entitled to have and recover judgment against Stabilization in an amount in excess of TEN THOUSAND AND NO/100 (\$10,000.00) DOLLARS and to have and recover treble damages pursuant to the provisions of N.C.G.S. § 75-16 and to the recovery of their costs and attorney fees.

Demand for a Jury Trial

174. Plaintiffs demand a jury trial on all issues of fact.

Satisfaction of All Conditions Precedent

175. To the extent to which they exist, Plaintiffs have satisfied all conditions precedent prior to filing this action.

Prayer for Relief

WHEREFORE, Plaintiffs demand judgment against Stabilization and pray the Court:

1. Certify a class action pursuant to Rule 23, NCRCP, appoint the named plaintiffs as class representatives, and appoint C. Alan Runyan and William Robert Cherry, Jr. as Co-Lead Class Counsel;
2. Enter Judgment in favor of Plaintiffs in an amount to be determined to include actual, compensatory, special, treble and punitive damages that may be proven at the trial of this case and may be available under laws and statutes applicable to the parties;
3. Enter a Declaratory Judgment in favor of Plaintiffs finding:
 - a. That Plaintiffs are bona fide member/shareholders in Stabilization and are entitled to all rights, privileges, and benefits resulting therefrom, including rights to nominate and elect their own eligible Directors;
 - b. That the acts of Stabilization exceeded the authority of the Board of Directors, in that the 2002 District Seven election of director Bruce Flye was illegal and unauthorized;
 - c. That the tobacco stored by Stabilization is the property of and titled to the member/shareholders who produced it;
 - d. That the Court order a partial distribution of the assets of Stabilization to the Class.
4. That the Court award to Plaintiffs the costs of this suit and reasonable attorneys fees incurred in the prosecution of this action;

5. That the Court appoint an independent auditor to conduct an accounting of assets, net gains and losses of Stabilization; the No-Net Cost tobacco accounts and funds, the stored inventory of tobacco that is being held by Stabilization and any revenues generated from the sale of stored tobacco;

6. That the Court Order the creation of a constructive trust over the assets and inventory being held by Stabilization; and

7. That the Court enter any other such Judgment, Order or Decree against Stabilization as may be determined just and equitable or appropriate under the applicable laws, statutes or in equity.

This the 9th day of July 2012

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing was duly served upon each party to this cause by email and by delivery as stated below a copy thereof to their counsel of record indicated below either by hand-delivery or with the proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Postal Service, properly addressed as follows:

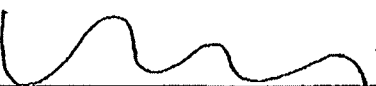
Via Hand Delivery

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This 9th day of July, 2012.



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EXHIBIT CC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN,
ROBERT POINDEXTER, MIKE MITCHELL,
ROY L. COOK, ALEX SHUGART, H.
RANDLE WOOD, ROBIN ROGERS and
DANIEL LEE NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

DEPOSITION OF GLENN HARRISON

Law Offices of Wyrick Robbins Yates & Ponton, LLP

4101 Lake Boone Trail #300

Raleigh, North Carolina 27607

WEDNESDAY, JANUARY 10, 2018

10:01 A.M.

1 VIDEOGRAPHER: Going on the record at
2 10:01 a.m. Today's date is January the 10th,
3 2018. This is the video deposition of Glenn W.
4 Harrison in the matter of Teresa M. Speaks, et.
5 al. versus U.S. Tobacco Cooperative, Incorporated,
6 et al. This is filed in the United States
7 District for the Eastern District of North
8 Carolina, Western Division Civil Action NO. 512 CV
9 007298.

10 Counsel will please introduce yourselves
11 for the record and whom you represent and our
12 court reporter will swear in the witness.

13 MR. FORST: Sure. Keith Forst with
14 Quinn, Emanuel, Urquhart, Sullivan on behalf of
15 the Defendant in this case. With me are my
16 colleagues, Ben Cornfeld and Deborah Sohn.

17 MR. SHIPMAN: Gary Shipman representing
18 the Plaintiffs.

19 MR. RUNYAN: Alan Runyan representing
20 Objector Sharp Farms, Incorporated.

21 MR. FORST: I think for the sake of good
22 order, we might --

23 MR. MILLER: Again, I'm Phillip Miller.
24 I'm here with Alan.
25 Whereupon,

1 GLENN HARRISON,
2 having first been duly sworn,
3 was examined and testified as follows:

4 EXAMINATION

5 BY MR. FORST:

6 Q. Good morning, Dr. Harris.

7 A. Good morning.

8 Q. How are you?

9 A. I am good. Thank you.

10 Q. Good. Before -- I assume you've sat
11 through a deposition before; is that right?

12 A. Yes, I have, sir.

13 Q. How many, approximately?

14 A. 40, 50, 60, something in that order.

15 Q. Okay. So I won't walk through the
16 normal admonitions but, of course, if you don't
17 understand questions, you can ask to clarify and
18 et cetera, et cetera. Do you understand the rules
19 of the road generally with depositions?

20 A. Yes, I do.

21 (EXHIBIT NO. 1 MARKED.)

22 Q. Okay. Great. What's been put in front
23 of you has been marked Exhibit 1. Just take a
24 moment to look at it and then let me know if you
25 recognize it.

1 A. Yes, I do. It appears to be my
2 affidavit in this case and the attachments.

3 Q. Okay. Dr. Harrison, you're -- you're
4 not an attorney, are you?

5 A. No.

6 Q. And you're not a lawyer; is that right?

7 A. That's correct.

8 Q. Okay. You've had no formal legal
9 training; is that right?

10 A. I -- I have taught law and economics
11 for about 20 years, but I've had no formal
12 training as a lawyer.

13 Q. Okay. Have you ever been qualified as
14 an expert in federal court to offer an opinion on
15 the fairness and adequacy of a proposed
16 settlement?

17 A. That's a good question actually. I do
18 not believe so in federal court.

19 Q. Have you ever been proffered as an
20 expert in federal court to offer an opinion on the
21 fairness and adequacy of a proposed settlement?

22 A. I do not believe so.

23 Q. So is it fair to say this would be the
24 first time that you're doing it in federal court,
25 offering an opinion on the fairness and adequacy

1 of a proposed settlement?

2 MR. RUNYAN: Object to the form of the
3 question.

4 THE WITNESS: I believe so, yes.

5 Actually, let me qualify it. The reason
6 I'm saying "I believe so" is because I played a
7 major role in the settlement of the state attorney
8 general's actions against tobacco companies, which
9 I'm happy to tell you about. And there were a
10 number of hearings concerning that settlement. I
11 do not believe they occurred in federal court, but
12 I -- I was -- I played a role in that, so I'm just
13 trying to be clear.

14 BY MR. FORST:

15 Q. Sure. Was that a class action lawsuit?

16 A. No, that was a direct action on behalf
17 of the -- it was brought by the attorney --
18 attorneys general in each state. They subrogated
19 the claims.

20 Q. Okay. And so just to be clear then,
21 when it comes to a class action proposed
22 settlement, you've not been proffered or qualified
23 in federal court as an expert?

24 A. No, I have not then.

25 Q. When were you first engaged to

1 undertake the analysis that was reflected in
2 Attachment G or your affidavit here?

3 A. If we're talk -- and forgive me, I'm
4 going to forget the names of the precise cases.
5 If we're talking about the Speaks affidavit, the
6 one dated 2017, that was sometime in early 2017, I
7 believe. I actually don't have a retention
8 letter. I've worked with Mr. Runyan for many --
9 few decades probably and I don't get a retention
10 letter. But the reason I'm qualifying is I've
11 worked on similar cases, the Fisher case and the *
12 Louis case, for many years since 2005. So I see
13 this as something of a continuation of that -- of
14 that charge.

15 Q. Okay. I understand. But just to be
16 clear on that, on your answer there, you're saying
17 that in early 2017, you were contacted about
18 specifically the Speaks lawsuit?

19 A. To the best of my recollection, yes.
20 It might have been late 2016. I -- I don't
21 recall.

22 Q. Okay. And -- and who contacted you?

23 A. Mr. Runyan.

24 Q. And were you given an assignment at
25 that time as an expert?

1 A. Yes, I was asked to look into the
2 fairness and equity of the proposed settlement,
3 and that is what I did.

4 Q. So do you have an understanding that
5 this settlement was not proposed or made public
6 until September 2017?

7 A. No.

8 Q. Okay. So do you know when exactly the
9 proposed settlement agreement was reached and then
10 submitted to the federal court for preliminary
11 approval?

12 A. That would be in the documents that
13 I've reviewed, but I don't recall the exact dates.
14 And as I said, I was not sure exactly when
15 Mr. Runyan contacted me. He may have had some
16 knowledge of it coming out beforehand or he may
17 have contacted me in September 2017.

18 Q. Okay. If I -- if I represent that it
19 was submitted in September 2017, that that's when
20 the proposed settlement was filed and made public,
21 does that jog your memory on when perhaps you were
22 asked to undertake the assignment to assess the
23 fairness and adequacy of it?

24 A. No, I -- I'm not trying to hide here.
25 I just don't recall the date and I don't want to

1 speculate. I appreciate what you're saying that
2 if Mr. Runyan had no knowledge of it until
3 September, then he would not have asked me until
4 after September. That -- as a matter of logic, I
5 see that point. I don't recall the date, so I
6 don't want to guess what the date was. It may
7 have been September 2017.

8 Q. Okay. So sitting here today, you're
9 not exactly sure. Is that fair?

10 A. That's correct, yes.

11 Q. And the reason I'm really getting at is
12 I'm going to go through and just figure out what
13 you did in order to assess it. So I just want to
14 figure out when you started to undertake that
15 effort. That's -- that's all I'm -- I'm not to be
16 tricky, I'm just trying to peg the start date.
17 That's all?

18 A. Okay. Not a problem.

19 Q. So I know we talked about this, but
20 what specifically were you asked to do?

21 A. I was asked to review the
22 appropriateness of the settlement, whether it was
23 equitable, whether it was fair with respect to the
24 farmers. I'm going to just say "farmers" so that
25 we don't get confused who the Plaintiffs are here.

1 Q. Okay. And when you say -- we don't
2 have a live note or a --

3 (DISCUSSION HELD OFF RECORD.)

4 Q. Okay. So you were asked to review the
5 appropriateness and fairness in your words. Is
6 that fair?

7 A. That's right. Of the proposal in the
8 Speaks, et. al. settlement.

9 Q. Okay. And so were you given any
10 principles to apply in performing that analysis?

11 A. No. Beyond those that I had discussed
12 in my previous evaluations of proposed
13 settlements. So the one in 2005 and, again, in my
14 2012 affidavit where I presented my own views on
15 the -- on what would be a fair and equitable
16 settlement. So those principles were embodied in
17 the previous work that I had been doing in this
18 case.

19 Q. Okay. Did you -- did you ask whether
20 there are any legal principles that are involved
21 with or a court would undertake in assessing
22 whether or not a settlement is fair, adequate or
23 reasonable?

24 A. No, I don't believe I asked Mr. Runyan
25 that, partly because the documents that I had

1 before me, which were to do with class
2 certification -- and this is, again, over all of
3 the years, not just -- not just this instance --
4 talk extensively about the legal criteria that a
5 judge has to take into account in certifying a
6 class. Again, I'm not professing to be a lawyer
7 or -- or a legal expert, but I have access to
8 those and they provide some guidelines in terms of
9 the principles that one would look at to decide if
10 something is equitable.

11 Q. And did you apply those principles --

12 A. I --

13 Q. -- in approaching your assessment?

14 A. -- I believe I did.

15 Q. Okay. And what were they specifically?

16 A. Well, the principles were essentially
17 would it be equitable, would it lead to -- across
18 all of the members of the class, would it be --
19 lead to conflict with the class, is it transparent
20 to members of the class, and in a broad sense, is
21 it adequate. Now, I would include aggregate
22 adequacy as a measure of is it equitable towards
23 the members of the class. But that's worth
24 distinguishing because it has to do with the level
25 of the settlement as distinct from its allocation.

1 Q. I understand. But -- but my question I
2 think is a -- a little more specific. In
3 assessing the adequacy, what did you consider to
4 make that determination?

5 A. The factors that I just listed to you.

6 Q. You said the factor was is it adequate
7 in -- in aggregate, right, that was a factor you
8 considered?

9 A. No, that's not what I said. If you
10 look at the list you have, I gave you a list of
11 several ideas. For example, is it equitable
12 across all the members of the class -- of the
13 putative class? Are there conflicts within the
14 class, within the class members? Is there -- is
15 it transparent to the class members? And then
16 there is aggregate adequacy.

17 Q. Have you ever been qualified as an
18 expert in federal court to opine on whether there
19 are intraclass conflicts such that a class should
20 not be certified?

21 A. I honestly don't recall. I may have
22 been -- I have done some -- it's actually not
23 called a class in West Virginia. They have a
24 different term for it. I think it's a mass --
25 some other term of art, legal art for it, and I do

1 not know whether that was in federal court. So I
2 do not recall. The answer is I don't recall.

3 Q. Okay.

4 A. I don't believe so, sorry.

5 Q. Okay. So, again, just to be clear on
6 this, if we're talking a proposed class action
7 settlement, have you ever offered an opinion or
8 been qualified as an expert to a federal court on
9 whether a class should be certified because of
10 intraclass conflict?

11 A. I don't believe so.

12 Q. Okay. So this would be the first time?

13 A. Yes.

14 Q. And what standards did you apply in
15 order to determine whether or not there was
16 conflicts in this class such that they were
17 disabling that it shouldn't be certified?

18 A. Oh, the conflicts would be is there
19 some ambiguity in the proposed settlement? Is
20 there an aspect of the algorithm that is implicit
21 in the settlement allocation that disenfranchises
22 some members of the class? Is there some aspect
23 of the proposed settlement that treats some people
24 unfairly inequitably?

25 Q. Okay. But there I think what you're

1 talking about is the distribution scheme under the
2 class settlement, right?

3 A. Yes.

4 Q. Okay. What I'm asking you is, are you
5 offering an opinion in this case that this class
6 should not be certified because of disabling
7 conflicts in the class?

8 MR. RUNYAN: Object to form.

9 THE WITNESS: I suspect that's a
10 judgment for the judge in the case and not really
11 I think a judgment that an expert should provide.
12 I am pointing out that in my view, given my
13 expertise, there are inequities. There are
14 ambiguities and there are problems with the
15 settlement from my perspective. Whether that
16 rises to the level of a judge believing them to be
17 an inadequate class for purposes of certification
18 is not my -- my remit.

19 Q. Right. So you're not offering an
20 opinion one way or the other whether this class as
21 defined should be certified under Rule 23?

22 A. Oh, I don't think it should be, but I'm
23 not offering that opinion as a lawyer. I'm going
24 to let the judge -- I have my own judgment on that
25 based on simply reading the facts of the case, and

1 I think it's -- it's an appalling settlement
 2 compared to -- okay. So I'm sorry --
 3 Q. My question is --
 4 A. -- you asked the question. I'm
 5 answering.
 6 Q. -- about conflicts, not the
 7 settlement -- not the size of the settlement.
 8 A. Uh-huh.
 9 Q. My question is this, are you offering
 10 an opinion on whether this class under Federal
 11 Rule 23 should be certified as a class due to
 12 conflicts?
 13 A. In my affidavit, I am not offering that
 14 opinion. I am offering my opinions on the
 15 reasonableness of the proposed settlement and the
 16 judge will then make a determination on the
 17 question you're asking.
 18 Q. Okay. So a second ago you said in your
 19 personal opinion, I think, that this class
 20 shouldn't be certified. Are you standing behind
 21 that or you don't have a view on that?
 22 A. Yes, I do have a view. I don't
 23 think -- based on the settlement proposal here, I
 24 don't think this class should be certified. But I
 25 fully understand that there are issues of law

1 involved and I'm respectful of the judge who's
 2 going to make those decisions. But it's -- if
 3 that's my personal opinion, as distinct from the
 4 opinion in this affidavit, that's...
 5 Q. I understand, but I want to be clear
 6 about something, Dr. Harrison. I'm not asking you
 7 whether or not you think the settlement number is
 8 high enough or too low, if it's a big enough
 9 number. Okay. That's not my question.
 10 A. Okay.
 11 Q. My question is simply, do you think
 12 this class in *Speaks* as defined should proceed as
 13 a class action under Rule 23?
 14 A. So narrowly defined, I don't have an
 15 opinion. But I took your question as asking in
 16 the context of my opinions about the settlement,
 17 do I believe it's a -- it should be certified. So
 18 maybe I misunderstood your question. But, again,
 19 I am not trying to offer a legal opinion.
 20 Q. Okay. So just so we're on the same
 21 page, you're not sitting in your affidavit nor
 22 here today offering a legal opinion on whether or
 23 not as a threshold matter the class as defined in
 24 *Speaks* should be a certified class action?
 25 A. Correct. I am not offering a legal

1 opinion.

2 Q. When you were engaged, and I think just
3 by a matter of logic would have to be after we
4 proposed the settlement made public in September,
5 to consider the fairness and adequacy of it, did
6 you ask for any documents to review?

7 A. Implicitly I would have asked for --
8 and by that I'm saying this is my normal course --
9 I ask for the formal documents that are filed. I
10 like to see the public documents that are part of
11 the -- part of the case. And those would have
12 been the initial documents that I would have asked
13 for and I believe obtained fairly quickly.

14 Q. Okay. And when you say "implicitly,"
15 this was just a few months ago, do you remember
16 asking for those documents?

17 A. Yes, I do. Actually I recall the
18 initial conversation that I had with Mr. Runyan
19 whenever that was. He knew about this settlement
20 being proposed. It was some weeks later before
21 something was filed and documents were actually
22 made available. So there was some lag there. I
23 don't exactly remember when I obtained those
24 documents.

25 Q. I see. Presumably after September when

1 the submission was made to federal court for
2 approval of the class action settlement?

3 A. That's correct, because they were the
4 documents that were filed in court.

5 Q. I understand.

6 A. And I -- sorry to interrupt, but I have
7 provided -- I believe I provided those
8 documents --

9 Q. I understand.

10 A. -- as requested.

11 Q. Did you ask for any other documents?

12 A. I don't believe I asked for any other
13 documents because I had access to many of the
14 documents that I had used in my 2012 affidavit,
15 which were able to give me a background to assess
16 the adequacy of the proposed settlement. Again,
17 adequacy not from a legal perspective but from
18 my -- my legal expertise as an economist.

19 Q. Okay. So you apply -- you did an
20 economic assessment of whether or not this
21 proposed settlement was adequate?

22 A. That's correct. That's my training as
23 an economist.

24 Q. Okay. So you consider yourself in
25 terms of an expert as an economic expert, right?

1 A. Yes, I am.
2 Q. Okay. Do you recall asking for any
3 documents that weren't provided by counsel in
4 connection with your analysis?
5 A. No.
6 Q. Okay. Did you discuss the proposed
7 settlement with any class members?
8 A. No, I did not.
9 Q. Did you reach out to any of the named
10 representatives in the Fisher * Louis case to
11 discuss their views on the proposed settlement?
12 A. No, I did not.
13 Q. Did you ask to speak to any of the
14 named representatives in Speaks who had
15 participated in the mediation, agreed with the
16 settlement and approved it to ask their views on
17 whether it was fair and adequate and why?
18 MR. RUNYAN: Object to the form.
19 THE WITNESS: No, I did not.
20 BY MR. FORST:
21 Q. In rendering an expert opinion on the
22 adequacy of a settlement, do you think it would be
23 important to speak to the class members who agreed
24 to it on their views on why they think it's
25 appropriate?

1 A. Not necessarily.
2 Q. Could you have spoken to certainly the
3 named representatives in the Fisher * Louis class
4 to discuss their views of the settlement?
5 A. I have no idea if that's allowed in
6 law, I have no idea -- I -- I assume it is -- it
7 might be. It could have been done logistically.
8 I do not know.
9 Q. You didn't think it was important to
10 have that conversation?
11 A. No, I did not think that I needed to
12 have that conversation in order to determine --
13 have -- make an independent assessment based on
14 the facts that I had access to about the
15 reasonableness of the proposed settlement.
16 Q. Okay. And what facts did you have
17 access to?
18 A. I had access to -- actually, I had
19 access to the data from stabilization, the
20 transactions data from stabilization, which gave
21 me information over the relevant history until
22 2004 of the contributions of each farmer, of the *
23 known and cost fees by each farmer, and the
24 activities of the farmers with respect to
25 stabilization. So that was one piece of data that

1 I already had as part of the -- my preparation for
2 the 2012 affidavit.

3 I also had a number of documents, which
4 I list in my affidavit, which provide explanations
5 of the -- for the background of those
6 transactions, for example, the loan agreements,
7 the CCC loan agreements, the reconciliations, the
8 annual reports, various minutes. So those are
9 documents that I had already access to that I'd
10 used in my 2012 evaluation, and I used virtually
11 all of those in this instance as well.

12 Q. Okay. Do you have any sense of how
13 many members of this class have sought to
14 participate in the settlement?

15 A. Sorry, just to clarify, do you mean the
16 Speaks class?

17 Q. Yes. Well, that -- the proposed
18 settlement that you're evaluating is in the Speaks
19 lawsuit, right?

20 A. I understand, but I wanted to be -- I
21 wanted to be certain that I was -- we're talking
22 about the same -- the same proposed settlement.
23 No, I don't.

24 Q. Okay. Would it impact your opinion one
25 way or the another if thousands of claims had been

1 filed to participate in the settlement?

2 A. No.

3 Q. No. Would it impact your opinion at
4 all if there were more people seeking to
5 participate than there were objecting?

6 A. No.

7 Q. So in your view, expert opinion, it's
8 not important to your decision one way or the
9 other upon the views of the actual class members
10 on whether or not this settlement is fair,
11 adequate and reasonable.

12 A. No, that's not -- that's not what I'm
13 saying at all. It's just that I was not asked
14 that question. I'm not asked the question as to
15 whether a limited class regards this as a
16 settlement for what could and should be a broader
17 class. The question is are the Speaks named
18 plaintiffs representative of the people -- of the
19 farmers that have been -- that have patronage
20 interest in stabilization. That's the broader
21 question to me in terms of it being an equitable
22 settlement.

23 Q. Okay. It's your view, and we'll get
24 into it specifically, that the settlement number
25 is too low. Fair?

1 A. Yes.

2 Q. Okay. My question is, sir, did you
3 think it was important or not to ask the actual
4 farmers their view on whether the settlement
5 number is too low?

6 A. No. And, again, the settlement number
7 being too low is one aspect of the -- of the
8 impropriety of the proposed settlement. I'm just
9 trying to be sure that we don't implicitly assume
10 that that's the only issue that I have with it.

11 Q. Regarding any issue you have with the
12 settlement, did you speak to actual class members
13 and get their take on whether they agreed with you
14 or not?

15 A. I've already answered that and the
16 answer is, no.

17 Q. Okay. If we turn to page 1 of
18 Exhibit 1, which is your present 2017 affidavit, I
19 want to focus on paragraph 3 and just ask you a
20 quick question there. I'll read it. It says, I
21 have been retained by counsel for Fisher, et. al.
22 to offer expert testimony concerning the
23 appropriateness of the settlement proposed by the
24 attorneys representing Speaks, et. al.

25 Do you see that?

1 A. Yes, I do.

2 Q. Do you understand the settlement was
3 proposed by the attorneys rather than the named
4 plaintiffs in Speaks?

5 A. Yes, I think I do, yes. I'm not quite
6 sure I understand the question.

7 Q. Sure.

8 A. Say it again.

9 Q. My question is this. The named
10 representatives in Speaks, the actual plaintiffs,
11 farmers themselves are the ones who proposed the
12 settlement; isn't that true, for court
13 consideration?

14 A. I believe it is, yes.

15 Q. So not the attorneys. It's the actual
16 growers who agreed to the settlement that made the
17 submission, right?

18 A. Yes. I take your point.

19 Q. Okay. Do you agree with me in that
20 evaluating whether or not a proposed class action
21 settlement is adequate, that the strength of the
22 plaintiffs' case on the merits would be important?

23 A. Yes and no. Yes, in the sense that if
24 I was giving advice to or I was a member of a
25 class and deciding whether to accept something, I

1 would take that into account. It's an adjustment
 2 of the risks of pursuing the case. No, in the
 3 sense that it's not really my role or opinion to
 4 assess the legal strength of this case. And I
 5 understand that there are a lot of issues involved
 6 there. So that's the sense in which I would say,
 7 no.

8 Q. Okay. So is it fair for me to include
 9 then that you did not undertake an effort to
 10 assess the relative merits of the Plaintiffs' case
 11 in Speaks?

12 A. That's correct, I did not make any --
 13 any assessment of that.

14 Q. Okay. Is it also fair to say that you
 15 did not undertake any effort to assess the
 16 relative strength or merits of the cooperatives,
 17 and by that I mean stabilization or USTC --

18 A. Uh-huh.

19 Q. Let me start this again. I'm not
 20 understanding. Just if I use the term USTC
 21 stabilization of the cooperative law, understand
 22 that to be the United States Tobacco Cooperative.
 23 That's the defendant in this case.

24 A. Understood and they've had name changes
 25 and I'll always use stabilization, but that's --

1 thank you.

2 Q. Got it. So would you agree with me
 3 that you did not undertake any -- any analysis to
 4 assess the strengths or weaknesses of the
 5 cooperative's defense -- defenses in the lawsuit
 6 filed against it by the growers?

7 A. That's correct. That's not my job.

8 Q. Would you agree with me that it is
 9 important to know the anticipated duration and
 10 expense of additional litigation in determining
 11 whether or not a settlement is adequate?

12 A. Yes.

13 Q. Okay. Did you take that into account
 14 in your analysis?

15 A. No.

16 Q. Do you agree it's important to me to
 17 take into account the degree of opposition and/or
 18 support of the proposed settlement in determining
 19 whether it's adequate?

20 A. That's an issue for somebody who is --
 21 who is able to judge those things, such as a
 22 judge. It's not something that I'm in a position
 23 to evaluate, so I did not.

24 Q. Okay. And I just want to be clear on
 25 the latter point. You would agree with me, you

1 were in a position to have a conversation
2 certainly with the named representatives of Fisher
3 Louis to understand the views of their settlement,
4 right?

5 A. I don't know. As I said, I don't know
6 as a matter of law if I'm allowed to speak to
7 them. I would have spoke to Mr. Runyan and asked
8 him and then I might have done that. But I did
9 not need to in order -- but to address the
10 questions that I've been asked to present opinions
11 on.

12 Q. Okay. Did you -- I understand you said
13 you didn't need to in your view, but did you ask
14 Mr. Runyan whether or not you were allowed to have
15 those conversations with his clients concerning
16 the proposed settlement?

17 A. No, I did not.

18 Q. Do you agree with me that in assessing
19 the fairness of a class action settlement, it's
20 important to know the procedural posture of the
21 case at the time the settlement was proposed?

22 MR. RUNYAN: Object to the form.

23 THE WITNESS: I have no idea what
24 "procedural posture" refers to.

25

1 BY MR. FORST:

2 Q. The -- the stage of the case. So if I
3 can ask it again. In evaluating a class
4 settlement in terms of fairness, do you think it
5 would be important to know the state of the case
6 at the time the settlement was reached?

7 MR. RUNYAN: Object to the form.

8 THE WITNESS: Actually, again, as a
9 nonlawyer, I don't know what you're meaning by
10 "stage of the case." I -- I'm not trying to be
11 difficult, I just don't -- I don't want to guess
12 at what those words mean.

13 BY MR. FORST:

14 Q. Okay. Do you think in assessing the
15 fairness, it would be important to know the extent
16 of discovery that had been conducted?

17 A. Again, I don't want to express an
18 opinion on that because the extent of the
19 discovery is more a function of what one has
20 discovered. Very often in cases, and I've been
21 involved in some complex litigation, there's a
22 massive amount of boring, tedious discovery that
23 occurs and it -- it adds up to many piles that
24 generate fees, but it doesn't actually add up to
25 evidence that is important. So it's more a

1 question of the -- of just the weight of the
2 discovery, if I could use that expression. And
3 I'm not in a position to assess that. The lawyers
4 are in a position to assess that.

5 Q. Okay. But my question was just this.
6 However we characterize it, the weight or
7 otherwise, in assessing the fairness of a class
8 action settlement, do you think it would be
9 important to understand the extent and the weight
10 of the discovery that has been conducted?

11 MR. RUNYAN: Object to the form.

12 THE WITNESS: Not necessarily, and I'm
13 not an opinion as a lawyer to really evaluate
14 those things.

15 BY MR. FORST:

16 Q. Okay. In assessing the fairness of a
17 proposed class action settlement, sir, do you
18 think it was important to understand the
19 circumstances surrounding the negotiation that was
20 had to reach the settlement?

21 A. No.

22 Q. In assessing the fairness, as you did
23 of the proposed class action settlement in Speaks,
24 do you think it would be important to know the
25 experience of class counsel in conducting class

1 actions?

2 A. Yes, that's something that the judge
3 should take into account.

4 Q. Did you take it into account?

5 A. No, I did not. I'm not qualified to do
6 so.

7 Q. In assessing this proposed
8 settlement -- well, you said earlier you -- your
9 analysis here was an extension of the analysis
10 that you had been performing in the earlier cases
11 back to 2005 in connection with the Fisher and *
12 Louis class action settlement, right?

13 A. That's correct, yes.

14 Q. Okay. Let me take a step back. Would
15 you agree or disagree that the single most
16 important factor in determining the adequacy of a
17 class action settlement, sir, is the strength of
18 the plaintiff's case on the merits?

19 MR. RUNYAN: Object to the form.

20 THE WITNESS: I agree that that is a
21 factor that a judge should look into as one of
22 many components to determine the fairness of a
23 proposed settlement. It's not something I was
24 asked to do, it's not something I'm qualified to
25 do.

1 BY MR. FORST:

2 Q. Okay. Well, my question was just
3 different. Do you understand one way or the other
4 whether the single most important factor in
5 determining whether a settlement is adequate is
6 the strength of the plaintiffs' case on the
7 merits?

8 MR. RUNYAN: Object to the form.

9 THE WITNESS: Again, I'm not going to
10 express an opinion on the -- the legal attributes,
11 the legal -- whether one is the single most
12 important attribute in the eyes of the law, in the
13 eyes of the judge who's evaluating this. I was
14 asked, as I state, in terms of my qualifications
15 as an economist to evaluate the propriety of
16 the -- appropriateness of the settlement. That
17 will be one factor that a judge takes into account
18 including other legal factors that you're talking
19 about.

20 BY MR. FORST:

21 Q. Okay.

22 A. I'm not in a position to say that one
23 is more important than the other.

24 Q. Okay. If there were a component or a
25 rule or a guiding * principal that the courts had

1 decided was the single most important factor in
2 deciding whether or not a settlement in its number
3 was appropriate, fair and reasonable, would you
4 want to know that?

5 MR. RUNYAN: Object to the form.

6 THE WITNESS: Not given the task that I
7 was given, I was not asked to present a legal
8 opinion to the court. And as I understand your
9 question, it's calling for a legal opinion.

10 BY MR. FORST:

11 Q. Okay. Sir, do you opine in this
12 affidavit that this settlement is not adequate
13 because it's too low?

14 A. Yes.

15 Q. Okay. Do you understand that the
16 single most important factor in deciding whether
17 or not a proposed settlement, the number is
18 adequate, is the relative strengths of the
19 plaintiffs' case?

20 MR. RUNYAN: Object to the form.

21 THE WITNESS: Again, you've asked the
22 question. That calls for a legal opinion. I'm
23 not a lawyer and it is for the judge to make that
24 decision and the judge will presumably use the
25 information that I've provided on the questions

1 that I was asked to present an opinion on.

2 BY MR. FORST:

3 Q. What I'm struggling with is you
4 presented an opinion that the settlement is not
5 adequate, right?

6 A. Correct, in my view.

7 Q. What I'm asking is, you did it without
8 knowing, I think, the factors that guide the
9 determination of whether or not it is, in fact,
10 adequate; is that fair?

11 A. No, that's incorrect. Sorry, that's
12 incorrect. What you're doing, I believe, is
13 asking me to broaden my opinion to present a legal
14 opinion to the court and I am not trying to do
15 that. I have been asked as an expert -- as an
16 expert in economics to evaluate the proposed
17 settlement as information that the judge or finder
18 of fact will use to determine whether it's a fair
19 settlement. I have not been asked to make legal
20 opinions. I do not present a legal opinion and
21 that is something the judge will do.

22 Q. Sure. Right. Isn't it presently
23 before Chief Judge Dever, the Eastern District of
24 North Carolina, to decide whether or not this
25 settlement is adequate?

1 A. I believe so, yes.

2 Q. Okay. That's ultimately his -- a legal
3 analysis and opinion that's going to take place,
4 right?

5 A. I believe so, yes.

6 Q. Okay. You've answered that question
7 for your part in this affidavit by saying it's not
8 adequate, right?

9 A. From the perspective of the -- an
10 economist who is being asked to look at the
11 appropriateness of the settlement from that
12 perspective. And that will be one of actually
13 several, I suspect, of the components the judge
14 will take into account in addition to the legal
15 question -- legal factors that you're mentioning.

16 Q. I see. What are the economic
17 principles or -- or what literature or things did
18 you consult in deciding what the appropriate
19 economic principles you should bring to bear to
20 decide and assess the adequacy of this settlement?

21 A. I brought to bear actually some of my
22 own publications in this area, but -- and my
23 experience working on the settlement of the state
24 tobacco litigation in the United States. In
25 particular, the issues that were of concern there

1 when we were crafting the settlement -- and I
2 played a role in that -- were the same ones I
3 talked about earlier; aggregate -- aggregate
4 adequacy, conflicts, ambiguity and the converse of
5 that, transparency.

6 Q. I just want to get those right.
7 Adequate -- aggregate adequacy, which I think,
8 just so we're on the same page, means the dollar
9 number, right?

10 A. That's correct, yes.

11 Q. And for that specific component, how do
12 you approach your analysis to determine whether
13 the dollar figure is too high or too low?

14 A. In this particular -- you're asking as
15 a matter of principal or in this particular case?
16 I can answer the latter, which is probably what
17 we -- we care about, in this particular case.

18 Q. No, I want to know what principles you
19 relied on in order to apply them to this case.

20 A. Sure. Okay. So let me give you the
21 broad principles and then I can say -- tell you
22 how it applied here, because it was actually much
23 easier in -- in these -- in this case.

24 The broad principle is to ascertain
25 what the damages were to the -- to the class using

1 the methods that would have been presented in
2 litigation and to do that in a manner that
3 initially assumes that the recovery would have
4 been 100 percent of the damages. And that's where
5 one gets into the strength of the case and the
6 probability that one would actually win the case.
7 So I'm fully aware that that is a role. I've
8 actually published on this issue myself. I don't
9 have -- I'm not a legal expert on -- in weighing
10 those, but I'm well aware that those are -- those
11 are factors that should be taken into account.

12 But the first stage, in terms of
13 evaluating adequacy, is to ascertain what the
14 damages are. In the instant case here, everything
15 is liquidated. We know the values. It's
16 essentially arithmetic. It's a matter of adding
17 up and multiplying some numbers. In many other
18 cases, particularly the cases I've been involved
19 in tobacco litigation, this is tobacco litigation
20 in a sense, but I mean the attorney general's
21 actions, one had a heavier reliance on statistical
22 or econometric models to calculate damages. And
23 that added an element of uncertainty, which the
24 courts assessed, and that's a separate issue. We
25 don't have those requirements here to undertake

1 elaborate statistical or econometric calculations
2 to ascertain damages.

3 Once one has ascertained damages, it's
4 then a matter of that being a denominator. The
5 numerator is in the proposed settlement and then
6 one can look at the ratio and then one can opine
7 either as an expert in economics or as a legal
8 expert who understands the other factors that
9 you've been mentioning earlier, whether that is a
10 reasonable settlement.

11 Q. Okay. So in this case, I think you're
12 saying you applied that first analysis
13 ascertaining the maximum extent of damages that
14 could be recoverable and then just comparing the
15 settlement to that number?

16 A. Yes.

17 Q. Okay. What claim -- well, what is
18 that? What is the outer bound of damages in the
19 Speaks litigation that you're considering?

20 A. Broadly defined patronage interest.
21 Now, I'm defining it also as patronage interest of
22 all farmers. So if we're talking about -- so I'm
23 talking about all of the farmers who have been
24 involved in stabilization over its history.

25 Q. Well, maybe we'll get to the part of

1 your report where we can put some numbers to it to
2 go from there. But I want to circle back to the
3 named representatives. Do -- do you understand
4 one way or the other whether or not all of the
5 named representatives in Fisher * Louis have opted
6 out of the class action settlement that was
7 reached in the Speaks litigation?

8 A. I do not know that one way or the
9 other.

10 Q. Do you know whether or not all of the
11 named representatives in the Fisher * Louis class
12 action have objected to the settlement that was
13 reached in the Speaks litigation?

14 A. I do not know if all of them have. I
15 know some have.

16 Q. Okay. If four or maybe five haven't
17 opted out nor objected, would that impact your
18 opinion on whether or not this class action was
19 fair and adequate at the settlement -- proposed
20 settlement?

21 A. No.

22 Q. In your view, you would not want to
23 talk to those named representatives in * Fisher
24 Louis to understand why they did not object and
25 why they did not opt out?

1 A. No, because I'm interested in the
2 fairness with respect to the ultimate plaintiffs
3 in -- in the broader case of the farmers. And
4 that is it could be that the Speaks settlement
5 refers to ten plaintiffs. I'm not -- not talking
6 about the named plaintiffs, I'm hypothetically
7 saying, what if it refers to just a handful of --
8 of plaintiffs? Then that's clearly not going to
9 be compensating all of the farmers who have
10 patronage interest.

11 Q. Sure. You understand that the * Fisher
12 Louis class in state court has been certified as a
13 class action, correct?

14 A. Yes, sir.

15 Q. And so you understand that a court has
16 at least made a determination that the named
17 representatives there adequately represent the
18 interests of the class of all the farmers. You
19 understand that, right?

20 A. Yes, I do, because that's -- I played a
21 role in that.

22 Q. Right. So those -- in a sense, those
23 named plaintiffs speak for the farmer community,
24 correct, in connection with this lawsuit?

25 A. Yes, and -- and the court has so

1 certified.

2 Q. Right. And so even in your view, it
3 wouldn't matter if five of those or four of those
4 individuals did not object or opt out speaking on
5 behalf of the class. It wouldn't be important for
6 you to understand why that was?

7 MR. RUNYAN: Object to form.

8 THE WITNESS: No, I don't see why. I'm
9 concerned about the aggregate -- adequate -- if --
10 and all of your questions right now are focused
11 solely on aggregate adequacy. I don't see why
12 four or five would make much of a difference.

13 BY MR. FORST:

14 Q. Okay. But, again, you -- you haven't
15 endeavored to ask even how many have submitted
16 claims in the Speaks settlement to participate?

17 A. No, I have not.

18 Q. Do you have any sense of how the
19 settlement in the Speaks litigation was reached?

20 A. Not really.

21 Q. So "not really" suggests to me you have
22 a little bit of information or knowledge.

23 A. My knowledge is just simply what's in
24 the public document about the history, particular
25 Mr. Shipman's history as part of the broader --

1 broader litigation. But it's -- that's the public
2 document. That's the extent of my knowledge.

3 Q. Okay. Do you understand that the
4 Speaks' plaintiffs and the cooperative
5 participated in a mediation?

6 A. Yes, I have heard that they did.

7 Q. Do you know why the named
8 representatives in Speaks participated in that
9 mediation?

10 A. No.

11 Q. Do you know whether or not the actual
12 farmers, the Speaks' plaintiffs, were present at
13 the mediation?

14 A. No, I do not.

15 Q. Have you undertaken ever -- any
16 efforts -- did you ask for or read the
17 cooperative's mediation brief that was submitted
18 in connection with the mediation that occurred in
19 Speaks?

20 A. No, I have not been provided with that
21 document to the best of my knowledge.

22 Q. Did you ask for it?

23 A. No, I did not know that there -- at
24 that point that there had been a mediation. I
25 learned about that subsequently.

1 Q. When did you learn about that?

2 A. When I read the plaintiffs --
3 Mr. Runyan's responses. I mean, in his lawyers
4 responses, they had some mention about the
5 mediation I believe that had occurred. And I
6 actually had no idea that I would be able to ask
7 for those as a matter of law, but I didn't ask for
8 them. My own experience in mediation is that
9 often those documents are sealed. That's one --
10 one -- it wouldn't have occurred to me to actually
11 ask for them.

12 Q. Do you know whether the parties used a
13 neutral third-party mediator in reaching the
14 settlement?

15 A. I do not know that. I would assume
16 that they would, because that's the normal course
17 in mediation.

18 Q. Okay. Do you know -- if you don't know
19 whether or not they did, I assume you don't know
20 who it was if they had one?

21 A. Correct.

22 Q. Okay. Do you know whether the parties
23 exchanged documents in Speaks specifically before
24 the mediation occurred?

25 A. No, I don't.

1 Q. Do you know whether the individual
2 Speaks' farmers, the named plaintiffs in that
3 case, had to approve the settlement?

4 A. Well, I -- I don't quite understand.
5 I -- they wouldn't have formed a settlement unless
6 they approved, so I'm not -- I'm not understanding
7 the question.

8 Q. So you understand that at least the
9 named representatives in Speaks, those farmers
10 agreed with the settlement?

11 A. Yes, I would assume so. Again, I'm
12 just making an assumption here. Maybe I shouldn't
13 because it might be a matter of law, but that
14 would seem common sense.

15 Q. Okay. Have you ever been before, as an
16 expert or otherwise, now retired the Honorable
17 Judge Frank Bullock of the Eastern District of
18 North Carolina?

19 A. I don't believe so.

20 Q. If he mediated this case, read
21 respective mediation briefs on the relative
22 strengths of the case, participated in a two-day
23 mediation and approved the settlement as fair,
24 adequate and reasonable, would that impact your
25 opinion one way or the other?

1 A. No.

2 Q. A judge who applies the legal
3 principles on whether a settlement is fair,
4 adequate and reasonable considers it and he or she
5 agrees, that wouldn't impact your opinion one way
6 or the other?

7 MR. RUNYAN: Object to the form.

8 THE WITNESS: Not on -- sorry, long
9 list, I know something about the history of the
10 judge. I've been in about 25 or 30 mediations
11 myself over 35, 40 years, and in some cases they
12 are extraordinarily facile events. In some cases,
13 they are perfunctory. And in some cases, they are
14 quite substantive. So I would need to know a lot
15 more about the ability of the judge, whether he or
16 she was able to process the information, whether
17 he or she really understood the information and
18 the nature of the mediation. So I'm not -- I
19 wouldn't be prepared to give an unconditional
20 answer to that question under any circumstances
21 given my experience in mediation.

22 Q. Sure. Okay. Do you have any reason to
23 doubt that Judge Bullock didn't understand the
24 issues, didn't give it due attention, due care and
25 attempt to mediate an arms length fair, reasonable

1 and adequate settlement?
2 MR. RUNYAN: Object to form.
3 THE WITNESS: I have no reason one way
4 or the other. That's my point. I'm not certainly
5 casting any aspersions on that specific judge.
6 I'm giving you my experience from the mediation
7 process over some decades.
8 BY MR. FORST:
9 Q. Sure. If we look at your -- I want to
10 focus specifically at paragraph 11 of your
11 affidavit, hopefully as an initial matter.
12 A. Sure.
13 Q. You -- you've reviewed the proposed
14 settlement agreement, correct --
15 A. Yes, I have.
16 Q. -- in Speaks? You say here in
17 paragraph 11, and I'll just read it. Given a net
18 settlement of 22 million and the stated method for
19 apportioning the settlement funds with the maximum
20 allowable claim of 15,000 for Group 1 claimants,
21 it is possible that the first 1,467 claimants
22 could exhaust all the funds, since 1,467 times
23 \$15,000 equals 22 million, leaving the vast
24 majority of the hundred thousand plus member class
25 uncompensated.

1 Do you see that?
2 A. Yes, I do.
3 Q. Do you stand behind that?
4 A. Yes, I do.
5 Q. Did you carefully read the settlement
6 agreement before rendering this opinion?
7 A. Yes, I did.
8 Q. Let me just ask you this. When you
9 were engaged or asked in September to evaluate it,
10 how many hours did you spend reviewing documents,
11 considering everything before writing this
12 affidavit?
13 A. Oh, I think it would be in the order of
14 25, 30 hours, something to that order.
15 Q. Do you understand Group 1 was designed
16 so it would be a pro rata distribution?
17 A. Yes.
18 Q. Do you know -- what does that mean to
19 you?
20 A. It means that -- well, what the term
21 "pro rata" means to me is that the allocations
22 would be in proportion to the individuals that
23 applied in that group. So if one person applied,
24 that person would get 100 percent of their
25 allocation if the funds had not been exhausted.

1 If two people applied, we would figure out the
2 relative weights of those people and so forth.
3 Q. Okay. Do you also understand or
4 believe, as you sit here right now, that the Group
5 1 pot for the settlement includes the full
6 \$22 million of the settlement?
7 A. It includes actually 24 million less
8 the up to \$2 million that will be given to
9 lawyers. So that's what I -- in the previous
10 paragraph I indicated as 22 million. So let's
11 call it 22 million.
12 Q. Okay. Sir, I just want to be clear.
13 You carefully read the settlement agreement before
14 rendering this opinion, right?
15 A. Yes.
16 MR. FORST: Can we mark this as 2?
17 (EXHIBIT NO. 2 MARKED.)
18 THE WITNESS: Thank you.
19 BY MR. FORST:
20 Q. I want to turn your attention to
21 page 12.
22 MR. RUNYAN: Excuse me, Keith. What is
23 that?
24 MR. FORST: Oh, I'm so sorry. I didn't
25 give you a copy.

1 MR. RUNYAN: That's okay. Thank you.
2 MR. FORST: It's the actual stipulation
3 agreement.
4 MR. RUNYAN: Okay.
5 MR. FORST: The settlement.
6 BY MR. FORST:
7 Q. So, again, Dr. Harrison, I'm sorry,
8 it's specifically page 12.
9 A. Yes, I have that.
10 Q. And I wanted to focus your attention on
11 paragraph 3. It reads, Upon receipt of each
12 settlement payment as described above, a
13 settlement fund shall be divided by the claims
14 administration -- administrator into two separate
15 funds with 75 percent of the settlement fund to be
16 paid into account from which Group 1 claims will
17 be paid, and 25 percent of the settlement fund to
18 be paid into an account for Group 2 claims from
19 which Group 2 claims will be paid.
20 Did I read that right?
21 A. Yes, you did.
22 Q. Okay. Do you understand that to mean
23 now that \$22 million of the settlement fund will
24 not be available to Group 1 claimants?
25 A. Yes, indeed. This was -- paragraph 11

1 was an illustration of the adequate -- the
 2 inadequacy of the -- of the amount, and I
 3 understand what you're saying that essentially
 4 75 percent of 22 million, so the point I'm making
 5 in paragraph 11 is even stronger. Thank you for
 6 pointing it out.

7 Q. It is. Well, I -- I need to hear that.
 8 But you say in paragraph 11 that it's possible for
 9 Group 1 claimants to exhaust all the funds of the
 10 settlement, right?

11 A. I understand that they could exhaust
 12 75 percent of the funds of the settlement, yes. I
 13 was using that as an example of how even a level
 14 of 22 million, even if it were 100 percent and
 15 I -- I agree at 75 percent, the first 1,467
 16 claimants could have exhausted it. But the point
 17 you -- the point you're making is it's not -- it's
 18 not 22 million, it's actually 75 percent of
 19 22 million, so it's, in fact, less than 1,467, so
 20 the point is even stronger.

21 Q. No, that's not the point I'm making.
 22 Let me tell you the point I'm making. You say
 23 22 million is the total amount available to
 24 claimants, agreed, under the settlement agreement?

25 A. Correct, for both Group 1 and Group 2.

1 Q. You say Group 1 alone could exhaust, in
 2 paragraph 11, all of that amount, all 22 million.
 3 That's what you say, right?

4 A. Yes.

5 Q. Okay. That is incorrect, isn't it?

6 A. Yes, it's incorrect. It's a
 7 hypothetical. I said even if 100 percent of the
 8 funds were allocated to Group 1.

9 Q. Where does it say even if or where's
 10 this say that this is a hypothetical?

11 A. It doesn't say it in those words, but
 12 it is fairly clearly implied and I believe if you
 13 read the paragraph in context, I'm trying to
 14 provide a numerical example that just illustrates
 15 how quickly the funds will be dissipated given
 16 that the funds are actually significantly less,
 17 the point you're making, the funds would dissipate
 18 even more quickly. So the -- the amount is even
 19 less adequate than I -- this example illustrates.

20 Q. Sir, you'll just agree with me that
 21 Group 1 claimants cannot exhaust all the funds of
 22 the settlement, right?

23 A. That's correct. They can only exhaust
 24 75 percent of 22 million. So even less claimants
 25 could exhaust it. So it's even less equitable.

1 Q. Sir, by definition -- well, we can get
2 to it. Group 1 is meant to put a pot of money
3 aside for those who claim will receive those
4 funds, all of them. That's the purpose of a
5 settlement.

6 A. Correct. 75 percent of that
7 22 million, I -- I agree. I'm not -- I'm not
8 questioning that.

9 Q. The hope is that it's exhausted, that
10 that money gets paid out to claimants, right, in
11 any settlement?

12 A. Yes, but that's -- that's not a part
13 of -- yes, that's correct.

14 Q. Okay. So the way this is designed is,
15 in fact, set aside 16 -- well, I just want to make
16 sure we're on the same page with the math. My
17 math of 75 percent of 22 million is 16-and-a-half
18 million. Would you agree?

19 A. Yes.

20 Q. Okay. So the amount of money that's
21 available to Group 1 claimants is 16-and-a-half
22 million, right?

23 A. That's correct.

24 Q. Okay. And so, again, just to be
25 crystal clear, no matter how many Group 1

1 claimants apply for those moneys, it will not
2 exhaust the total amount of the settlement fund.

3 A. Correct.

4 Q. Okay. You also understand, I think,
5 that it's a pro rata distribution within the Group
6 1 claims, right?

7 A. That's correct.

8 Q. Based on what, sir?

9 A. Based on total poundage or reported
10 total poundage by the farmers. So in that -- yes,
11 so in that instance, if you had more than whatever
12 the adjusted number is, it's less than 1,467
13 because it's 16.5 million, so it's even less
14 adequate. Whatever that number is; let's say it's
15 a thousand just for argument sake, then if you had
16 more than those, it would be pro rated. Again,
17 this hypothetical was saying if you only had this
18 number of people claiming. That's my point here
19 and the nature of the hypothetical.

20 Q. Okay. Do you understand there's a
21 \$15,000 cap in connection with Claim 1, right?

22 A. That's correct, and that's what I
23 assumed in this paragraph.

24 Q. So your assumption is that every person
25 who applies would obtain the \$15,000 cap.

1 A. Yes, in this hypothetical.

2 Q. Okay. Do you understand how a pro rata
3 distribution based on poundage relative to the
4 number of claims that come in would work?

5 A. Yes, I do.

6 Q. Okay. And can you explain to me how
7 that would work?

8 A. A number of -- a number of claimants
9 would submit their records, let's assume for the
10 moment that those records are deemed to be reliable.
11 The stabilization has information on those things,
12 but let's just assume that they're reliable.
13 Somebody would add up those total claims and then
14 the pro rata adjustment would be the fraction of
15 those total claims that would be given to each
16 person up to a maximum of 15,000.

17 Q. Okay. Well, again, just so we're on
18 the same page, a number of claims would come in,
19 the cooperative using its records, perhaps in
20 combination with some of what was submitted by the
21 claimants, would determine poundage for each
22 claimant, right?

23 A. Correct.

24 Q. Over the life of their membership.

25 A. Correct.

1 Q. Okay. Then a total number of pounds
2 would be determined based on that group, total
3 number of poundage that had been submitted, right?

4 A. As I just said, yes.

5 Q. Okay. And then on a percentage basis,
6 you would take for every claimant however pounds
7 they submitted, you would divide that by the total
8 and that would equate to some percentage, right?

9 A. Correct. Divided by 16.5 million and
10 as long as they didn't exceed the cap of 15,000,
11 that's what they would receive.

12 Q. No, I don't think -- I don't think it
13 would be divided by 16-and-a-half million dollars.
14 Follow -- follow me through here.

15 A. Okay. Okay.

16 Q. Right?

17 A. You're just determining the pro rata
18 percent in terms of --

19 Q. That's right.

20 A. So we're looking at the pounds right
21 now.

22 Q. You agree with me that's the way it's
23 going to work.

24 A. Yes, yes.

25 Q. All right. So for any claimant, you

1 take their pounds delivered divided by the total
2 poundage -- we don't know what that is. That will
3 be determined when we see how many claimants come
4 in, correct?

5 A. That's correct.

6 Q. And then a percentage is -- is derived
7 for every individual claimant, correct?

8 A. Correct.

9 Q. Okay. And that percentage is what's
10 multiplied by 16-and-a-half million, right?

11 A. Correct.

12 Q. Okay. And then you understand that if
13 any one single person is -- their pro rata dollar
14 amount is above 15,000, it will be capped?

15 A. Yes, that's what I was trying to say a
16 moment ago but, yes.

17 Q. Okay. So there is -- to the extent
18 there is a single cap, one person who's above
19 15,000, in fact, not all of the \$16.5 million
20 funds would be exhausted, would it?

21 A. I don't see how that follows.

22 Q. Okay. If -- if somebody based on the
23 pro rata distribution for claimants is entitled
24 to, based on the math -- let's -- let's make it
25 simple. Let's say ten people submit claim.

1 A. I'm sorry, I -- I -- the interpretation
2 you're putting on this makes this an
3 extraordinarily ambiguous settlement proposal if
4 that's the case.

5 Q. I think the difference is right --
6 let's just make sure we're on the same page --

7 A. Okay.

8 Q. -- with what I'm saying and then you
9 can characterize it however you want. But I want
10 to make sure you understand it because I'm
11 learning now for the first time that this was just
12 a hypo, but based on the actual words written
13 here, I think it reflects some misunderstanding,
14 so let's get on the same page.

15 Let's say ten claim -- claims come in
16 for Group 1, okay?

17 A. Okay.

18 Q. And that translates to a million pounds
19 of tobacco.

20 A. Okay.

21 Q. Okay. Let's say the second claimant
22 has 800,000 of those pounds, just because it's a
23 large farm, they patronize the most, 800,000.
24 Okay?

25 A. Okay.

1 Q. Under my hypo. That person then would
 2 be entitled to 80 percent, I think, times
 3 16.5 million, correct?
 4 A. Until we get to the cap, yes.
 5 Q. Right. At that moment in time, they
 6 would re -- I don't know, what's 80 percent of
 7 16.5 million, sir?
 8 A. I don't know.
 9 Q. Okay. Roughly 4 guess it would be
 10 20 percent, so.
 11 A. Yeah, I don't do arithmetic in my head.
 12 Q. I guess around \$12 million.
 13 A. Okay.
 14 Q. Sound about right?
 15 A. If you say so. It sounds about right.
 16 Q. Okay. So the base says rather than
 17 this one grower, just based on the sheer number of
 18 claims that come in on Group 1, rather than give
 19 him 12 million of the \$22 million settlement, we
 20 say the fair thing to do is to cap it, relatively
 21 given the scope of this class, at \$15,000.
 22 A. Uh-huh.
 23 Q. Under the settlement, what happens
 24 then? The Delta -- anything from the -- above the
 25 15,000 to 12 million for that individual, where

1 does that money go?
 2 A. It sounds from what you're explaining
 3 that it stays with stabilization.
 4 Q. No, it spills into Group 2, sir.
 5 A. Oh, correct. Sorry, you're correct, I
 6 apologize. You're quite right.
 7 Q. Right. And so to the extent then you
 8 agree with me on the pro rata distribution, if any
 9 single claimant --
 10 A. Uh-huh.
 11 Q. -- is capped, the full 16-and-a-half
 12 million dollars will not be exhausted. Accurate?
 13 A. That's right. That's why I was -- I
 14 was concerned about when you said it would not be
 15 exhausted, it -- that it goes into Group 2 and
 16 then it gets allocated there based on number of
 17 crop years and other methods.
 18 Q. Correct, right. So you agree with me
 19 that if the cap, again, just sort of applies to
 20 any one person that then 16-and-a-half million
 21 isn't exhausted, right?
 22 A. That's correct.
 23 Q. Okay.
 24 A. It's not exhausted in Group 1. It's --
 25 gets exhausted in Group 2.

1 Q. Exactly. I mean, the same with any
2 class action settlement no matter what the number
3 is. You would agree, even though you think the
4 number's too low, if the number were -- pick your
5 number -- \$50 million, you would hope that all
6 those funds get exhausted and paid out no those
7 submitting claims?

8 A. Yes.

9 Q. Right?

10 A. Yes.

11 Q. Okay. So you have no fundamental
12 quarrel with the settlement is going to be
13 exhausted and paid out ideally?

14 A. No, no.

15 Q. Okay.

16 MR. FORST: We've been going for a
17 little over an hour. Why don't we take a quick
18 break?

19 THE WITNESS: Okay.

20 VIDEOGRAPHER: Going off the record.

21 The time is 11:04 a.m.

22 (A BRIEF RECESS WAS TAKEN.)

23 VIDEOGRAPHER: We're back on the record.

24 The time is 11:17.

25

1 BY MR. FORST:

2 Q. Dr. Harrison, before we broke, I just
3 want to point you back to paragraph 11 of your
4 affidavit quickly that we were talking about, and
5 that is on page 6. Are you there?

6 A. Yes, I am.

7 Q. The one thing I just wanted to clarify
8 too, and I'll actually ask for your clarification,
9 is the very last clause where it says, Leaving the
10 vast majority of the hundred plus members class
11 uncompensated.

12 Do you see that?

13 A. Yes, I do.

14 Q. You agree with me that that's
15 inaccurate.

16 A. I don't understand in -- the sentence
17 in which it is.

18 Q. Okay. You're -- you're -- in
19 paragraph 11, you assume Group 1 is going to
20 exhaust the full \$22 million of the settlement
21 fund, right? And because of that, you reached the
22 conclusion that will leave the vast majority of
23 the hundred plus members uncompensated, correct?

24 A. Yes, I agree. That's the implication
25 of the hypothetical which I agree could have been

1 worded more artfully, yes.

2 Q. Okay. I just want to make sure we're
3 clear. You're not saying that this class
4 settlement, the one that's before Judge Dever for
5 consideration, leaves a hundred plus class members
6 uncompensated?

7 A. That's correct. Not -- and that's --
8 that was why this was a hypothetical.

9 Q. Okay. Are you aware of any class
10 member that would be uncompensated if they choose
11 to submit a claim in connection with the
12 settlement?

13 A. That's a good question because there
14 could be some people who do not have records of
15 the pounds that they submitted. It could be some
16 people that don't have good detailed information
17 on the crop years, and it could be that there's no
18 information on no net cost fees. But, of course,
19 that would come with poundage submitted, so
20 that's -- those would be the people that don't
21 have information on pounds that they submitted.
22 So I would be -- I would have a concern.

23 Q. Okay.

24 A. But that's something that the
25 settlement doesn't speak to, pardon the pun, that

1 how one would ascertain that information if one
2 doesn't use stabilization's records.

3 Q. Sure. Do you have any understanding
4 one way or the other or did you ask whether the
5 cooperative has supplied its records, years of
6 membership, poundage of tobacco, patron -- the
7 years of patronage for each person to the claims
8 administrator?

9 A. To the Speaks claims administrator?

10 Q. Uh-huh.

11 A. No, I did not ask.

12 Q. Do you know one way or the other
13 whether that's true?

14 A. No, I don't.

15 Q. Okay. Is it your understanding that if
16 every -- if to the extent a claimant submits a
17 valid claim, that they should receive some
18 compensation under Group 1 or Group 2? Nobody
19 will left -- be left uncompensated.

20 A. That's my understanding, yes.

21 Q. Okay. I want to turn to paragraph 7 of
22 your affidavit, which is on page 4, sir. Let me
23 know when you're there. And you can read it if
24 you'd like to refresh your memory.

25 A. Yes, I'm there and I've read it.

1 Q. Okay. Do you consider yourself an
2 expert on what is and what is not patronage income
3 to an agricultural cooperative?

4 A. I believe so, yes. I've studied the
5 documents. I understand the nature of the term as
6 it's used in that context and I have written
7 several affidavits on that matter.

8 Q. You've done that in connection with
9 this lawsuit, correct?

10 A. That's correct, yes.

11 Q. Okay. And specifically, not the Speaks
12 lawsuit but the * Fisher Louis lawsuit, right?

13 A. Yes.

14 Q. Okay. My question is, have you ever
15 written a peer-reviewed journal, article,
16 anything, on what is and what is not patronage
17 income in the context of agricultural cooperatives
18 outside of this litigation?

19 A. No, I have written some articles on --
20 the term of art in economics is what is the ad
21 valorem equivalent -- and I'll explain what that
22 is in a moment -- of price support programs of
23 this kind and the role that cooperatives play that
24 has to do with international trade negotiations.
25 The term ad valorem equivalent means if one was to

1 replace the agricultural program which generates
2 patronage interest with a tariff, what would be
3 the equivalent. That was part of the
4 international trade negotiations in the early
5 1990s which subsequently led to the no net cost
6 funds. All I'm saying is I have written on those
7 matters. I have not specifically written on
8 patronage interest, but I've written on the
9 implications for what are called a economics
10 rents, which is the same thing.

11 Q. Okay. Do you consider yourself an
12 expert on the tax treatment or whether or not
13 something is patronage under the tax code that's
14 applicable to agriculture cooperatives?

15 A. Not an expert, but I am familiar with
16 some of the implications, yes, and I have done a
17 fair bit of work on tax allocations.

18 Q. Okay. You say in -- in paragraph 7, I
19 think, there are four logical ways that a
20 cooperative could contribute to the reserves of
21 this cooperative, right?

22 A. Correct.

23 Q. Okay. The first I think you were
24 talking about the 5-dollar fee to become a member,
25 right?

1 A. Well, that's actually what I say, yes,
2 requiring a 5-dollar fee and a postage stamp.

3 Q. The second you're saying they can
4 patronize by giving pounds of tobacco to the
5 cooperative, right?

6 A. In a given crop year, yes. The
7 specific crop year matters.

8 Q. Okay. You recognize that that might
9 not necessarily lead to income for the
10 cooperative, right?

11 A. That's correct. I'm saying this is
12 the -- these are necessary but not sufficient.

13 Q. Okay. You say, third -- the third is
14 to have contributed pounds of tobacco leaf in a
15 year that actually generated positive net earnings
16 for the cooperative, right?

17 A. Correct.

18 Q. Okay. So what is the difference, just
19 so I'm clear, between two and three?

20 A. Well, it's precisely the point that you
21 sought to clarify, that the second is a necessary
22 condition, but it's not sufficient. You might
23 have contributed pounds in a year that did not
24 generate any net gains.

25 Q. Okay. So -- right, so is it fair --

1 you're saying here though, there are four ways
2 that you can contribute to the reserves. Are you
3 agreeing with me that the second way doesn't
4 necessarily contribute to the reserves?

5 A. No, you need to read the rest of the
6 paragraph. On page 5 I have a statement that
7 clarifies precisely why I said that. The first --
8 and, quote, The first two are necessary but not
9 sufficient for any net earnings contribution to be
10 associated with a grower, end of quote. So that's
11 exactly what I'm trying to explain.

12 Q. Okay. So I just want to make sure
13 we're on the same page. What you're saying is,
14 simply because somebody comes and patronizes and
15 gives their tobacco leaf to the cooperative, it
16 doesn't necessarily mean that that translated into
17 a dollar that goes into the cooperative's
18 reserves.

19 A. Yes, that's exactly what I said.

20 Q. Okay. You say, The fourth is to pay no
21 net cost fees on tobacco delivered to the
22 stabilization, right?

23 A. Correct.

24 Q. What does that mean?

25 A. Well, that means after 1982, I mean,

1 there were certain -- there was a change in the
2 regime where as pounds were delivered to be
3 marketed were consigned to stabilization, there
4 was a fee assessed, no net cost fees. In
5 subsequent years, I think after '86, these fees
6 were also assessed on manufacturers and other and
7 importers, but we'll put those aside. So I'm
8 referring here to the no net cost fees that go
9 along with tobacco that is consigned to be
10 marketed.

11 Q. Okay. But is it your understanding
12 that the cooperative retained those fees?

13 A. No, I'm going to be careful here
14 because there was -- the cooperative, I believe,
15 had to put them in a certain fund and that they
16 were given to the -- they were then provided to
17 the CCC and the SFA, so -- well, the CCC. So
18 they -- there was an accounting of those fees, but
19 I'm simply saying from my point of view, the
20 farmer paid fees. Who actually got them is not
21 relevant. They generated in the end, net earnings
22 for -- for the cooperative.

23 Q. Okay. But do you agree with me that
24 the no net cost fees were to make sure that the
25 program would continue to exist at no net cost to

1 taxpayers and so those moneys would be kept for
2 the government?

3 MR. RUNYAN: Object to form.

4 THE WITNESS: They would be in an
5 account kept by the government, yes, and to ensure
6 that there was no net cost to the taxpayers over
7 several years is the idea. It didn't have to be
8 any -- in any particular year.

9 BY MR. FORST:

10 Q. Right. And that account and those
11 moneys were controlled by the government, right?

12 A. That is my understanding, yes.

13 Q. Okay. And not the cooperative. The
14 cooperative had no say in those fees or how they
15 could be used.

16 A. Okay. But my point here in this
17 paragraph --

18 Q. Is that a yes to my question?

19 A. That's a yes to your question. And I'm
20 clarifying that the point in this paragraph is how
21 net earnings were generated, how an * intel
22 patronage interest was generated. But you're
23 quite right, as an accounting matter, as a legal
24 matter, they were not owned by the cooperative.

25 Q. Okay.

1 A. Which is, in fact, the members.

2 Q. And, in fact, those fees, the taxes
3 that were paid, weren't booked on the
4 cooperative's books as an asset, correct?

5 A. That's my understanding.

6 Q. Okay. I want to focus -- and we'll
7 circle back to that, I think, a little bit later,
8 but down to paragraph -- I just want to hear from
9 you quickly. In paragraph 8, you say, It is my
10 opinion that the proposed settlement does not
11 represent a fair, equitable or adequate
12 resolution, right?

13 A. Correct, that's what I've written.

14 Q. That -- you're not offering a legal
15 opinion. Even though that question is before the
16 court to answer precisely, you're saying you're
17 not offering a legal opinion?

18 A. Yes, I've said that many times to you
19 and it's, in fact, quite clear I think in the
20 beginning of my affidavit, I have an area of
21 expertise that will contribute to the decision of
22 the finder of fact and to the -- to the judge.

23 Q. Okay. You say here in your first prong
24 on -- on dealing with whether or not this
25 settlement is fair, equitable or adequate, you

1 look at the aggregate and adequacy in paragraph 9.

2 Do you see that?

3 A. Yes, I do.

4 Q. You first note that the proposed
5 settlement of 24 million includes \$2 million for
6 attorneys' fees. Do you see that?

7 A. Yes, I do. And, of course, it's up to
8 \$2 million.

9 Q. Fair. You have no opinion on whether
10 or not that's reasonable or not.

11 A. On what? *.

12 Q. On attorneys' fees.

13 A. Let -- no. No, no expert opinion on
14 that.

15 Q. Okay. You're not offering an opinion
16 in this affidavit on that aspect, right?

17 A. No, I'm not.

18 Q. Okay. You say, Based on a net worth of
19 363.6 million for the stabilization -- and I'm
20 going to skip ahead -- you're effectively saying
21 that sets the upper bound for any proposed
22 settlement, right?

23 A. Yes, it sets an upper bound for the
24 proposed settlement that's correct.

25 Q. Okay. And why is that?

1 A. Well, that is -- that net worth
2 represents in accounting terms net shareholders
3 equity and that's how it's referred to in any
4 annual reports of stabilization. And that
5 reflects if -- if stabilization were dissolved as
6 of those dates and not in an emergency setting, I
7 mean, because one has assets that one would want
8 to sell off, so you're not talking about a -- a
9 fire sale, so to speak, that's the amount of money
10 that would be retained. That's the accounting
11 intention of net shareholders' equity. So that's
12 often colloquially referred to as "net worth."

13 Q. Okay. So you're -- and you're
14 connecting this to a claim -- a specific claim
15 in -- in the Speaks lawsuit?

16 A. I'm sorry, I do not understand the
17 question.

18 Q. Well -- well, in any analysis, a
19 damages analysis, you're calculating damages
20 assuming liability for a particular claim that's
21 been asserted or alleged in the case, right?

22 A. I don't -- I don't understand the
23 question. Sorry.

24 Q. Okay. Why -- why is it -- under what
25 claim in Speaks would they be entitled to a

1 recovery of the full net value of stabilization?

2 A. Oh, if one was to try to identify what
3 patronage interest amounts to, then this is an
4 upper bound on patronage interest.

5 Q. My -- my question is though, what
6 specific claim that has been alleged by the
7 Speaks' plaintiffs are you saying would lead to a
8 damages award of this number?

9 A. Any claim that requests recovery of net
10 patronage interest.

11 Q. Any claim that requests -- whether or
12 not they're asking for all of it or a portion of
13 it?

14 A. No, I'm -- what I'm -- what I'm saying
15 here, and I'm using these terms quite clearly, is
16 that this is an upper bound on the net patronage
17 interest to the members of stabilization, the
18 farmers. No, again, I'm trying to --

19 Q. Do you know if Speaks has made that
20 allegation? The Speaks complaint that you're
21 considering this -- this number against, do you
22 understand what claims are alleged in that case?

23 A. No. I have looked at them, but I don't
24 recall them as I sit here now. On the other hand,
25 what I was proposing here in paragraph 10 is an

1 upper bound in order to assess what would be a
 2 reasonable recovery of net patronage interest.
 3 Q. So if somebody brings a lawsuit against
 4 Google, when you're evaluating a settlement you
 5 would say, the upper bound is the net value of
 6 Google.
 7 A. The net worth. If that's in -- if
 8 they're bringing a lawsuit with respect to
 9 recovery of net shareholders equity or net
 10 patronage interest, yes.
 11 Q. Okay.
 12 A. And that is the nature of these
 13 lawsuits, to recover net patronage interest.
 14 Q. Have you read the Speaks Complaint?
 15 A. I have.
 16 Q. When did you read it?
 17 A. Oh, sometime in late 2017 before I
 18 wrote this affidavit.
 19 Q. Okay. You did. Do you know what
 20 claims are being asserted in that case?
 21 A. I do not recall them as I sit here, but
 22 my understanding is that they seek recovery of net
 23 patronage interest owed to farmers, and that would
 24 be -- I'd be surprised if it's different than
 25 that.

1 Q. Okay. So you're saying that that's the
 2 appropriate outer bound because they seek
 3 effectively dissolution I think of the company?
 4 A. No. Actually, I -- I -- again, that's
 5 why I used the word upper bound. And this is a
 6 reasonable way to calculate the upper bound
 7 because it's actually using stabilization's own
 8 audited accounts to look at net worth, net
 9 shareholder equity. So that's why I'm saying it
 10 is an upper bound. I'm not saying that one should
 11 dissolve stabilization. That's not for me to
 12 determine.
 13 Q. But let me --
 14 A. If one is --
 15 Q. Sorry, finish. I apologize.
 16 A. No problem. If one is to dissolve
 17 stabilization and, again, with the caveat that I
 18 gave you that it's not a fire -- fire sale, that
 19 would provide the upper bound and it would give
 20 us -- give the court an idea of how much money is
 21 available to patrage.
 22 Q. Sure. But you would agree with me,
 23 because you said earlier, in order to -- you
 24 understand this is an offer of settlement,
 25 compromise, right?

1 A. I'm not sure what the word "compromise"
2 means.
3 Q. It's a settlement between two
4 litigants. It's -- it's not assuming that
5 someone's going to win necessarily or -- or lose
6 necessarily, right?
7 A. Okay. I understand that.
8 Q. Okay. And you understand that the
9 parties decided in evaluating the relative
10 strengths of the case \$22 million was a fair,
11 reasonable and adequate settlement compromise?
12 A. I understand that the parties --
13 Q. Okay.
14 A. -- came to that judgment, yes.
15 Q. Okay. You're -- you're -- you're
16 certainly not saying, I don't think, that the
17 appropriate settlement should be \$363.6 million, a
18 hundred percent recovery, assuming that the
19 plaintiff would win on every claim and you're a
20 hundred percent certain and that's the right
21 number? You're not saying that?
22 A. I am saying what I'm saying here, that
23 that is an upper bound.
24 Q. Okay. Right.
25 A. Again, the idea here is to get an upper

1 bound to inform the court.
2 Q. And the lower bound is zero.
3 A. So that it -- so that it can assess
4 whether -- lower bound is zero to be sure. But
5 the court can assess whether \$22 million is a
6 small number, a large number relative to the net
7 worth. It represents the net patronage of the
8 farmers.
9 Q. I understand that. What economic
10 analysis did you undertake to determine the
11 likelihood of assess on recovering \$364 million in
12 connection with this lawsuit?
13 A. I did none. But, again, that's
14 precisely why I used the words "upper bound." I
15 used the words upper bound in several respects.
16 The first is obviously that one does not need to
17 require dissolution of stabilization. That's what
18 net worth implies in -- in broad accounting terms.
19 But I'm not saying one should necessarily do that,
20 so I'm calling it an upper bound.
21 Q. Right.
22 A. The other aspect, of course, is indeed
23 the legal one, and that is would the finder of
24 fact, would the judge agree with that as -- as the
25 settlement of damages?

1 Q. I don't think it's legal or not. In
2 terms of economics, in any lawsuit there's the
3 potential of a zero recovery or a hundred percent
4 of the ask. Do you agree with that?

5 A. That's correct. And I've published on
6 that very issue in peer-reviewed economic
7 journals.

8 Q. Okay. I get it. Whether or not it's
9 dissolution or some other claim, is it true, sir,
10 that if there is a 10 percent chance of likelihood
11 of success on those claims in this lawsuit, then
12 \$22 million would be reasonable?

13 A. I'm going to -- I don't want to agree
14 with the specific arithmetic, but I agree with the
15 logic of what you're saying. I'm not questioning
16 it. I've published on that myself. That's
17 precisely why I used the word "upper bound."

18 Q. Right. But you're also saying this
19 number, the absolute number, 22 million, is
20 inadequate, right?

21 A. Yes.

22 Q. Okay. Relative to what?

23 A. Relative to this upper bound. And I'm
24 very clear that this is an upper bound.

25 Q. Yeah, but that assumes they -- total

1 victory for the plaintiffs, doesn't it?

2 A. It assumes victory for the plaintiffs,
3 yes.

4 Q. Right. Okay.

5 A. I'm not in a position to opine on the
6 probability of success. That's for a judge to do.

7 Q. But -- but that is how you assess
8 whether a compromise is reasonable. What are the
9 relative strengths of the case so I can decide if
10 the number they're reaching makes sense? Would
11 you agree?

12 A. I'm agreeing with you that that is a
13 factor. What I'm disagreeing with repeatedly is
14 that in this particular instance that calls for an
15 expert opinion, you need to know a lot more about
16 the case, you need to know a lot more about the
17 legal proceedings of the case. If I'm in a
18 position where I know a lot about the case, and I
19 have been in some instances and I have written on
20 this in peer-reviewed academic journals, then one
21 can assess whether certain cents on the dollar are
22 indeed -- is indeed a reasonable settlement.

23 Q. You haven't undertaken that exercise in
24 this case, right?

25 A. That's correct. I was not asked to do

1 that.

2 Q. Right. So you don't know if the
3 \$22 million, given the relative strengths in the
4 case, is reasonable or not.

5 A. That judgment is -- calls for a legal
6 judgment with knowledge of the strengths of the
7 case, and I'd leave that to the judge.

8 Q. Okay. And I can show you the case, but
9 I represent to you, the single most important
10 factor of deciding whether a settlement is
11 reasonable is the relative strengths of the case.
12 Do you agree or disagree?

13 MR. RUNYAN: Object to the form.

14 THE WITNESS: I can't agree or disagree
15 because I don't know that to be true.

16 BY MR. FORST:

17 Q. Okay.

18 A. On the other hand, I'm more than happy
19 to let the judge decide what is the most important
20 factor and what weight he or she should put on
21 those factors.

22 Q. Agreed. You also agree that there's a
23 possibility, if you're assuming the upper bond is
24 346 million, the lower bound is zero. We agreed
25 on that, right?

1 A. Yes.

2 Q. Okay. So total victory for the
3 cooperative, the farmers in this case, would
4 obtain zero dollars. Would you agree?

5 A. Actually, forgive me, I'll object to
6 the form if I may in the sense that to me, the
7 cooperative is the farmers. I don't understand
8 the distinction between cooperative and farmers,
9 but if you're talking about litigants.

10 Q. The defendant.

11 A. I understand the question, yes. Yes.

12 Q. Let me re-ask it.

13 A. Yeah, but I want to be careful here,
14 because you -- you take my point. Okay.

15 Q. If the defendant prevails on the
16 lawsuit and dismisses or wins at summary judgment
17 or trial and every legal claim brought about them,
18 the recovery for the plaintiffs in this class
19 action would be zero dollars?

20 A. Agreed.

21 Q. Okay. And so you -- do you tell the
22 court that the lower bound he ought to consider is
23 zero dollars when assessing the adequacy of this
24 settlement?

25 A. No, the court knows that.

1 Q. Okay. But sitting here today -- well,
2 listen, if you -- because the net worth assumes
3 total victory for the plaintiffs, sitting -- if
4 you assume total victory for the cooperative,
5 wouldn't 20 -- you would agree then \$22 million is
6 quite high relative to the outcome of the case?

7 A. If one made that assumption. Again,
8 all I'm trying to do here is convey to the finder
9 of fact and to the judge exactly how much money is
10 on the table. Are we talking about patronage
11 interest, if that's the term we're using here,
12 that is in the order of 10, \$20 million,
13 \$200 million, \$300 million. I'm trying to provide
14 that sense of a denominator that is -- I talked
15 about earlier to -- to -- so that the judge can
16 make an informed decision with these other factors
17 taken into account.

18 Q. What expert analysis or economic
19 analysis does one have to bring to bear to look at
20 a balance sheet and say, The net value of the
21 company is X?

22 A. Not much. You have to be an economist
23 and understand how to read annual reports. And
24 that's all I've done here. I'm not trying to
25 represent this -- in fact, it may be that it's the

1 net worth in other years that are -- that is
2 relevant if we're looking at 2004 and so forth.
3 I'm making a point here that the upper bound can
4 be ascertained by the net worth so that the court
5 gets an opinion. If we're looking at 22 million,
6 is this from a small company in terms of its net
7 worth or a large company in terms of its net
8 worth? It's simply trying to inform those court.

9 Q. I understand. But, again, if Google
10 faces a patent litigation lawsuit over its search
11 bar and there's a specific claim about the harm
12 associated with its use --

13 A. Uh-huh.

14 Q. -- and a settlement is reached, the
15 appropriate metric is not the net worth of Google
16 to decide if that settlement with respect to those
17 claims is adequate and fair. Would you agree?

18 MR. RUNYAN: Object to the form.

19 THE WITNESS: I would agree with that
20 because the claim, as you suggested, is not
21 seeking recovery of net shareholder equity or
22 patronage interest, which is the case we do have
23 before us here.

24 BY MR. FORST:

25 Q. Right. But in -- in your example of

1 Google where somebody is seeking, let's say, to
2 dissolve the company and the net worth is
3 \$750 billion and a settlement is reached, to
4 assess whether that's fair and adequate relative
5 to the net worth, you have to decide, don't you,
6 are they going to win or lose? What are their
7 chances?

8 A. Yes, I agree that that's something that
9 the judge needs to do.

10 Q. Would --

11 A. And I'm providing information that will
12 inform the judge in his or her decision.

13 Q. So -- so, again, though, what you're --
14 the reason I struggle, Dr. Harrison, is because
15 you actually conclude that it's not the number
16 itself is too low, but you do that without
17 assessing whether or not the plaintiffs are going
18 to win or lose; is that right?

19 A. No. What you're confusing is me, as a
20 testifying expert with a limited remit, and the
21 judge. I am not the judge in the case. I am not
22 putting together all of the legal considerations
23 and the legal character -- issues that you --
24 factors that you've talked about, which I'm not
25 disagreeing with. I'm simply providing my

1 expertise which will help the judge make those
2 determination.

3 Q. Sir, you write in paragraph 8, you tell
4 the judge, you tell him, in your opinion, the
5 proposed settlement does not represent a fair,
6 equitable or adequate resolution of stabilization
7 when considering the aggregate inadequacy of the
8 settlement size, which I take to mean \$22 million,
9 right?

10 A. Yes.

11 Q. Okay. You're telling him full stop
12 right there, the number is too low, right?

13 A. Yes.

14 Q. And the only input that you give him is
15 the net value of the company and economic sense to
16 decide whether that number is too low.

17 A. Actually, net worth, because I want to
18 be precise on that, in an accounting sense but,
19 yes.

20 Q. Okay. But you also agree with me, he's
21 confronted with another number, and that's
22 potentially zero, right?

23 A. Yes.

24 Q. Okay. And let me ask this, sir. Are
25 you aware that there was a lawsuit in Georgia

1 filed by actual members of these classes both in *
 2 Fisher Louis and Speaks against the same
 3 defendant, the cooperative?

4 A. I don't recall it as I sit those.

5 Q. You don't know one way or the other?

6 A. I just don't recall it as I sit here.

7 Q. Let me ask it -- this.

8 A. If I may, I don't remember cases.
 9 Sometimes I remember cases by, you know, who was
 10 the lead plaintiff and so forth, so I don't want
 11 to say "yes" or "no" and guess at that.

12 Q. It's Rigby. Julian Rigby would be the
 13 name. The name of the lawsuit would be Rigby et.
 14 al. versus Stabilization U.S.T.C, the Cooperative.

15 A. Okay. I do not recall seeing that.

16 Q. Okay. Have -- have you ever been told
 17 by counsel or any other farmer that there is
 18 another parallel litigation proceeding in Georgia
 19 state court?

20 A. Not that I recall as I sit here.

21 Q. Okay. Would it impact your opinion in
 22 this case on the fairness, adequacy and
 23 reasonableness if a case pressing the same claims
 24 by the same members of this class had gone to
 25 final judgment?

1 A. By "same claims," you mean the same
 2 claims as Speaks?

3 Q. Or * Fisher Louis. You understand both
 4 lawsuits to be seeking recovery of their patronage
 5 interest, the total value, right?

6 A. That's correct.

7 Q. Okay. So what I'm saying is, if there
 8 was another case that was pressing the same
 9 claims, asking for the same recovery that had
 10 proceeded to final judgment and there was a -- an
 11 award, would that impact your opinion?

12 A. I would need to know more about the
 13 case.

14 Q. Okay. But my hypo is members of the
 15 class, same defendant, same claims asking for
 16 recovery of -- of their patronage interest. Do
 17 you understand that?

18 A. Yes.

19 Q. That's the essence of this lawsuit, I
 20 think, as you explained it, right?

21 A. Uh-huh, yes.

22 Q. Okay. If it -- that lawsuit had
 23 proceeded to final judgment, would that impact in
 24 your expert analysis, your opinion in -- in your
 25 affidavit?

1 A. It depends on the extent of recovery.

2 Q. What if I represented to you that the
3 cooperative litigated that case and it went all
4 the way up to the Supreme Court and it has been
5 affirmed that those plaintiffs are entitled to
6 zero dollars, would that impact your analysis?

7 A. I would need to know more about the
8 flaws in the case.

9 Q. Okay. Would you, sitting here today,
10 if that case actually happened, would you -- would
11 you want to read it and investigate it?

12 A. I'd be curious, but there are all sorts
13 of reasons why a case can be thrown out that have
14 nothing to do with whether indeed there was a net
15 patronage interest. It could be that the case had
16 been poorly cast or the class had been poorly
17 defined or some other procedural reason. So I --
18 all I'm saying is, there are a myriad of legal
19 reasons even on appeal why something can be set to
20 zero that have nothing to do with, in my -- the
21 language I'll use, the merits of the case.

22 Q. Fair.

23 A. So I'm accepting that. I would need to
24 read more about the case. As a curiosity, I would
25 need to read it. That's all.

1 Q. But if that -- I think though what
2 you're saying is, you would want to know more
3 about that case to determine whether it was
4 dismissed for -- on legal grounds, factual
5 information, procedural grounds. That would be
6 relevant, a data point for you to consider in
7 saying whether this settlement, which is from the
8 same class representatives, the same interest, is
9 fair, adequate and reasonable, right?

10 A. No, I think, again, you're confusing me
11 with the judge. That's actually something that I
12 think would be entirely appropriate for the judge
13 to look at and decide if that case was on point,
14 if that case actually spoke to the merits of the
15 case that the judge sees before him or her,
16 whoever the judge is.

17 Q. Okay. So do you -- are you familiar
18 with the complaint that has been filed, the
19 current operative complaint in the * Fisher Louis
20 action where you were initially engaged?

21 A. I believe so, yes.

22 Q. Okay. Do you know which iteration it
23 is one, two or three?

24 A. I believe it's at least two. It may be
25 three. No, I think the third -- I'm sorry, go

1 ahead.

2 Q. I can represent to you, and your
3 counsel, if I'm wrong, I'm sure will correct it.
4 It's on the third amended Complaint.

5 A. That's my understanding because three
6 of the claims were -- were struck and it had to be
7 recast to just talk about the remaining claims is
8 my recollection.

9 Q. Okay. I noticed that the third amended
10 Complaint was not in your materials considered for
11 this affidavit. Was there a reason for that?

12 A. I'm surprised that it's not listed.

13 Q. You can look. I mean, it's on the
14 back. Perhaps I missed it. I'm certain I didn't,
15 but tell me if I'm wrong.

16 A. I'm looking at Item 22. I guess that's
17 the second amended --

18 Q. Correct.

19 A. -- Complaint? Okay. So I -- I
20 certainly reviewed the second amended Complaint
21 and I may have reviewed the third and -- but from
22 my point of view, not seeing any difference. I
23 understand that there were eight counts and three
24 were taken out because they were ruled
25 inadmissible. My recollection and -- is that

1 the -- the Complaint was otherwise identical. But
2 that's just those recollection.

3 Q. Sitting here today, sir, do you
4 understand that the plaintiffs represented by
5 counsel here in * Fisher Louis in the third
6 amended Complaint dropped their claim for
7 dissolution?

8 A. I do believe that's the case, yes.

9 Q. Okay. And if they -- that wasn't
10 dismissed, those -- those plaintiffs voluntarily
11 dropped their claim for dissolution, would that
12 indicate to you that the plaintiffs or counsel
13 there do not consider that a strong legal claim?

14 MR. RUNYAN: Object to form.

15 THE WITNESS: I'm not going to make an
16 opinion about what counsels think in terms of a
17 strong legal claim.

18 BY MR. FORST:

19 Q. I asked what would it indicate to you?
20 How would you understand that if they dropped it?

21 A. I -- my -- my understanding from what I
22 heard about the pleading was that they -- that was
23 a natural thing to drop because they -- the
24 previous court said, these claims can't go
25 forward. I'm not going to opine about the legal

1 validity of doing something or whether it
2 indicates strength or otherwise. It doesn't
3 affect my opinion.

4 Q. Well, sir, I think you just told me
5 that the court, Chief Judge Dever, should consider
6 the net worth of the company because there's a
7 potential that -- of dissolution or that the
8 plaintiffs in Speaks are successful in basically a
9 complete recovery, right?

10 A. No, I said the court should consider
11 that as an upper bound simply because it is an
12 easily -- easily ascertained upper bound. Other
13 values would require determination about what may
14 be reasonable reserves for an ongoing company, and
15 that's something that we're not in position -- I'm
16 not in a position to present opinions on. I'm
17 qualified in that area, but I'm not in a position
18 to present opinions because I don't have the facts
19 before me. That's why I said in this case,
20 clearly, repeatedly, it's an upper bound because
21 it's easily ascertained from stabilization's own
22 documents, their --

23 Q. Sure.

24 A. -- annual report.

25 Q. And I think you'll agree with me

1 clearly and easily, the lower bound for the
2 court's consideration is zero dollars, right?

3 A. Yes, you've asked that and I've agreed
4 with you, yes.

5 Q. Okay. But sitting here today, you
6 can't say one way or the other in your opinion,
7 because you didn't do the analysis, whether the
8 \$22 or \$22 million is -- is appropriate relative
9 to those two data points?

10 MR. RUNYAN: Object to form.

11 THE WITNESS: I most certainly can say
12 that it is inappropriate if one looks at the upper
13 bound on net patronage interest, and that's the
14 sole purpose of introducing that number. As I
15 said a moment ago, I fully understand that one
16 would need to determine reasonable reserves for
17 the firm -- for cooperate -- stabilization as an
18 ongoing entity. And that's a subsequent
19 calculation, that's a subsequent analysis.

20 BY MR. FORST:

21 Q. Sure. You would also agree that
22 potentially it's inappropriate relative to the
23 lower bound because it's too high.

24 A. What is inappropriate? I don't
25 understand.

1 Q. The \$22 million. It could be viewed as
2 inappropriately high.

3 A. Again, I'm trying to avoid -- and I'll
4 say it again and, again, and, again, that I'm
5 trying to avoid doing the judge's job. I'm not
6 here and I was not asked to do the judge's job in
7 this particular instant case, evaluate the
8 probability of the success, the merits of the case
9 from a legal point of view. The judge will do
10 that. He or she, whoever does that, is qualified
11 to do it. I'm not qualified to do that.

12 Q. So then if you don't know whether --
13 you don't have any expert opinion or idea on the
14 probability of success whether or not the
15 plaintiffs in Fisher Louis, whether or not the
16 plaintiffs in Speaks would recover \$346 million,
17 you're agreeing you have no opinion on the
18 relative probability of that occurring?

19 MR. RUNYAN: Object to form.

20 THE WITNESS: It's not relevant to my
21 opinion.

22 BY MR. FORST:

23 Q. Okay. Right. So you don't have an
24 opinion on it.

25 A. It's not relevant to my opinion. I

1 actually think there's a fair chance that they'll
2 recover a lot. Because if you simply look at the
3 facts clearly, the net patronage interest is
4 vastly in excess of 22 million, so --

5 Q. Yeah, but the --

6 A. But that's just me. I know, I'm not --
7 I'm a testifying expert who has a limited remit.
8 I'm -- I'm there giving you my personal opinion
9 and I fully understand that court cases can go in
10 different directions.

11 Q. Right. Okay. What I'm saying though
12 is, how can you say \$22 million is too low as an
13 expert? I'm struggling with this. How can you
14 say that when you don't know the probability of
15 success on the claim?

16 A. I can say that because I can easily
17 identify the upper bound that we're talking in the
18 orders of 2, \$300 million is the net worth of the
19 company. That is one metric, and I'm very clear
20 that it's a -- it's an upper bound. I'm also
21 very, very clear and I think the judge is going to
22 be able to look at paragraph 1 in my affidavit
23 that says what I'm qualified as, that I'm not
24 qualified to present legal opinions. I'm not
25 representing that I'm presenting legal opinions.

1 I don't doubt that any competent judge will be
2 able to see that these are opinions that are meant
3 to inform his opinion on the appropriateness and
4 fairness of the settlement amount.

5 Q. So then all you're really -- this
6 entire affidavit is -- in terms of this dollar
7 value -- is really telling the judge the upper
8 bound is 347, the zero -- the lower bound is zero
9 dollars and I can't tell you relative to the case
10 whether or not \$22 million is appropriate or not?

11 A. No. I'm saying I'm providing inputs
12 into the appropriateness viewing it as an
13 economist in terms of the amount of net patronage
14 interest that is on the table and 22 million is
15 vastly inadequate. Now, whether that is to be --

16 Q. But why?

17 A. Please -- let me finish. Whether the
18 judge chooses to weigh that by his assessment of
19 the -- the merits of the case from a legal
20 perspective, that's the judge's determination.
21 It's not my job to do that.

22 Q. What I'm struggling with is you're
23 telling him it's too low, but why?

24 A. Because 22 million is pennys on the
25 dollar compared to the upper bound and hence one

1 can use that as a metric, not necessarily the
2 final metric but a metric to get a sense of how
3 much money is on the table potentially.

4 Q. But you -- but, again, just to be
5 crystal clear so we have it, you are indifferent
6 to and didn't take -- undertake an analysis to
7 determine the probability of success of these
8 legal claims, correct?

9 A. Correct. I -- that's not my area of
10 expertise. Unless I have --

11 Q. You --

12 A. -- sorry, unless I have a lot more
13 information about the actual strengths and
14 weaknesses of the case, as I've had in some --
15 some instances where I published on the matter.

16 Q. Did you ask for it in this case?

17 A. No.

18 Q. You would agree that this is complex
19 commercial litigation, right?

20 A. It -- it's commercial. I actually
21 don't call this complex. I know that's a term of
22 art in law. The complex litigation I've been
23 involved in is vastly more complex if I could --
24 if I can say so, from my perspective. I'm not a
25 lawyer, so maybe you're using the word complex in

1 some sense that I'm not familiar with.

2 Q. Okay. I was using your word in
3 paragraph 8 where you say, The settlement for one
4 reason doesn't properly address the complexities
5 of this lawsuit.

6 A. Oh, the term --

7 Q. Are you saying it's not complex?

8 A. No, sorry, the term "complexities" used
9 colloquially in this context is very different
10 than complex litigation. The term complex
11 litigation, my understanding, I'm not the lawyer
12 in the room, refers to particular types of
13 litigation that has multiple jurisdictions, that
14 involves multiple plaintiffs, it may involve
15 multiple international parties and so forth, and
16 there are some major issues of -- of law to be
17 determined. So I'm used to complex in that -- in
18 that -- in that sense. I'm just using it here in
19 relation to my -- actually, I'm not even using it
20 in that formal sense.

21 Q. Okay. So just to clear, are you saying
22 though this lawsuit, I mean, it doesn't -- it
23 doesn't have international parties, although I
24 think it has representatives from multiple states,
25 your definition of "complex litigation" deals with

1 where the parties are located and what else?

2 A. I'm just -- I'm just using the term.
3 It's sometimes used when you talk about complex
4 litigation, it's used as a way to describe certain
5 types of litigation. I don't really care of the
6 definition. I practice a lot of those. I mean, a
7 lot of those sort of lawsuits, so that's where
8 I've heard the term of art. I'm using the word
9 here to refer to the complexity. Complexity can
10 actually be -- can be a word that might explain
11 something being very, very simple. It's the
12 degree of complexity of the case. And in this
13 context, what I'm talking about here, is the fact
14 that it's critical for determining net patronage
15 interest, to know the year in which somebody
16 committed -- provided poundage, the specific year.
17 It's also critical to know what pounds were --
18 were contributed so that one can calculate the net
19 patronage interest fairly. And that this is
20 missing, in my understanding, in the proposed
21 settlement information.

22 Q. I mean, ultimately what you're saying
23 is -- well, let me take a step back.

24 So are you saying -- I think you said
25 earlier, you view this particular case as not that

1 complex?
2 A. From my perspective, yes.
3 Q. Okay.
4 A. In terms of from my perspective
5 testifying as testifying expert for many, many
6 decades, I don't see it as particularly complex.
7 Q. But I thought you said a second ago
8 that determining the relative strengths and
9 probability of success of the claims would be a
10 very complex and long analysis. Would it not be?
11 Would it be simple?
12 A. No, I don't think I used that term
13 complex. It calls for a certain expertise which
14 somebody who's been following the case for years
15 and years and years will know the nature of the
16 case. That's all I'm saying. It calls for --
17 things that I do naturally as an economist,
18 lawyers might find very complex, but they may be
19 very simple. Conversely, there are many, many
20 things that lawyers do that are simple to you that
21 look complex to me. So that has to do with the
22 area of expertise. So to somebody who is trained
23 in this area, who's followed the case for years,
24 such as the judge we have in the case, that may
25 not be a complex determination.

1 Q. Okay. Again, Dr. Harrison, I think you
2 just said this particular case in your view is not
3 complex?
4 A. From a damages point of view, correct.
5 Q. From a damages point of view. From the
6 merits and relative strengths of the claims,
7 whether or not these plaintiffs under their legal
8 theories are entitled to the very patronage
9 interest that your flagging set the outer bound,
10 that's a complex inquiry?
11 MR. RUNYAN: Object to form.
12 THE WITNESS: No, it's an inquiry that
13 somebody else has to make. Whether -- if I had
14 enough information, I don't think it would be that
15 complex because I -- I think I have enough
16 experience as a nonexpert if I had enough
17 information. I just don't have that information.
18 So if I don't have the information, that it's
19 incorrect to say it's complex. It's just simply
20 something I'm not informed about. That's all.
21 BY MR. FORST:
22 Q. So you've been hired as an expert in
23 these related lawsuits for how long?
24 A. These related lawsuits in -- oh, with
25 respect to stabilization, since 2005.

1 Q. Okay. How many years is that?

2 A. 13.

3 Q. Okay. Is that --

4 A. I better check. Yes, it's 13. 2018,
5 yeah.

6 Q. Are you saying you needed more time to
7 evaluate the relative strengths of the case --

8 A. No.

9 Q. -- that has been brought?

10 A. No, I needed more exposure, and I
11 really did not want that exposure, to the legal
12 nuances. In other litigation that I've been
13 involved in for various reasons because there are
14 many, many pretrial motions, I was actually much
15 closer to the lawyers in terms of discussing legal
16 strategy and the strengths and weaknesses of the
17 case. I haven't been party to that. I've been
18 given well-defined tasks by Mr. Runyan and I
19 haven't discussed with him the strengths and
20 weaknesses of the case. That's all.

21 Q. Okay. And just to be clear, you didn't
22 ask to do that.

23 A. No.

24 Q. Okay. Would you just, again,
25 hypothetically, economics, if there was a

1 5 percent chance that the plaintiffs in this case
2 or any case could obtain a hundred percent
3 recovery, would you agree with me that this
4 settlement would be reasonable?

5 A. No.

6 Q. No? Why not?

7 A. Because -- well, for other reasons.
8 It's got nothing to do with the -- we're just
9 talking now about aggregate inadequacy. The
10 information that is collected in order to do the
11 pro rata adjustments doesn't take into account
12 the -- the contributions in specific years either
13 in poundage or in no net cost fees. And in order
14 to come to an equitable and conflict free
15 allocation, one needs at a minimum that other
16 information.

17 Q. Okay. But focus on aggregate
18 inadequacy. Would you agree with me if there was
19 a 5 percent chance on obtaining dissolution that
20 the aggregate settlement number here would be
21 reasonable?

22 A. It might be. I don't want to say it
23 would be, but it might be. I agree, you could --
24 in other words, one could choose a percentage of
25 the probability of getting dissolution such that

1 it would be reasonable. I mean, there exists a
2 small enough probability of victory such that it
3 would be reasonable in that sense. That's not a
4 judgment for me to make. It's a judgment for the
5 lawyers bringing the case to make and it's a
6 judgment for the plaintiffs -- for defendants to
7 make and it's a judgment for specifically the
8 court in its --

9 Q. Okay.

10 A. -- attitude towards the reasonableness
11 of this proposed settlement.

12 Q. Do you understand in the Fisher Louis
13 lawsuit that their claim only seeks the
14 unreasonable portion of what they call the
15 reserve?

16 A. I understand that that -- no, actually,
17 I'm not sure what "unreasonable reserve" is.

18 MR. FORST: Can we mark this Exhibit 3?

19 (EXHIBIT NO. 3 MARKED.)

20 BY MR. FORST:

21 Q. I'm going to refer you to page 28.

22 A. Thank you. Yep, I have that.

23 Q. Okay. Do you recognize this document?

24 A. Yes, I do.

25 Q. And what is it?

1 A. It is Plaintiffs' memorandum in support
2 of motion for class certification in the Louis
3 case and the date is -- the date is 2012.

4 Q. Okay. And you actually submitted an
5 affidavit in support of this motion; is that
6 right?

7 A. Yes.

8 Q. If you look at page 28.

9 A. Yes.

10 Q. I'm going to -- under the subheading
11 Existence of a Class Commonality and Predominance.
12 I'm going to could read to you the second
13 paragraph of the second sentence. The primary
14 factual question common to all class members --
15 it's missing a word -- is what reserve if any is
16 reasonable such that the moneys in excess must be
17 distributed.

18 Do you understand that?

19 A. Yes, I do.

20 Q. Have you undertaken any analysis to
21 determine what portion of the cooperative's
22 quote/unquote reserve is reasonable?

23 A. No, I have not. I have -- there's
24 information that I need in order to determine that
25 and I'm not in position to present an opinion.

1 But that is something that I am an expert on.

2 Q. Okay. Would you agree with me if the
3 portion of the reserve that is deemed unreasonable
4 by a court is \$50 million, then this settlement
5 looks fair, adequate and reasonable?

6 A. Not necessarily, no. There's many,
7 many other factors. Because I'd need to know what
8 the reserve is and what -- no, that -- by itself
9 that doesn't tell me whether something's
10 reasonable.

11 Q. Let me ask it this way. If a court
12 determines in -- in the Fisher Louis lawsuit,
13 because that's the question presented, that the
14 unreasonable portion of the reserve is
15 \$20 million, wouldn't this settlement exceed that
16 number?

17 A. It numerically would exceed it. But I
18 would need to make a determination, you need an
19 expert to decide what is an appropriate and
20 reasonable reserve. So I fully understand a court
21 may make that determination. I understand who
22 gets to make the determinations here. But if
23 you're asking me as an expert in the area, what is
24 a reasonable reserve, that -- that's -- there's
25 science behind that, something that I teach. It's

1 in my department. It's exactly what I do. So
2 you're asking me to agree that the court has done
3 that analysis correctly.

4 Q. No, I'm not asking you to agree with
5 that at all.

6 A. Well, if --

7 Q. I'm asking you if you've done that
8 analysis.

9 A. I have not.

10 Q. Okay. So I'm asking, you have no
11 opinion one way or the other whether \$22 million
12 is fair, adequate and reasonable relative to that
13 potential analysis that might occur?

14 A. There's too many hypotheticals in there
15 for me to say "yes" or "no." I don't know what
16 the potential analysis constitutes. Is it a legal
17 opinion? Is it some arbitrary percentage of
18 gross? And I've seen many calculations in general
19 of what -- what are supposedly reasonable
20 reserves --

21 Q. Sure.

22 A. -- that are just -- just appallingly
23 bad. They're not the things that we -- one should
24 do. They just take a percentage of -- of, say,
25 gross sales and that's quite arbitrary. So I

1 can't really answer without more specifics.

2 Q. Sure. Well, you -- you make room for
3 the possibility that a court or an expert could
4 find that the cooperative needs a hundred percent
5 of its reserve, right?

6 A. I'm not sure how one would arrive at
7 that calculation.

8 Q. You don't think there could be a --
9 that's the question presented in the lawsuit in
10 which you're an expert, correct?

11 A. Correct.

12 Q. You plan to undertake this analysis at
13 some point in the future, I would assume, if this
14 case continues. Am I right about that?

15 A. Yes.

16 Q. Okay. So at some point, you're going
17 to reach a determination. Sitting here today, do
18 you have a sense of what the reserve is currently?

19 A. No.

20 Q. Okay. So you don't know whether that's
21 even below \$22 million or above it.

22 A. No, I haven't looked at it.

23 Q. Okay. So you're going to undertake
24 that analysis presumably and you're not going to
25 prejudge anything. You could come out and say, I

1 think the cooperative, given its operation, given
2 its current business, given the benefit to the
3 cooperative, all these things, it should retain
4 all of its reserve and continue forth. You make
5 room for that possibility. You could reach that
6 conclusion, right?

7 A. I could reach that conclusion without
8 the extra parts about it should continue forth,
9 but those are -- what you meant there is under
10 those assumptions as an ongoing concern, one might
11 reach that conclusion.

12 Q. Okay. So, again, you haven't done that
13 so you, again, could reach it, right?

14 A. Yes.

15 Q. Okay. And to it -- to say that
16 \$22 million is or not fair and reasonable, one
17 would have to undertake that analysis in order to
18 come up with a denominator to compare it against,
19 right?

20 A. Well, that's -- that's one calculation
21 one could do, yes. The determination of a
22 reasonable reserve is not a trivial calculation.
23 It's not an easy calculation.

24 Q. I don't doubt it, but I'm -- I'm just
25 saying though, if -- if this plaintiff's lawsuit

1 in which you are an expert is asking for that --
2 take a step back here.

3 You're challenging this lawsuit or
4 this -- basically the Objectors, the one you're
5 putting in expert opinion for has challenged this
6 settlement in Speaks as being inadequate, right?

7 A. With respect to the recovery of net
8 patronage interest of all farmers.

9 Q. I understand that. Again, they think
10 or your Objector thinks and you're supporting that
11 potentially they should and could recover more.

12 A. Yes.

13 Q. Okay. You haven't done an analysis to
14 figure out what that may be, right?

15 A. Well, I have calculated the upper
16 bound, as I've told you.

17 Q. Okay. Well, that is just -- isn't it
18 on a balance sheet assets minus liabilities?

19 A. Not quite, but it's net worth. It is
20 net worth. There's a particular term of art, so
21 it's net worth or it's net shareholders' equity.
22 But that's -- all I've done is read that of the --
23 for the purposes of this affidavit --

24 Q. Right.

25 A. -- so that the finder of fact, the

1 judge has a sense of how much money is on the
2 table.

3 Q. I mean -- right. So you -- that has
4 been submitted to the judge. You're giving him
5 the dollar figure from arithmetic that can be
6 calculated for the net worth for the company,
7 right?

8 A. Correct.

9 Q. Okay. What I'm asking though is, are
10 you contending that's its reserve or not?

11 A. No.

12 Q. Meaning you haven't reached an opinion
13 on that or that's not your contention?

14 A. No, the term "reserve" is -- is a
15 different term in accounting and in risk
16 management, my field.

17 Q. Okay. So you understand the lawsuit in
18 Fisher Louis then isn't potentially seeking the
19 full amount of net worth, right?

20 A. No, I have -- all I'm saying, I've said
21 repeatedly, this is an upper bound simply to give
22 the judge a sense of how much money is on the
23 table if one is talking about recovery of net
24 patronage interest. If one is truly representing
25 the farmers and seeking to recover their net

1 patronage interest, the net number is
2 stabilization's own number. And hence I thought
3 that would be useful information for the judge to
4 have before him.
5 Q. I understand. My question was about
6 this lawsuit. Do you understand this lawsuit to
7 be seeking the full amount of what the
8 cooperative -- the full -- to dissolve the
9 cooperative, to liquidate its assets to obtain all
10 of its money?
11 A. No.
12 Q. Okay. That --
13 MR. RUNYAN: You're talking about the
14 Fisher Louis, right?
15 MR. FORST: Correct.
16 THE WITNESS: Thank you. Yes. Yes,
17 you're holding up Exhibit 3, Fisher Louis.
18 MR. FORST: I think we have to break
19 because the disc needs to be changed and it's --
20 if we want to break for lunch in any event it make
21 make sense.
22 VIDEOGRAPHER: Going off the record.
23 The time is 12:15.
24 (A LUNCH RECESS WAS TAKEN.)
25 VIDEOGRAPHER: Going back on the record.

1 The time is 1:06 p.m.
2 BY MR. FORST:
3 Q. Dr. Harrison, before we broke, I think
4 even earlier in the morning I had brought up a
5 hypothetical about Google. Do you generally
6 remember that?
7 A. Yes, I do.
8 Q. Okay. Over the break I looked up the
9 net worth of Google and I'll represent to you that
10 the shareholder equity in their 2016 financials
11 was roughly \$120 billion or was \$120 billion. Do
12 you accept that --
13 A. Okay.
14 Q. -- for this hypothetical?
15 A. Sure.
16 Q. If there's a class action lawsuit
17 brought against Google by shareholders seeking the
18 dissolution of Google, would you calculate the
19 upper bound of the appropriateness of any
20 settlement by referring to the \$120 billion?
21 A. If that is indeed the net worth of
22 Google, then that would be an appropriate upper
23 bound.
24 Q. Okay. You would agree with me in that
25 scenario too, the appropriate lower bound would be

1 zero dollars?

2 A. Correct.

3 Q. Okay. And evaluating the legal merits
4 of the particular class action lawsuit would be
5 beyond your expertise to figure out where it ought
6 to fall within that range?

7 A. Unless I knew a lot more about the
8 strengths and weaknesses of the case from having
9 been participating or having participated in it
10 for a number of years.

11 Q. Okay. So if there was a \$22 million
12 settlement in that case, you would say it's even
13 more aggregately inadequate than the settlement in
14 this case because the upper bound is \$120 billion?

15 A. With respect to the total amount that
16 is available if indeed there is a -- there are
17 merits to the case of saying that there are --
18 there are economic merits to the case in saying
19 that there should be a dissolution. Let's take
20 that as the given, as you've asked me to do, and
21 one was seeking to recover net shareholder equity,
22 then that would be the correct upper bound.

23 Q. Okay. I want to talk about something
24 there. You said economic merits. Are you
25 distinguishing that from legal merits?

1 A. Yes, I've been doing that repeatedly
2 all day.

3 Q. Okay. And what are economic merits of
4 a lawsuit?

5 A. Well, the economic merits not so much
6 of a lawsuit but of a settlement. I'm not talking
7 about economic merits of a lawsuit, I'm talking
8 about the economic merits of a proposed settlement
9 in terms of their equity, their inconsistency and
10 so forth.

11 Q. Okay. But you would agree with me that
12 the economic -- economic merits of a proposed
13 settlement would depend on the relative strengths
14 of the underlying claims?

15 A. In a broader analysis, yes, if one had
16 information on that, one should take that into
17 account as indeed a judge might take that into
18 account as well.

19 Q. Okay. And, again, specifically to this
20 proposed settlement and this lawsuit, you didn't
21 take that into account, right?

22 A. No, I did not.

23 Q. I think you said earlier that you must
24 have reviewed the Speaks Complaint at some time.
25 I'll represent, again, I did not see that on your

1 materials considered. Do you recall reviewing
2 that in connection with this evaluating this
3 settlement?

4 A. Let me review the materials considered
5 because I believe it is listed here. I believe it
6 is in Item 16 if you're looking on page 30 of
7 Exhibit 1. My recollection is that those
8 materials, including the exhibits, because the
9 exhibits were the note -- the draft notices and
10 the notices that were sent out.

11 Q. So -- I'm sorry, I'm just catching up
12 now. You said which --

13 A. Page 30.

14 Q. I'm on it.

15 A. And Item 16. My recollection is that
16 it contained the proposed settlement and the class
17 notices that were sent out.

18 Q. The letter from * Russ Consulting.

19 A. Yes. Yes.

20 Q. That's No. 16. Okay. I'm not sure
21 sitting here if it did or it didn't.

22 MR. FORST: But regardless, we can mark
23 it as Exhibit 4.

24 (EXHIBIT NO. 4 MARKED.)

25 Q. You can take a moment to --

1 A. Thank you.

2 Q. -- refresh * and then tell me if you
3 recall reviewing it.

4 A. Yes, I do recall I believe seeing this,
5 and I believe it was in context of the letter from
6 * Russ Consulting.

7 Q. Okay. Fair enough. I think you said
8 earlier and -- and what anchors your upper bound
9 is -- is Speaks' claim for dissolution of the
10 cooperative's assets, right?

11 A. No.

12 Q. No?

13 A. No. In fact, that upper bound is a
14 measure -- a measure of net patronage interest.

15 And if one is to recover on behalf of all of the
16 farmers, then that is an upper bound for that
17 purpose. Now, that implies -- the usual
18 accounting assumption is that implies dissolution
19 of the company, as I've stressed, not with a fire
20 sale. But it's not because of the dissolution
21 aspect of the claim. If I was asked to state what
22 is an upper bound on net patronage interest, I
23 would say net worth realizing that that entails
24 dissolution.

25 Q. Okay. But, again, for purposes of the

1 lawsuit though, the legal claim before you figure
2 out damages that they're advancing that would lead
3 to that is their claim for dissolution, fair?

4 A. It would also, yes.

5 Q. Okay. And if you turn to page 26 --
6 well, let me ask -- well, it's 26 of the
7 Complaint.

8 A. Yes, I have that.

9 Q. Do you have an understanding of what
10 misconduct the Speaks plaintiffs allege in
11 connection with their claim for dissolution?

12 A. I don't recall the exact terminology.

13 Q. Okay. If you look at paragraph 98 --
14 and you can read that -- do you agree with me that
15 it's predicated on --

16 A. Just to clarify, sir, it's page 27 now,
17 not 26, but it starts in that section? That's
18 fine. Thank you. Yes.

19 Q. Yes, so on page 27, paragraph 98, it
20 talks about with the enactment of * FETRA. Do you
21 know what FETRA is?

22 A. Yes.

23 Q. And what is it?

24 A. The Federal Equitable Tobacco -- the
25 exact terminology, but it's the Equitable

1 Termination Act. I've forgotten the exact
2 acronym.

3 Q. The end of the tobacco program?

4 A. Essentially, yes. Yes. Forgive me. I
5 should know. I know that, but there are so many
6 acronyms floating around.

7 Q. They contend here or allege that the
8 Federal Tobacco Program was eliminated thereby
9 eliminated the principal and historical purpose
10 and function of stabilization. Do you see that?

11 A. Correct. And that was, just to
12 correct, it's the Fair and Equitable Reform Act in
13 2004, which was actually part of another act but,
14 yes.

15 Q. Okay. Do you have a view one way or
16 the other whether or not the cooperative's purpose
17 ended with the enactment of FETRA?

18 A. Certainly, the -- yes, I do. With
19 respect to the historical purpose of cooperative,
20 the stabilization.

21 Q. What does that mean?

22 A. It means the purpose that led to the
23 founding and principal activity of stabilization
24 over most of its life leading up until 2004.

25 Q. Have you reviewed North Carolina

1 Marketing Act that established the cooperative?

2 A. I have reviewed some of the statutes,
3 particularly Section 54, some of the -- some of
4 those.

5 Q. Do you understand that act to anywhere
6 say that the cooperative's existence and
7 fundamental purpose is tied to the tobacco
8 program?

9 A. No, no, it's much more general than
10 that. And, in fact, it explicitly allows in one
11 of those sections for a cooperative to engage in
12 manufacturing activity, for example.

13 Q. Okay. And do you also understand that
14 it permits the cooperative to establish reserves?

15 A. Yes.

16 Q. Okay. And so you're not -- it's not
17 your view or opinion that the cooperative's
18 establishment or retention of reserves violated
19 any statute or governing document of the
20 cooperative?

21 A. Not that I'm aware of.

22 Q. Okay. So you're not -- you don't hold
23 that opinion?

24 A. No.

25 Q. And, again, sitting here today, you

1 have not gone through the exercise of what I would
2 call handicapping the chances that the Speaks'
3 Plaintiffs are successful in their claim for
4 dissolution, right?

5 A. Correct, I've not done that.

6 Q. Have you reviewed the cooperative's
7 Articles of Incorporation from time to time?

8 A. Yes, I have.

9 Q. Okay. Did you review it in connection
10 with your affidavit that you submitted in this
11 case?

12 A. Not recently, but I have it -- a
13 general recall of them.

14 Q. Okay. Do you agree that the articles
15 give the cooperative the power to retain funds in
16 * older reserve?

17 A. Yes, I do.

18 Q. Okay. Have you reviewed the
19 cooperative's bylaws as well?

20 A. Yes, in general, I have.

21 Q. Have you reviewed them in connection
22 with your affidavit here?

23 A. Not specifically, but I have a -- had a
24 general recall of them.

25 Q. Okay. Do you also agree that the

1 bylaws provide the cooperative with the discretion
2 of the board of directors to establish and retain
3 capital reserve?

4 MR. RUNYAN: Object to the form.

5 THE WITNESS: A capital reserve, yes, I
6 believe there is an explicit allowance for that,
7 as there should be in -- in bylaws for a
8 cooperative association or any -- any corporation
9 actually.

10 BY MR. FORST:

11 Q. Okay. Do you -- have you also reviewed
12 the various marketing agreements that the
13 cooperation entered into with its members over the
14 years?

15 A. Yes, I have reviewed some of those.
16 Not -- not all of them. There are many of them.

17 Q. Do you agree that those marketing
18 agreements give the board the discretion to
19 determine a reasonable deduction for reserves?

20 A. I don't recall that in the agreements.
21 They may be there. I don't recall them.

22 MR. FORST: Mark this as 5.

23 (EXHIBIT NO. 5 MARKED.)

24 THE WITNESS: Thank you.

25

1 BY MR. FORST:

2 Q. Apologies, Dr. Harrison, it's a little
3 tough to read and you can take the time to read
4 it, but I think the portion that I'm interested in
5 is the very last sentence of the last paragraph.

6 A. Okay. Let me just have a quick look at
7 that.

8 (PAUSE.)

9 A. Yes, I've read that.

10 Q. Okay. Now, do you agree with me that
11 the marketing agreements as signed by the
12 membership provide that the cooperative is able to
13 make a reasonable deduction for reserves as
14 determined by the board of directors?

15 A. Yes, it does.

16 Q. So you have no opinion that the
17 establishment, the maintenance and the use of
18 reserve violates or somehow conflicts with either
19 its founding statute, governing documents or
20 membership agreements, do you?

21 A. No, I don't. And, in fact, it's proper
22 risk management practice to construct reserves.

23 Q. And, again, just to be clear, as -- as
24 of today, and you've been engaged as an expert I
25 think since 2005, you haven't undertaken the

1 analysis to determine what if any portion of the
2 reserve is unreasonable?

3 A. That's correct.

4 Q. Okay.

5 A. I have -- I have been asked to consider
6 that question and I will do so if asked -- and if
7 I have the documents that allow me to do it.

8 Q. Okay. Do you have a ballpark for how
9 long you think that would take you to do?

10 A. It depends -- the reason I'm pausing is
11 it depends on the nature of the data that I'm able
12 to get. Sometimes -- let's assume that the data
13 is in some sort of machine readable form and one
14 can fairly easily get at it. Oh, I'd say a couple
15 of weeks.

16 Q. Okay.

17 A. Something of that order. And, again,
18 that's assuming that there are no major legal
19 complications in the -- or accounting
20 complications involved if it's a --

21 Q. And sitting here today right now,
22 you're not exactly sure what you would call or the
23 dollar amount that you would say the cooperative
24 has in reserve; is that fair?

25 A. That's correct, yes.

1 Q. Do you have any sense of whether that
2 would be \$1 million, a hundred million dollars or
3 anything?

4 A. No, I -- I -- I never guess on those
5 things.

6 Q. Okay. So you -- when it comes to the
7 size of the reserve, sitting here today, you don't
8 know how the \$22 million proposed settlement
9 compares to the size of the reserve, whatever it
10 may be?

11 A. No, and there are also different types
12 of reserves. There's -- there are different
13 reserves for different purposes, so I don't have
14 the number in front of me.

15 Q. Okay. Sitting here today, do you know
16 if the proposed settlement that has been offered
17 to Judge Dever exceeds the amount of cash the
18 cooperative has on hand currently?

19 A. No, I don't know that number. It's --
20 I mean, I wouldn't -- I don't think anyone in the
21 room would know what the amount of cash they have
22 available right now, I mean, today, so.

23 Q. Okay. That wouldn't be provided on
24 their annual financial report?

25 A. No, that's -- that's as of April 2016,

1 some other time. It's not as of January the --
2 Q. Oh, I see.
3 A. -- 19th.
4 Q. So you agree -- that would be reflected
5 in the financials, correct?
6 A. Yes, it would be.
7 Q. I see.
8 A. As of a certain date.
9 Q. Do you know -- you've looked at the
10 2016 financials, correct?
11 A. Correct.
12 Q. Do you know whether the proposed
13 settlement that's been offered in Speaks exceeds
14 the amount of cash that the cooperative at least
15 in 2016 had on hand?
16 A. No, I don't recall and nor would I
17 wonder why I would ever be interested in that.
18 Q. Okay. The amount of cash that the
19 cooperative had wouldn't factor into your
20 determination of what is its reserve?
21 A. No. No.
22 Q. I know we talked earlier about a
23 lawsuit against the stabilization or the
24 cooperative that had taken place in Georgia. I
25 think you told me you weren't familiar with that

1 lawsuit, right?
2 A. That's correct.
3 MR. FORST: I want to mark -- where are
4 we, Tracy, 6?
5 (EXHIBIT NO. 6 MARKED.)
6 A. Thank you.
7 Q. I'll represent to you, Dr. Harrison,
8 and you can check this at the beginning because I
9 was present and actually asked the questions at
10 this deposition, that this is the deposition of
11 Plaintiffs' expert in that case, Hugh Roberts,
12 who's a CPA, and you can see that on the cover.
13 Took place in 2015.
14 A. Yes.
15 Q. Have you ever seen this document
16 before?
17 A. No, I have not.
18 Q. And I assume, again, because you --
19 having been sitting here today, you weren't aware
20 of that lawsuit, you weren't aware experts had
21 been engaged in that lawsuit concerning the claims
22 that I would represent are similar to the claims
23 in this lawsuit, right?
24 A. That's correct.
25 Q. Okay. If there was an expert hired by

1 some of the members of this class suing the same
2 defendant in another jurisdiction that had an
3 opinion on the size and the appropriateness of the
4 reserve, would that be something you'd like to
5 consider?

6 A. I'd be interested to have a look at it,
7 yes, but it's not needed for me in order to form
8 an opinion.

9 Q. Yeah, perhaps not needed, but it would
10 be one data point that perhaps you would like to
11 look at to understand, fair?

12 A. Yes, to see if that expert thought of
13 something that I didn't or had an alternative
14 opinion that I deemed to be valuable.

15 Q. Okay. If you turn to -- it's actually
16 page at the bottom. You'll see there's like a
17 page number and then a parentheses --

18 A. Sure.

19 Q. -- pages something else. If you look
20 at the first page number, turn to 19. And you
21 look at pages really 70 and 71 of the actual
22 deposition transcript.

23 A. Okay. I've got that.

24 Q. Or really 71. Do you see the question
25 here, it says, Okay. So if, in fact, they were

1 correct -- "they" being the cooperative -- to
2 continue operating beyond the end of the Federal
3 Price Stabilization, which really means program,
4 it is your opinion that it would be prudent to
5 keep the reserve for that future operation.

6 Answer, that's correct.

7 Question, In its total amount, right?

8 Answer, that's correct.

9 Would you like to -- if another expert
10 had reached this conclusion about the reserve,
11 that it should be kept in its total amount, again,
12 that's something you'd like to consider and
13 evaluate, right?

14 A. No, actually, I don't know why he said
15 that's correct. Because when you say "in its
16 total amount," there is considerable ambiguity in
17 that. I don't know what "total amount" means.

18 Q. Sure.

19 A. So I don't -- I --

20 Q. But you don't know what efforts he
21 undertook to analyze what the reserve was or the
22 total amount, right?

23 A. No.

24 Q. Okay.

25 A. But just as I'm looking at the question

1 and answer that you've asked me to look at, I
2 don't know how he can say that's correct because
3 he has no -- unless there's something -- as a
4 precursor in the deposition, which I'm only
5 looking at this section, that talks about total
6 amount, I don't know how he can say that's
7 correct. I'm not disagreeing with you, I'm just
8 saying I'm surprised that he said that's correct.
9 Q. Okay. But you'll agree with me that's
10 what he said, at least in response to that
11 question, right?
12 A. Yes.
13 Q. Okay. Have you considered at all, sir,
14 whether or not any of the claims advanced in this
15 case, in Speaks or specifically the legal claims
16 advanced in the Fisher Louis action down below are
17 untimely because of statute of limitations?
18 A. No, I have not.
19 Q. You would agree that if they were
20 deemed untimely by a court -- well, do you
21 understand what the statute of limitations is?
22 A. Yes, I do.
23 Q. And what is it, in your words?
24 A. Well, it refers to a time period of
25 which standing fails due to tardiness in bringing

1 a -- bringing an action. It's usually given by
2 the date of the action -- that the action is
3 brought as distinct from the date that an action
4 is decided upon. And it varies from jurisdiction
5 to jurisdiction, the type of crime and so forth.
6 Q. Okay. And so you're opining on, again,
7 the fairness and adequacy of the settlement that's
8 been proposed in the Speaks action in Federal
9 Court North Carolina, right?
10 A. That's correct, yes.
11 Q. Okay. Are you aware of the statute of
12 limitations that attaches to the claims advanced
13 by the Speaks' Plaintiffs here?
14 A. No.
15 Q. Are you aware of generally a statute of
16 limitations in North Carolina for claims?
17 A. No, I'm not.
18 Q. Okay. Do you understand that if the
19 claim was barred by the statute of limitations it
20 could be dismissed as a matter of law?
21 A. That would seem reasonable to me, yes.
22 Q. Okay. If a decision had been made by
23 another court, potentially in Georgia, that claims
24 similar to these in Speaks and in Fisher Louis
25 were untimely and barred by the statute of

1 limitations, would that be a factor you would want
2 to consider in determining the appropriateness of
3 the settlement here?

4 MR. RUNYAN: Object to form.

5 THE WITNESS: I'd -- I'd really have to
6 read the case in some detail. I don't want to --
7 you know. I've agreed with the prior question
8 talking about this instant court in this instant
9 case. I don't want to casually -- and I know
10 you're warranting to me that it's the same sort of
11 case, just in a different jurisdiction, but I
12 don't want to casually make an opinion on that.
13 That's not my area of expertise.

14 Q. Fair. But I think we actually are in
15 agreement on one point, and let me -- if you
16 disagree, tell me, but I'm going to offer it. And
17 that is you would want to read the opinion because
18 it might be meaningful to your analysis of whether
19 this settlement is fair, adequate and reasonable?

20 MR. RUNYAN: Object to the form.

21 THE WITNESS: No, actually, that call --
22 that has to do with the legal judgment. So I was
23 not asked to evaluate nor am I qualified to
24 evaluate the legal standing of plaintiffs. That's
25 not something I would have looked at and something

1 I would have formed an opinion on because I'm not
2 qualified in that area.

3 BY MR. FORST:

4 Q. Okay. Fair enough. Let's say outside
5 your expertise, you can understand that when the
6 parties sit down to mediate and reach a
7 settlement, that debate, that issue of whether or
8 not the claims are timely or not would be one
9 factor that they consider in deciding what the
10 appropriate settlement amount may be?

11 A. Yes. And in my experience, that's
12 usually something that's mentioned and passed on
13 very very quickly. It's normally something the
14 courts have determined but, yes.

15 Q. Okay. Similarly, if there was another
16 expert, just hypothetically in Georgia, that was
17 hired by the members of the -- of the class here
18 that said that these class members were aggrieved
19 from the retention of these funds by the
20 cooperative as early as the 1970s, would you want
21 to consider that in connection with your analysis?

22 MR. RUNYAN: Object to the form of the
23 question.

24 THE WITNESS: I'm -- I'm not sure. It
25 depends entirely on the context. For example,

1 let's not look at the 1970s, but if we're talking
 2 post 1982, then there is a joining of, so to
 3 speak, if you make a contribution in 1982, one can
 4 only really evaluate the net patronage interest of
 5 that as it accumulates over time. So you can't do
 6 that on a year-by-year basis.

7 Q. Sure.

8 A. So there are some circumstances when
 9 one might. In addition, it actually does happen
 10 that settlements are made of things that one
 11 couldn't arrive at through a court case. I mean,
 12 very often people in settlements give up certain
 13 rights that they might have a constitutional right
 14 to. So settlements are not -- while a component
 15 of a settlement is what might occur in the court,
 16 they can include other factors outside those.

17 Q. Sure. Agree. I mean, I agree with you
 18 there. One thing I think though I want to make
 19 clear, you understand that in this case and in the
 20 Fisher Louis Case -- strike that.

21 Let me ask it this way. You've made an
 22 assumption, I think, in rendering your opinion
 23 that the no net cost assessments, those taxes
 24 paid, are, in fact, patronage, right?

25 A. No, no, they contribute to patronage.

1 They play a role in determining net patronage
 2 interest. By themselves, they're not. It's --

3 Q. Okay. So how do they play -- if by
 4 themselves they're not patronage and those didn't
 5 go to the cooperative's balance sheet, we're
 6 agreed on that, right?

7 A. Yes.

8 Q. Okay. You -- you nonetheless take the
 9 position, which the cooperative, of course,
 10 disagrees with, that they are contribute to
 11 patronage interest. Explain that for me.

12 A. Well, they contribute through the
 13 operating of the -- the auction system and through
 14 the operating of the support price and the use of
 15 no net cost funds. In some years, those are
 16 needed; in some years, they're not needed. And
 17 the net result of that process over several years
 18 and that's the -- that's the complication of the
 19 post 1982. Prior to that, you can look at things
 20 year-by-year-by-year. Post 1982, you have to look
 21 at the accumulated effect of contributions. So
 22 the no net cost fees themselves are not directly
 23 leading to net patronage interest, but they're
 24 part of the process that leads to net gains that
 25 are -- do constitute net patronage interest.

1 Q. Are you aware -- well, let me ask it
2 this way. Would you agree or disagree that
3 when -- when FETRA was enacted that there wasn't
4 enough money in the growers no net cost
5 assessments to make the CCC whole?

6 A. I believe that was the case and that
7 was the reason it was then ceded capital or ceded
8 tobacco rather and that that was provided in order
9 to balance up, so to speak. That was the purpose
10 of that period.

11 Q. I just want to make sure you understood
12 my question or maybe it's I just misunderstood
13 your answer. And that was, do you understand when
14 at the end of the tobacco program the money that
15 was in the no net cost assessments collected from
16 growers, farmers, was not enough to cover the
17 loans outstanding that the CCC had made pursuant
18 to the program?

19 A. That is my understanding. That's my --

20 Q. Okay.

21 A. -- my recollection.

22 Q. And do you know who or what the CCC
23 turned to in order to make up that difference?

24 MR. RUNYAN: Object to the form.

25 THE WITNESS: I don't understand the

1 question.

2 BY MR. FORST:

3 Q. Okay. Do you have an understanding
4 that in order to be made whole for the loans that
5 it had given under the program, the CCC imposed an
6 additional assessment on tobacco manufacturers --

7 MR. RUNYAN: Object to form.

8 Q. -- in 2004 in connection with FETRA?

9 A. Oh, I'm aware that there were some --
10 let me call them one-time contributions to be
11 made.

12 Q. Okay.

13 A. Because part of the transition payments
14 were to be done over a number of years and I think
15 they actually end this year or next year or last
16 year. So yes, there was, if you want to call it a
17 special assessment for those purposes and tobacco
18 manufacturers domestic and imported billed for a
19 fair burden of that.

20 Q. Okay. And would you agree with me then
21 the ceded tobacco that happened with the enactment
22 of FETRA that was received by the cooperative as
23 determined by the CCC was in part due to the
24 special assessment that was imposed on
25 manufacturers of tobacco?

1 A. I don't see how that follows.

2 Q. Okay. You would agree with me in the
3 no net cost assessment -- well, why do you
4 understand the no net cost assessment or that
5 regime was put into place in 1982?

6 A. It was put into place because of
7 negotiations that occurred between the United
8 States and directly the European -- it was then
9 called the European communities pursuant to the *
10 Euro go round of multilateral trade negotiations
11 that were concluded in 1995 in * Marquisha in
12 Morocco. And they involved claims by the
13 Europeans and counterclaims by the Americans that
14 their -- they were subsidizing agriculture in
15 their respective countries and they wanted to
16 lower those subsidies. One component of that was
17 the tobacco price support program. Each country
18 or countries, in the case of the European
19 communities then European Union, was given a
20 period of time ranging between 10 to 30 years to
21 make adjustments to these programs. So the no net
22 cost funds policy was actually discussed in 1995
23 by the office of the U.S. trade representative
24 with European counterparts. And I believe it had
25 a sunset clause -- that those particular programs

1 had a sunset clause of 15 years. So about 10
2 years after the signing of the * Euro go round,
3 the U.S. government was required to make sure that
4 there was no net subsidies from taxpayers to
5 tobacco farmers, which it amounted to something
6 like \$397 million in -- in none -- in -- in
7 current dollar terms I think over the life.

8 Q. Okay. Do you know -- I mean,
9 domestically, was there some threat or some
10 movement to eliminate the price support program in
11 the early 1980s?

12 A. Yes, there was. It's always been
13 there, but it's always been a political fight in
14 congress, I mean, and it goes on
15 year-after-year-after-year-after-year.

16 Q. Okay. And do you have any
17 understanding of whether or not the growers at
18 that time wanted the price support program to
19 continue or not?

20 A. I don't recall --

21 Q. Okay.

22 A. -- their position.

23 Q. Would you assume that they were -- felt
24 it beneficial or were willing to pay the no net
25 cost and wanted the program to continue on?

1 A. Yes. The program had been very, very
2 generous to them, so it would stand to reason that
3 they would like to do that. Clearly, they would
4 prefer not to pay the no net cost fees because it
5 reduces the amount of subsidy they get from
6 taxpayers.

7 Q. Sure.

8 A. So I'm not saying they're in favor of
9 no net cost fees, but one has to look at the whole
10 equation. And I think the alternative -- so the
11 short answer is, I would not be surprised if they
12 were supportive of it because they had no
13 alternatives.

14 Q. Okay. Well, the alternative would be
15 just what it is today, right, no price support and
16 you're out there completing in the market just
17 without the safety net of the U.S. taxpayer
18 subsidies, right?

19 A. That's correct, but there was not quite
20 the history going back to 1982 of direct marketing
21 agreements that evolved over the years. But
22 you're quite right, that is -- that is actually
23 technically the clear alternative.

24 Q. Okay. I just want to be clear. Are
25 you of the opinion that the cooperative serves no

1 useful or beneficial role in today's flue-cured
2 tobacco market?

3 A. No, I did not say that. I said that
4 I -- I have the opinion that its original purpose
5 and original function was to implement the tobacco
6 program, and that when that type of tobacco price
7 support program ended in 2004, that purpose of
8 stabilization ended. Whether it's appropriate
9 for -- on behalf of its members or for
10 stabilization to have undertaken the other
11 activities that it has undertaken, such as
12 manufacturing, is the -- is the -- and warehousing
13 is another -- is another question.

14 Q. You haven't formed an opinion on that
15 one way or the other?

16 A. From the perspective of the farmers who
17 have not received their net patronage interest, I
18 don't believe that was an appropriate thing to do,
19 but that's just me forming a personal opinion.

20 Q. That's not an expert opinion that
21 you're offering in this case?

22 A. It's an expert opinion with respect to
23 the risks that the manufacturing activity entailed
24 when it was begun relative to what I believe are
25 the obligations to the patrons at that point in

1 time. I regard that as a fairly risky activity.

2 Q. Sure.

3 A. It has subsequently made some profits,
4 but nothing commensurate -- in my professional
5 judgment as a professor of risk management --
6 commensurate with the risks that it involved at
7 the time.

8 Q. Okay. But let's go back. You agreed,
9 I think, that the governing documents and even the
10 forming marketing act authorized expressly for the
11 cooperative to do a -- exactly that, engage in the
12 manufacturing of tobacco and byproducts, right?

13 MR. RUNYAN: Object to the form.

14 THE WITNESS: The North Carolina
15 statutes do allow cooperative associations to do
16 that, yes.

17 BY MR. FORST:

18 Q. Okay. And are you aware one way or the
19 other whether other agriculture or cooperatives in
20 the United States engage in such activities too?

21 A. No, I'm not.

22 Q. You don't know one way or the other?
23 Have you ever compared -- let me -- you don't know
24 one way or the other?

25 A. That's correct.

1 Q. Okay. Have you done any analysis to
2 determine whether or not this cooperative is doing
3 something different than other agricultural
4 cooperatives like Ocean Spray and * Land 'O Lakes,
5 Blue Diamond in the United States?

6 A. I know those are the ones that were
7 referred to in the minutes of the -- by the board
8 of directors when they were saying that we should
9 think about manufacturing in a crisis environment
10 with people no longer having their marketing -- or
11 a large percentage of people no longer marketing
12 with stabilization. They were doing direct
13 marketing. I -- I don't see those as directly
14 comparable. I'm not saying that they might not
15 be. I just haven't done an evaluation of that.

16 Q. Okay. So you're not aware one way or
17 the other whether they're -- those other
18 cooperatives are functioning in the same way as
19 the modern cooperative today?

20 A. No. And my -- it actually would have
21 no opinion -- no effect on my opinion because to
22 me, the relevant issue -- and I -- is that the
23 stabilization should -- stabilization is the
24 members and they should have consulted members and
25 made a decision on some systematic basis if they

1 were going to change the -- fundamentally the
2 nature of their operations. And I have not seen
3 any evidence that they did that. I've seen claims
4 that, indeed -- at the annual reports, for
5 example, that we've had consultations with some
6 people. But I have asked counsel and I have not
7 obtained any documents that suggest that the board
8 of directors made a systematic attempt to engage
9 the opinions of members as a whole to do that.

10 Q. Do you have any documents or hard
11 evidence that they didn't do that?

12 A. No documents or hard evidence.

13 Q. Okay. So, again, I guess -- fair.

14 You mentioned the manufacturing
15 facility, which is called * Timberlake that the
16 cooperative I think acquired in 2004. Are you
17 generally familiar with that?

18 A. Yes, I am.

19 Q. You don't have an opinion as you sit
20 here today one way or the other whether that was
21 reasonable or not, do you?

22 A. I -- I have an opinion that that was
23 highly risky in that environment, and I have
24 played a major role in the -- as a testifying
25 expert on the fate of domestic manufacturers as a

1 result of the attorney general's lawsuit against
2 them. So that was a very, very risky time --

3 Q. Okay.

4 A. -- indeed. Subsequently, stabilization
5 required -- became -- I can't forget -- I forget
6 the term of art. It's in the master settlement
7 agreement. They became a participating
8 manufacturer later where they had to start making
9 some payments pursuant to the agreements of the *
10 MSA. So I think that was a very risky venture.
11 That's my own view based on my knowledge of that
12 industry at the time.

13 Q. Well, fair, but have you studied this
14 particular acquisition and the pros and cons and
15 the analysis that the board undertook before
16 making that decision in this case?

17 A. No, I have not.

18 Q. Okay. So your -- your -- your risk
19 isn't informed by the record in either the Fisher
20 Louis case or the Speaks case or any other case,
21 right?

22 A. Well, it's informed by my judgment of
23 the industry and the nature of the -- nature of
24 the investment, but I have not looked at the
25 documents that you talked about.

1 Q. Right. So it's not informed by any
2 discovery or factual record in the cases in which
3 you're sitting as an expert, right?

4 A. That's correct. And those would be
5 documents I would look at in order to determine
6 what constitutes a reasonable reserve for
7 stabilization as an ongoing activity.

8 Q. Okay. Right. So -- so actually you
9 would look at the cooperative's current ongoing
10 operation in order to make a determination on what
11 is the appropriate size of its reserve?

12 A. That's correct. If -- I would also
13 look at stabilization as of 2004, the point at
14 which the farmers are requesting recovery of
15 patronage interest. So these are different --
16 different cooperatives, so to speak. 2004 and
17 today are different beasts and one's to look at
18 both of those.

19 Q. Fair. I think though you're agreeing
20 with me that you would -- you would take an
21 evaluation and undertake an economic analysis of
22 the cooperative's current operation, its various
23 subsidiaries, its business plan, its financials to
24 make a determination on what if any portion of its
25 reserve is unreasonable.

1 A. Yes, with the qualification it's
2 unreasonable for the -- for the -- for
3 stabilization as it exists today.

4 Q. Meaning you would -- that analysis
5 would lead to your opinion on -- on the current
6 size of the -- of the reserve?

7 A. Correct. And given the current plans
8 for activity.

9 Q. You -- you reviewed the cooperative's
10 annual statements in connection with this
11 affidavit from 2004 to 2016, right?

12 A. Yes, I have.

13 Q. Did you look at the relative net income
14 between its consumer products division and then
15 its green leaf tobacco purchase side?

16 A. I did look at those and I don't recall
17 the numbers.

18 Q. Okay. Do you have any understanding
19 whether or not the purchase of green leaf tobacco
20 from its members operates at a loss for the
21 cooperative only offset by the consumer products
22 side of the cooperative?

23 A. I don't recall.

24 Q. Do you have any understanding of
25 whether or not the current cooperative has been

1 able to pay patronage dividends to its membership?

2 A. My understanding is it has paid some.

3 Q. Okay. So you have no -- I mean, are
4 you familiar -- do you know what * Premier is?

5 A. It's a tobacco brand, right?

6 Q. I'm asking you.

7 A. No, sorry, I believe it to be a tobacco
8 brand.

9 Q. Okay. So, again, sitting here today,
10 you don't have an opinion one way or the other
11 whether the -- the cooperative's decision to
12 acquire Premier Manufacturing, for example, was a
13 reasonable or not decision?

14 A. No, I'm not able to present opinion on
15 that right now, nor was I asked to do that for
16 this case.

17 Q. Okay. Do you have any understanding on
18 whether or not the cooperative has a line of
19 credit or a credit facility?

20 A. Oh, I -- I believe it does and I'd be
21 surprised if it didn't have that. That's a
22 standard thing for any cooperative or
23 noncooperative to have.

24 Q. Do you have any sense of the size of
25 that credit facility?

1 A. Not as I sit here, no.

2 Q. Okay. Do you have any understanding of
3 how the cooperative collateralizes that credit
4 facility?

5 A. I have a general understanding, but
6 I -- I don't recall the specifics as I sit here.

7 Q. Okay. If and when you undertake the
8 analysis of a reasonable reserve, are these things
9 that you would like to look at and consider?

10 A. Most definitely.

11 Q. Do you have any understanding of when
12 current members of the cooperative receive payment
13 for their tobacco that they bring to the
14 cooperative under their marketing agreements?

15 A. No, I don't.

16 Q. Okay. Do you have any understanding of
17 how long it takes for -- for the cooperative to
18 sell the green leaf tobacco that it purchases in
19 any given year?

20 A. No, I don't. I would assume it --
21 it -- in approximately one year because now there
22 are -- well, there were in past penalties in place
23 for manufacturers when they were stating their
24 purchase intentions. So I would assume that the
25 production would be sold within the year, but I

1 don't know that for sure.

2 Q. So that's just an assumption though.

3 A. Yes.

4 Q. Okay. And the penalties you don't know
5 whether or not apply to the cooperative in their
6 current operation, right?

7 A. No, I believe they don't. They're --
8 they were a component of the -- a component of the
9 price support program and also the transition.

10 Q. Okay. So, again, you think it would be
11 reasonable for the cooperative to obtain financing
12 from external sources, correct?

13 A. That's correct, yes, in general. It
14 depends on the manner in which that's negotiated,
15 and that is an important part of risk management.

16 Q. Okay. And you understand that a
17 potential settlement in this case and providing
18 money in response to this lawsuit could impact the
19 cooperative's current operation, right?

20 A. Oh, yes, of course. Any -- any
21 activity can impact the operation.

22 Q. Correct. It could impact the terms of
23 its credit facility, right?

24 A. Yes, and it should.

25 Q. Okay.

1 A. I mean, that's the sort of --

2 Q. It might be --

3 A. Sorry. That's the sort of thing in an
4 accounting statement you have disclosures for, you
5 have statements for. That's a perfectly normal
6 aspect of accounting for any cooperative or
7 noncooperative.

8 Q. Right. And so you have no
9 understanding or opinion one way or the other of
10 how this \$22 million settlement will impact the --
11 the cooperative's operation currently and going
12 forward, do you?

13 A. I have an opinion, but I haven't looked
14 at any data on that.

15 Q. Again, these are all things, when you
16 get to the place of thinking about a reasonable
17 reserve, that you'll consider and look at hard
18 data, right?

19 A. I would look at some data, yes, and
20 I'll do an analysis of the data. The 20 -- if
21 it's 22 million, I suspect that will improve the
22 credit rating of the stabilization because it's
23 such a small amount.

24 Q. Is that just another assumption, a
25 hypothetical?

1 A. No, I'm an expert in the field of risk
 2 management and reserving and if -- if indeed this
 3 settlement goes through, and I believe one of the
 4 requirements of this settlement to go through is
 5 that the Fisher case be resolved as well. I --
 6 that's my understanding from the notice.
 7 22 million is a very, very cheap settlement of --
 8 of that -- those lawsuits if indeed that turns out
 9 to be the case. So if I was a creditor, and I'm
 10 an expert in this field of risk management and
 11 enterprise risk management, I'd regard that as a
 12 fabulous outcome for stabilization albeit a
 13 terrible outcome for the farmers.

14 Q. I understand you think that. Two
 15 things. Have you had a conversation with the
 16 cooperative's creditors to see if they share that
 17 point of view?

18 A. No.

19 Q. No. Okay. So that's just your own,
 20 right, without actually talking to anybody or
 21 looking at any hard data, right, in this case?

22 A. I don't need to look into hard data to
 23 express an opinion as a professor of risk
 24 management, which I am.

25 Q. Okay. You also said the settlement

1 is -- is very cheap, I think was the word you
 2 used, cheap, right?

3 A. If I didn't, I'm happy to use it, yes.

4 Q. I think you did.

5 A. Okay.

6 Q. Okay. But, again, cheap only relative
 7 to the upper limit and not relative to the actual
 8 strength of the case, right?

9 A. No, it's relative to -- well, putting
 10 aside the strength of the case, as I've repeatedly
 11 said is -- is outside my remit in this instance,
 12 when I look at the amount that the net patronage
 13 interests that are being accumulating over the
 14 years, and using the accounting number simply
 15 because it is a specific number in the annual
 16 reports as -- as a measure, it does look very,
 17 very cheap.

18 Q. But it -- it looks very, very generous,
 19 doesn't it, if any court were to decide that the
 20 members have no legal claim to this patronage
 21 interest, right?

22 A. We have talked about that. That's a
 23 legal issue which I'm not presenting any opinion
 24 on.

25 Q. Okay. I'm saying, assume with me

1 that's the decision that is reached by a court
2 or -- or the likely outcome, then the settlement,
3 the \$22 million looks very favorable, doesn't it?

4 MR. RUNYAN: Object to form.

5 THE WITNESS: Yes, again, you're talking
6 about favorable in a narrow legal sense. I'm --
7 forgive me, but my job here was to look into the
8 net patronage interest of the farmers. And
9 relative to the net -- call that -- well, I'm
10 going to call it the economic merits of the case.
11 Relative to the economic merits of the case, I
12 don't think that is a favorable judgment. I
13 accept what you're saying if that's a legal
14 judgment, but that's a different calculation all
15 together, which I'm not qualified to make.
16 BY MR. FORST:

17 Q. I honestly don't know what the economic
18 merits of a case means. What does that mean?

19 A. It means the calculation of the damages
20 to the plaintiffs in this case, which is net
21 patronage interest, relative to the amount that's
22 being offered in the settlement.

23 Q. Right. But the amount of damages that
24 you're assuming is a complete and total victory
25 and win, correct?

1 A. No. That is one of the numbers that is
2 in my affidavit and in my --

3 Q. But you're saying -- you're saying the
4 \$22 million compared to that number, complete
5 victory is cheap, right?

6 A. No, no. What I'm saying is that a
7 measure of the amount of money on the table that
8 represents net shareholders' equity is net worth
9 and that's a number that we can see and the court
10 can get an idea of how much money is on the table.
11 When I've calculated what is net patronage
12 interest in other instances, and I've outlined how
13 to do that in my 2012 affidavit, it's far in
14 excess of 20 million -- \$22 million.

15 Q. Okay. But -- but your assumption there
16 is that these plaintiffs are entitled to those
17 moneys, correct?

18 A. No. My -- the question I was asked --
19 you're asking me to be the judge and I am not the
20 judge here. I'm not presenting a legal opinion.
21 The question I was asked to calculate is what is
22 the damages to these plaintiffs, what's the net
23 patronage interest? And then to put that --
24 compare that, as I have done in other settings,
25 with settlement amounts and ask, do they -- are

1 they consistent both in terms of the aggregate
2 amount? Are they consistent in terms of equity
3 and conflicts between class members, and that's
4 what I have done. I haven't pretended to be the
5 judge in this case, and you keep asking me to do
6 that. I won't do that.

7 Q. Okay. Sir, where in your affidavit
8 does it say that your assignment of what you did
9 was calculate damages? Where does it say that?

10 A. It doesn't use those words.

11 Q. Doesn't, right? Instead what it says
12 is, the settlement does not represent in a legal
13 term a fair, equitable or reasonable resolution.
14 And that's what it says, right?

15 A. No. I -- I, sir, let me -- let me
16 answer. You're -- I agree with your quoting what
17 I'm saying, but you added in a legal term. Other
18 people are allowed to use that word -- those words
19 as well.

20 Q. Okay.

21 A. And I think it is completely obvious to
22 the court from paragraph 1 of my affidavit that
23 I'm not a lawyer. I'm not presenting -- and in
24 paragraph 3, I believe, I'm not presenting in my
25 opinion a legal opinion. And I'm -- can't be

1 clearer on that. You -- I fully understand that
2 you're trying to interpret what I'm saying as
3 presenting a legal opinion, but I am not doing
4 that.

5 Q. I just want to be clear then what
6 exactly you're saying is to the court, if the
7 judge were there you would be saying the total
8 amount of damages that these plaintiffs could
9 potentially recover in this lawsuit is
10 \$364 million. That's your opinion?

11 A. No. In fact, I'm saying, the
12 damages -- well, the damages are an amount. And
13 it might be 364 million. If that's net
14 shareholder interest and the share -- and my
15 understanding is that the farmers are the
16 shareholders of stabilization and will put aside
17 the culling of members and so forth. Let's forget
18 that just for the moment. They are the
19 shareholders, so that represents their interest as
20 is -- as it is calculated in a standard accounting
21 manner and standard economic matter in the -- in
22 the cooperative. So there -- that's the answer to
23 that question. That -- if that is the damages,
24 then I'm simply calculating that number.

25 Q. Okay. So actually -- that helps me.

1 So you're not saying then this is actually the
2 appropriate damages or could be a damages award
3 that they could obtain in this lawsuit on these
4 claims. You haven't done that analysis?

5 A. That's correct.

6 Q. Okay. So this might not reflect the
7 total amount of recovery that they can obtain
8 relative to the claims that they've asserted in
9 the case?

10 A. I'm not sure I understand the question.

11 Q. I think we -- you just said you
12 calculate damages based on the legal claims that
13 are brought and we can figure out if they're
14 successful damages should be X, right?

15 A. Yes.

16 MR. RUNYAN: Object to form.

17 Q. You haven't done that analysis, right?

18 A. No, I have not.

19 Q. Okay. So you're not even telling the
20 court in this affidavit that if the plaintiffs in
21 Speaks were successful, they would be entitled to
22 X in damages, right?

23 A. I'm not sure I'm not saying that. If
24 they're successful. If they're successful, then
25 they're entitled to an amount that is clearly in

1 excess of 22 million. And I --

2 Q. Right. But you don't know that number.

3 A. I haven't done the calculation of the
4 number. If, for example, they do not seek the
5 dissolution of stabilization, then one has to take
6 into account reasonable reserves.

7 Q. Okay. But, again, because you haven't
8 done that, what I struggle with is if you haven't
9 done that and you haven't decided what is
10 reasonable or unreasonable, how can you even
11 compare -- you're not comparing \$22 million to
12 that number then, right?

13 A. Correct.

14 Q. Okay. So -- so if that number -- if
15 they're not successful on the dissolution claim,
16 let's assume they're not successful on that and
17 then this turns into like the Fisher Louis case,
18 we're only talking about the reasonableness of the
19 reserve and the size thereof. You have no opinion
20 yet on whether \$22 million would be fair and
21 adequate in connection with that, right?

22 A. Oh, I do. I do.

23 Q. But you don't know the number.

24 A. I don't need to know the number. I --
25 because the fairness and adequacy has more to do

1 with -- unless you were still just talking about
 2 aggregate adequacy. If we're talking about that,
 3 then we don't know the total -- the total
 4 reasonable reserves yet. If you're talking about
 5 those things we don't know, I'm giving that as an
 6 upper bound. However if one is, as you were,
 7 quoting the broad conclusion I had with respect to
 8 fairness, consistency and lack of conflict, we
 9 certainly know that there's lack of conflict. We
 10 know why. It's not -- it's not a surprise. It's
 11 very easy to see why this conflict.

12 Q. Okay. Before we -- I want to focus on
 13 aggregate adequacy. What you're saying then on
 14 that specific opinion when you look at
 15 \$22 million, you can't say whether that is an
 16 aggregate adequate or not relative to what may or
 17 may not be a reasonable portion of the reserve,
 18 right?

19 A. That's correct, however the -- the net
 20 shareholders equity I believe informs the court
 21 that there are -- there's significantly more money
 22 on the table potentially.

23 Q. Potentially. But you agree with me,
 24 you -- sitting here today, you don't know how much
 25 cash the cooperative has either on hand or long or

1 short term investments, correct?

2 A. Yes, and those would be components that
 3 are needed to determine reasonable reserves.
 4 Those are components that are needed to determine
 5 actual reserves, and then it's a separate
 6 calculation to determine what are reasonable
 7 reserves. I'm making certain assumptions about
 8 what the -- what the cooperative plans to do in
 9 the next few years.

10 Q. Okay. And you also understand, I think
 11 we're on the same page here, that it's common --
 12 we talked about this in complex litigation for
 13 settlements to be cents on the dollar, right?

14 A. Yes.

15 Q. So the mere fact that this settlement
 16 is cents on the dollar in and of itself isn't that
 17 important, right?

18 A. Correct.

19 Q. Let's look at, again, paragraph 11 of
 20 your affidavit. And I promise we're not going to
 21 go through the same exercise before, but I'm only
 22 using that to discuss -- well, strike that.

23 It's better if we look at paragraph 14.

24 A. Yes, I have that.

25 Q. Okay. Here you -- you're of the

1 opinion, and just to be clear, that the Group 1
2 cap of \$15,000 per claimant is arbitrary and
3 inequitable, right?

4 A. That's what I say, yes.

5 Q. Why do you say that?

6 A. Well, I don't know where the
7 number 15,000 comes from. It could be that, as I
8 then go on to say, that there's some claimants
9 that * are paid in more than that amount in any
10 single year as well as over the life of their
11 participation. So it could be that the net
12 patronage interest of particular claimants exceeds
13 15,000 and it could be that they would then --
14 they might be then inequitably treated.

15 Q. You would agree with me when you say
16 "paid in," are you talking about the no net cost
17 assessments?

18 A. That's one example. So, for example,
19 in 1983, '84 when the no net cost fees are I think
20 7 cents a pound, there's many Plaintiffs,
21 including many of the named Plaintiffs in the
22 Fisher class that paid in in excess of 15,000 just
23 in any one year. There's many of those. So all
24 I'm saying is, if we're using here the metric of
25 what was the net patronage interest, that's

1 contribution, and just using the no net cost
2 funds, then the limit of 15,000 means that they
3 can't recover 100 percent of their net patronage
4 interest.

5 Q. Sure. You -- you would agree with me,
6 I thought you said that the no net cost
7 assessments in and of themselves were not
8 patronage, right?

9 A. They led to patronage.

10 Q. Right. Okay. So the fact that they
11 paid 7 cents in a year, that didn't go to the
12 cooperative's bottom line, right?

13 A. No, I understand. I was just using
14 those as examples, but we have calculations from
15 some of the named plaintiffs in the Fisher class
16 where the contributions exceed 15,000.

17 Q. Agreed. But -- but that didn't accrue
18 to the cooperative, right? Those assessments
19 didn't accrue to the cooperative.

20 MR. RUNYAN: Objection to the form.

21 THE WITNESS: I agree. I've answered
22 that before and I agree with that. I'm just
23 saying that that -- I was trying to give you the
24 intuition behind the fact that in some particular
25 years, people might have contributions that would

1 exceed 15,000. But you're quite right, the no net
2 cost fees did not go directly into stabilization's
3 account.

4 Q. Okay. And so it didn't go into the
5 account and so any comparison to the reserves,
6 it's -- it's meaningless to the no net cost
7 assessment. That was a tax collected by the
8 government.

9 MR. RUNYAN: Object to the form.

10 Q. Correct?

11 A. I have no idea what you're saying. I
12 have no idea why that should be compared to
13 reserves, but let's put that aside. I've
14 repeatedly said, and I thought we'd agreed, that
15 the no net cost fees led to some -- may have led
16 to actually, may have led to some net patronage
17 interest, and that's the calculation one has to
18 do. All I was indicating is that there are
19 clearly some -- some patrons -- some farmers in
20 particular years that are generated in net
21 patronage interest in excess of 15,000. That's
22 all.

23 Q. Two things there. We certainly don't
24 agree. The whole purpose of this lawsuit is, of
25 course, that these no net cost assessments play no

1 role, that's the cooperative view, and it didn't
2 translate and the farmers have no right to -- to
3 those moneys or any tobacco that the cooperative
4 received and retained and then sold at a net
5 profit. That -- that's the lawsuit, that's the
6 clash, right, you understand that?

7 MR. RUNYAN: Object to the form.

8 THE WITNESS: No, I don't -- I don't
9 understand that at all. That makes to intense to
10 me at all but, you know, that you were opining and
11 that's okay.

12 BY MR. FORST:

13 Q. No, no, no. You understand that the
14 gravamen of the lawsuit attacks three -- we'll
15 call it buckets of money that shareholder equity
16 on the balance sheet that's not really cash on
17 hand at the cooperative, but retained earnings
18 from the '67 through '73 crop years, right?

19 MR. RUNYAN: Object to form.

20 THE WITNESS: In part, yes.

21 Q. Okay. In part, the ceded tobacco, the
22 '82 through '84 tobacco that was ceded to the
23 cooperative in the early '90s and then sold later
24 for profit, right?

25 MR. RUNYAN: Object to form.

1 THE WITNESS: In part.

2 Q. Okay. And third, the moneys at the end
3 of FETRA that, again, the tobacco was ceded out in
4 connection with the buyout to the cooperative and
5 the cooperative later sold for roughly 83 million
6 dollars, right?

7 MR. RUNYAN: Object to form.

8 THE WITNESS: In part and -- yes.

9 Q. Okay. So those 3 -- those \$3 or those
10 amounts are what the farmers are claiming we have
11 a right to receive, correct?

12 A. The farmers in Speaks.

13 Q. Well, the class action in Speaks, which
14 is, as you understand it, the class action in
15 Fisher Louis, correct?

16 MR. RUNYAN: Objection to form.

17 THE WITNESS: The * -- no.

18 Q. You're saying the class is different
19 between Speaks and -- and Fisher Louis?

20 A. It strikes me as very different.

21 Q. The scope of the class.

22 A. Well, anyway, I -- let's just talk
23 about Speaks.

24 Q. No, I'm curious about that. I want
25 your opinion. Are you saying the class definition

1 in Speaks encompasses something different than the
2 class definition in Fisher Louis?

3 A. Well, I don't believe, for example,
4 that Fisher Louis specifies particular buckets.
5 They talk about recovery of net patronage
6 interest. But I don't have a precise recall as I
7 sit here of the exact claims and the exact
8 definitions of the class.

9 Q. Okay. So sitting here today, you don't
10 know one way or the other whether the class
11 definition in Fisher Louis and in Speaks is *
12 co-terms?

13 MR. RUNYAN: Object to form.

14 THE WITNESS: No, I don't know if it is
15 the same, no.

16 Q. Okay. So make room for the possibility
17 it could be or it might not be, right?

18 A. I don't want to speculate.

19 Q. Okay. But you just don't know. That's
20 fair.

21 A. Right.

22 Q. Okay. So I won't say that if we focus
23 on the Speaks class, they're obtaining the right
24 to those moneys that we talked about a second ago,
25 right, those three buckets of moneys, correct?

1 A. Yes. I -- I -- I see them as trying to
2 recover the net patronage interest. And if you
3 want to associate them with those three buckets of
4 money, you can go ahead. That's -- that seems to
5 me to require more of a calculation.

6 Q. But what -- then I don't understand
7 what net patronage interest means. What are they
8 seeking to obtain in damages from the cooperative,
9 the Speaks -- the Speaks' Plaintiffs?

10 A. Sorry. My understanding is recovery of
11 net -- their net patronage interest. And that --
12 in order to calculate that correctly, when it's
13 detailed information on specific crop years that
14 people have made contributions of poundage,
15 specific crop years that they've made
16 contributions of poundage and no net cost fees in
17 order to ascertain the net effect. I appreciate
18 what you claimed is that that's not something
19 that's interest stabilization or you don't view
20 that as relative to net patronage interest, but
21 we're going to have to agree to disagree on that.

22 Q. Correct. But that is where the
23 parties -- again, that would be decided by a court
24 and that was the purpose of the compromise, right,
25 to come to a settlement where nobody admits

1 they're right or wrong from a legal liability
2 standpoint and they come to a settlement where
3 growers can be compensated to some degree, right?

4 A. I -- I wouldn't characterize it that
5 way, but you're entitled to characterize it how
6 you want to.

7 Q. Okay. So then I guess this goes back
8 to, sitting here right now, you haven't done an --
9 an economic analysis to determine if the Speaks'
10 Plaintiffs -- what their net patronage interest is
11 in terms of dollars and cents, right, as a class?

12 A. Correct. My -- the question I was
13 asked to look at is to whether there were
14 conflicts in it, whether it would be adequate,
15 whether there are ambiguities in it and so forth.
16 The issues that I raised in my affidavit.

17 Q. Okay. Let's go back though to the
18 \$15,000 cap in paragraph 14. Do you agree with me
19 that there could be a scenario where in Group 1
20 you have a small number of claimants?

21 A. Sure. It's possible.

22 Q. Okay. And if that were the case, given
23 that 75 percent of the \$22 million is allotted for
24 Group 1, only a few members of this class could
25 reap a substantial amount of the settlement?

1 A. Are you implicitly saying \$15,000 is a
2 substantial amount of the settlement? I -- then I
3 don't understand your question.

4 Q. Without a cap, there's the chance that
5 if only there are a few Group 1 claims, that those
6 members would disproportionately receive a huge
7 number of the -- a huge portion of this
8 settlement?

9 A. Well, you've actually made the point
10 perfectly. That's the idiocy of Group 1 and Group
11 2. And the idiocy of Group 1 and Group 2 is not
12 mitigated by having a double idiocy of a limit of
13 15,000. So the problem you've raised is precisely
14 because the notice, the settlement has this Group
15 1, Group 2 distinction based on the information
16 that they can provide. And this 15,000 is --
17 that's precisely why it's arbitrary. It's trying
18 to correct something that is nonsense from the
19 beginning. So it's nonsense on stilts, so to
20 speak.

21 Q. Did you criticize the settlement that
22 was offered in 2005?

23 A. Yes, I did.

24 Q. Do you understand whether that
25 settlement had a Group 1, Group 2 exact redesign

1 this way?

2 A. I believe it did, yes.

3 Q. Does your affidavit come out and
4 criticize that --

5 A. I --

6 Q. -- in 2005?

7 A. -- I don't believe I did in 2005.
8 There were other reasons for pointing out the
9 problems with that settlement.

10 Q. Well, you just said that this
11 particular problem reflected idiocy, correct?

12 A. From the point of view of coming up
13 with an equitable allocation, yes, it's sort of
14 creating a problem that doesn't need to be there
15 and hence the 15,000 is an attempt to mitigate the
16 conflicts that are generated by having Group 1 and
17 Group 2 based on the information that is reported.

18 Q. But you didn't find it important enough
19 or the idiocy important enough to criticize in
20 2005 when you submitted your critique then?

21 A. I didn't need to. I -- if you want me
22 to say it now, then I'll perfectly -- if it's
23 idiotic here, it's an idiotic thing to have done
24 in 2005.

25 Q. You just didn't tell the court that.

1 A. I didn't need to. Maybe it didn't
2 occur to me at that point.

3 Q. Okay.

4 THE WITNESS: Can we take a break in a
5 few minutes?

6 MR. FORST: How about now? That's good.

7 THE WITNESS: Just five, ten minutes.
8 Thanks.

9 VIDEOGRAPHER: Going off the record.
10 The time is 2:09 p.m.

11 (A BRIEF RECESS WAS TAKEN.)

12 VIDEOGRAPHER: We're back on the record.
13 The time is 2:23 p.m.

14 BY MR. FORST:

15 Q. Dr. Harrison, we were focused on
16 paragraph 14 of your latest affidavit before we
17 broke, and I just want to jump back two paragraphs
18 to paragraph 12. I think the title there is
19 Inconsistencies and Inequities. Do you see that?

20 A. That's correct, yes.

21 Q. So we had talked earlier about your
22 critique of the settlement of aggregate
23 inadequacy, right, and that's in paragraph 9?

24 A. That's correct.

25 Q. Okay. And this is a different

1 critique; is that right, outlined in paragraph 12
2 called Inconsistencies and Inequities, right?

3 A. That's correct.

4 Q. And I want to be clear that -- well,
5 let me -- I understand this to not be talking
6 about the total amount or the precise dollar
7 figure of the -- of the proposed settlement,
8 right?

9 A. That's correct.

10 Q. Okay.

11 A. It's to do with the proposed dollar
12 figures for individual claimants vis-a-vis each
13 other, but not the aggregate amount.

14 Q. So the way -- just so I understand
15 that. It's really taking issue with the
16 distribution scheme and design of the proposed
17 settlement irrespective of the number?

18 A. That's correct, yes.

19 Q. Okay. And here what you're -- what
20 you're saying is, is that it ignores the different
21 interests among the class members when it's
22 distributing the settlement, right?

23 A. That's correct, yes.

24 Q. Okay. And what are those interests
25 that you think are being ignored?

1 A. Well, in general terms, the net
2 patronage interest for each individual claimant,
3 which depends on the specific years in which they
4 either contributed pounds or contributed no net
5 cost fees. And we understand we disagree about
6 the role of no net cost fees, but the general
7 problem is that the information that's gathered
8 ignores the specific years in which the pounds
9 were contributed and the specific years in which
10 the no net cost fees were collected.

11 Q. Okay. You understand and I think
12 implicit in that is this class in plaintiff -- in
13 Speaks and even in Fisher Louis includes members
14 going back to 1946, right?

15 A. Yes.

16 Q. So it's the whole time period for the
17 cooperative, '46 -- or the program rather. '46 to
18 2004, right?

19 A. That's right, until 2004, yes.

20 Q. Okay. And so there is a substantial
21 number of members, heirs and assigns that didn't
22 participate in the era in which there were no net
23 cost assessments, fair?

24 A. That is correct, yes.

25 Q. Okay. You say though that this

1 distribution scheme ignores the pounds that were
2 provided from the members, right?

3 A. No.

4 Q. Okay. Well, help me understand.
5 What's your first critique? It ignores what
6 exactly?

7 A. It ignores the pounds per year but
8 they -- and the year that they -- Group 1, for
9 example, asks about what total poundage. It
10 doesn't say in what years and it ignores the
11 specific years. And that could make a difference
12 because, as you know, in some years there were net
13 gains, in other years there were not net gains.

14 Q. I got it. So it's -- it's -- it's
15 not -- you agree with me that Group 1 actually
16 gets the total pounds by considering the amount of
17 tobacco that was patronized by a claimant in every
18 year that he or she or their father or
19 grandfather, whatever it may be, was a member,
20 right?

21 MR. RUNYAN: Object to the form.

22 THE WITNESS: Their -- their agents were
23 a member, yes, the total poundage.

24 BY MR. FORST:

25 Q. Okay. So it's -- it's -- the

1 distribution scheme actually computes and figures
2 out how many pounds of tobacco each claimant
3 patronized the cooperative every year, right?

4 A. I'm sorry, say that again.

5 Q. Group 1, in order to come up with the
6 pro rata distribution based on poundage, if a
7 claimant makes a submission, what it does is, it
8 attempts to do is figure out how many pounds per
9 year did you patronize and then come up with a
10 total number, correct?

11 A. I'm not -- no, I don't see in the
12 information that I've been looking at that it's --
13 it's gathering information on pounds per year. It
14 asks about total poundage, as in Group 2, you ask
15 about total number of crop years, you don't ask in
16 which years. Now that information is available,
17 but that's not in the class notice that I read and
18 it's not in the documents that I read.

19 Q. Okay. But if that data is available
20 and that's how the -- have you reviewed the -- the
21 declarations from the claims administrator on the
22 data that they've received from the cooperative
23 and how they plan to use that data and what it
24 entails and how they're going to determine Group 1
25 and Group 2 distributions?

1 A. No, I haven't. I've looked at the
2 class notices and took those as -- as somebody
3 in -- a farmer would read those in deciding how
4 the allocation would be determined.

5 Q. Okay. Did you call? Do you understand
6 that thousand -- tens of thousands of farmers have
7 called the claims administrator to better
8 understand the claims process?

9 MR. RUNYAN: Object to the form.

10 THE WITNESS: They would have to do
11 that? You mean the notices doesn't explain those
12 things as clearly as --

13 MR. FORST:

14 Q. Can you answer my question?

15 A. No, I do not understand that they
16 called. But given the confusions that I had with
17 it, I'm not surprised that someone would have to
18 call to clarify.

19 Q. I see. One of your confusion was just
20 misreading the settlement agreement, right, that
21 75 percent of the total amount goes into the Group
22 1?

23 A. No, it wasn't a confusion. It was a
24 hypothetical, which you've distorted as if I was
25 trying to provide a literal statement. But, you

1 know, the record can be clear on --

2 Q. Okay.

3 A. -- how we explained it.

4 Q. Have you spoken to -- well, I think
5 we've established you haven't spoken to any
6 members of this class about the proposed
7 settlement, right?

8 A. Asked and answered, no.

9 Q. Yeah. So specifically, you haven't
10 asked anybody about whether or not they are
11 confused, right?

12 A. No.

13 Q. Okay. And nobody has actually told you
14 they're confused, right?

15 A. No.

16 Q. Okay. My question though is, you're
17 evaluating the way this distribution scheme works
18 as an expert, right?

19 A. That's correct, and as given the
20 documents that I was provided such as the notice.
21 And if you're telling me that the notice is
22 misleading as to what the actual allocation would
23 be, I'm even more stunned.

24 Q. Okay. I'm not telling you anything.

25 A. Apparently.

1 Q. I'm telling you that -- I'm just asking
2 questions and you're answering them. I asked you
3 a simple question of whether you decided to review
4 all the documents that were filed in Speaks in
5 support of this settlement. Have you done that?

6 A. Well, I don't know what -- I don't know
7 what documents have been filed that I haven't
8 received because I haven't looked at them. So if
9 you're saying -- if you're telling me a little bit
10 more informatively that there was a document by
11 the administrator that said, forget the actual
12 notice, here's how I'm actually going to allocate
13 this thing, and this is my own phrasing, I have
14 not seen a document like that. I did not know
15 that a document like that existed. My
16 understanding was to take the notice as it's
17 presented to the farmers and evaluate that. And
18 that is what I've done indeed in my affidavit. I
19 quote the notice explicitly --

20 Q. Sure.

21 A. -- so that I could be clear. But if
22 you're telling me that a completely different
23 method of allocating is being used then, as I
24 said, I'm rather concerned that that's not in the
25 notice. You mean the notice is misleading?

1 Q. Are you asking me questions now?
2 A. No, I think the notice is misleading --
3 Q. Okay.
4 A. -- from what you've just been telling
5 me. That's my opinion.
6 Q. Just -- just -- I just want to answer
7 (sic) this question. Did you ask your counsel or
8 the named representatives that I want to receive
9 all of the submissions in connection with this
10 preliminary settlement that are filed on the
11 docket from experts or otherwise? Did you make
12 that request?
13 A. No, I did not.
14 Q. Okay. Do you think it is important as
15 an expert in critiquing or evaluating the proposed
16 settlement in its distribution scheme to read
17 everything that's been filed in support thereof?
18 A. It would be useful to do that and, on
19 the other hand, one of the charges that I was
20 given was to take the notice, the documents that I
21 were given and the notice that was sent out as --
22 and evaluate it, and that is what I've done.
23 Q. Okay.
24 A. And yes -- and my understanding now
25 from you is that something quite different is

1 actually being done and --
2 Q. I don't know why -- we'll get through
3 this to understand it. Here's -- here's all I'm
4 telling you. As an expert, is it your practice
5 outside of this case to only review the documents
6 provided by counsel and not to request the larger
7 set of documents?
8 A. No. In general, I ask counsel to send
9 me the documents that are appropriate for me to
10 form my opinion and they do that. In this
11 instance, I was asked to evaluate the notice that
12 was sent to farmers. I looked at that and I'm
13 being told by you that some other method is being
14 used to allocate moneys to claimants that was sent
15 in the notice. And I'm not a lawyer, but I'm
16 stunned at that.
17 Q. Yes, well, I'll clear that up in a
18 second Dr. Harrison --
19 A. Okay.
20 Q. -- because I actually think you're
21 mischaracterizing. What I'm telling you is, I'm
22 astonished to learn that when this is a pro rata
23 distribution on patronage that you didn't evaluate
24 the docket and all the things that have come in to
25 understand what that would be in connection with

1 the notice, in connection -- well, let me ask
2 this. Did you visit the settlement website?
3 A. Yes, I did.
4 Q. You did. Did you look at the
5 frequently asked questions of that website?
6 A. Yes, I did.
7 Q. Okay. You did. Well, we'll get to
8 that in a second. Did you -- again, you
9 understand how to use * Pacer, where the federal
10 court dockets are available to the public?
11 A. Oh, yes, I don't refer to it by that
12 name, but I'm aware of it, yes.
13 Q. Okay. Did you go on there to see what
14 had been filed in connection with this settlement?
15 A. No, I have not.
16 Q. Okay. Is it your normal practice to
17 turn to counsel and ask them to provide the
18 documents that are appropriate for your opinion
19 without telling them the documents that you want?
20 A. No, and that's not what I -- that's a
21 mischaracterization of what I did here. I was
22 asked to form an opinion and so I asked to be sent
23 the documents that I would need to form that
24 opinion. And so the opinion that I'm forming is
25 with respect to the notice that was sent out.

1 Q. What documents did you ask for then?
2 A. I asked for the documents that would be
3 relevant for me to form my opinion about the
4 notice that was sent out.
5 Q. Right. So if you asked them to send
6 you the documents that were relevant, did you
7 leave it to counsel to decide what was relevant?
8 A. With respect to -- actually, I had a
9 more precise query to counsel and that was the
10 documents that are relevant for me to do the
11 assignment you've given me, which is to evaluate
12 the notice that was sent to claimants --
13 Q. Okay.
14 A. -- not some other method of allocation.
15 Q. And I just want to be crystal clear
16 then. You left it to counsel to decide what would
17 be relevant for your expert opinion?
18 A. Yes, and those documents are provided
19 and listed here.
20 Q. Okay. Let's go back to the way --
21 let's look at the exhibit of the settlement
22 agreement * as Exhibit 2.
23 A. Yes, I've got that.
24 Q. And if you look again at page 14, it's
25 paragraph 9. It talks about Group 1. Would

1 you -- would you agree with me, Dr. Harrison, that
2 one common thread that traces through this entire
3 class regardless of what statutory regime was in
4 place is that every member, potentially every
5 member of the cooperative patronize the
6 cooperative at some time?

7 A. Yes. In fact, I believe they have to
8 in order to -- they have to do more than just have
9 paid their \$5. They have to have contributed
10 something at some point.

11 Q. Okay.

12 A. Poundage.

13 Q. So regardless of whether there was
14 gains or losses or no net cost assessments or
15 buyouts provided or whatever else it may be, one
16 common thread that attaches to everybody in this
17 class is the fact that they patronized the
18 cooperative, fair?

19 A. That's correct, yes.

20 Q. Okay. Is it also correct that another
21 common thread, regardless of the statutory
22 regime's gains, losses, how many assessments one
23 person paid, the size of a quota relative to
24 another, is that everybody was a member of the
25 cooperative at some time?

1 A. Yes.

2 Q. Okay. And so this Group 1 and Group 2,
3 what it does is it takes the two unifying themes
4 of this entire class as defined and certified both
5 in state court or certified in state court and
6 here proposed in federal court and designs a
7 distribution plan that accounts for those two time
8 themes across the entire membership?

9 A. No, not as I look at it here. Now,
10 you -- you represented to me that there's been
11 some other settlement allocation that has been
12 come up with subsequent to this, and I don't know
13 what that is. But as I read this, if you're
14 simply looking at someone's total pounds and
15 you're looking at the total number of crop years,
16 you cannot come up with an equitable allocation.

17 Q. Sir, how would -- if a claimant comes
18 in in Group 1, how do you understand that they
19 would determine the total pounds of tobacco
20 patronized for that claimant? How would that
21 work?

22 A. Well, they were actually asked on their
23 submission forms to say what the total pounds are
24 and they write that down. They would add that up
25 over the individual years. So the argument could

1 be -- if that's provided by the farmer, the farmer
2 might have just kept track of how many pounds over
3 10 years or 20 years that they contributed and
4 just write that number down. I know and you know
5 and stabilization knows that number by year, but
6 that's not what is said here in paragraph 9. It's
7 not what is said in the notice, which is what I
8 was asked to evaluate. That's all I'm reacting
9 to.

10 Q. No, okay. I'm not sure what you're
11 reacting to actually. What I'm saying is, how
12 would you understand that theoretically the amount
13 somebody would be due under Group 1, how would
14 that calculation run? What would the claims
15 administrator endeavor to do?

16 A. Well, my understanding is that it was
17 up to the farmer to provide that information on a
18 form and write it down and write one number down
19 for Group 1 and one number for Group 2. It was
20 not at all clear to me if somebody could be a
21 claimant under Group 1 or Group 2, again, just
22 looking at the notice. But I'm suspecting there
23 might be some other rules being set up because I
24 couldn't figure that out.

25 Q. Do you see in paragraph 8, just right

1 above paragraph 9 where it says, settlement class
2 members submitting Group 1 and/or Group 2 claims?

3 A. Yes.

4 Q. Do you understand what that means?

5 A. Yes, I do.

6 Q. What does that mean?

7 A. It means that if somebody is submitting
8 information into Group 1 and/or Group 2, they can
9 cause a check to be paid. But it doesn't say
10 whether they will only get a Group 1 check or a
11 Group 2 check. It just says if they submit a
12 claim that falls within one or the other, they
13 will get a check.

14 Q. You don't understand that to mean that
15 they can submit both in Group 1 and Group 2 plan?

16 A. No. It just says if you've got
17 information to establish that a claim -- if you
18 actually -- let's read it carefully. If the claim
19 form is timely proper and contains sufficient
20 information to establish the claim falls within
21 Group 1 and/or Group 2, the claims administrator
22 shall cause a check or checks to be provided to
23 settlement class members. That does not say that
24 you may receive moneys in -- under Group 1 and
25 Group 2.

1 Q. Sure. And you're -- you're sitting
2 here today also, I know that's how you read it,
3 but did you speak to any class members that maybe
4 read this and shared your understanding?

5 A. No. And I looked at the notice that
6 was sent out to class members and it was even less
7 clear than this. But that's...

8 Q. To you?

9 A. Yes, to me, absolutely.

10 Q. But did you speak to even anybody to
11 confirm your reading or did you reach out to the
12 cooperative, did you have any conversation with
13 anybody about your reading of it?

14 A. Yes.

15 Q. Who?

16 A. I asked actually Mr. Runyan if I'd
17 misunderstood it. And I asked my associate
18 Dr. Greg George if he misunderstood it. And they
19 said, I can't make any sense out of it, I can't
20 resolve the ambiguity.

21 Q. So you're relying on Mr. Runyan's
22 interpretation?

23 A. No, no, I'm actually relying on my own
24 interpretation, but you asked me if I spoke to
25 anybody and -- I spoke to my wife as well and

1 she's a professor, but it's my own opinion.

2 Q. But, again, just to be crystal clear on
3 this, you're not sitting here today aware of if
4 any class member shares that misunderstanding?

5 A. No, no.

6 Q. So if we talk about the -- the Group 1
7 distribution, it's -- it's laid out on a pro --
8 pro rata determination, again, based on
9 patronage -- let me flip it this way and just ask
10 you, Dr. Harrison, what -- regardless of the
11 amount, what is your distribution scheme that you
12 would recommend?

13 A. Oh, the distribution scheme I'd
14 recommend is based on the principles set out in my
15 2012 affidavit where one intuitively, you know,
16 follows the poundage and follows the -- the money.
17 You do a calculation separately for the prior --
18 pre1982 period and for the 1982 to 2004 period for
19 obvious reasons I don't think we disagree on. So
20 the idea here is that one would track poundage in
21 particular years and calculate net patronage
22 interest that derives from that and one would also
23 do a calculation that respects that different net
24 patronage interest accrued in different years and
25 that for present value purposes, one might want to

1 take that into account, that people are recovering
2 net patronage interest as of 20 years ago as
3 compared to one year ago.

4 Q. Okay.

5 A. And that's different in law from
6 prejudgment interest. That's, you know, present
7 value interest has damages. But that's the
8 calculation, an additional calculation one might
9 want to do.

10 Q. So --

11 A. There are a couple -- sorry. There are
12 a couple of other issues about ceded tobacco and
13 so forth, but those are the primary calculations
14 with respect to net patronage interest.

15 Q. So for this class, if a claimant is a
16 member from -- or an heir is assigned as a member
17 from 1946 to 1955, what would they be entitled to
18 under your distribution scheme?

19 A. Well, they -- if we know the poundage
20 that they contributed then there would be
21 certificates of interest some parts of which were
22 paid in cash. I mean, the certificates of
23 interest with the residual that were issued is my
24 understanding I think was 40 percent initially and
25 then 60 percent after a certain period of time.

1 If they have not been redeemed, and some of them
2 have been redeemed, then those would be the
3 amounts they're entitled to in present value
4 terms. So I'll put aside the -- I'll keep saying
5 in present value, but let's put that.

6 Q. I understand. Do you understand that
7 there was only a profit in the -- in the preno net
8 cost era there was only net gains between '67 and
9 '73?

10 A. That's correct. I was just answering
11 in principal. So the answers to all of those
12 would be zero, zero, zero, zero, zero. But I'm
13 trying to give you the logic that is just as
14 applicable.

15 Q. I see. So is it your view that a
16 substantial part of this class could, in fact,
17 receive zero dollars under your distribution
18 scheme?

19 A. They may.

20 Q. Okay. Have you had those discussions
21 with class members to act -- to ask what their
22 reaction to that would be?

23 A. No, I've been asked to figure out what
24 is the appropriate net patronage contribution.
25 And if somebody did not generate net patronage

1 contribution, then they are not entitled to
2 recover any net patronage contribution during
3 those years.

4 Q. Okay. So, again, just so I'm crystal
5 clear. If somebody was a member of this
6 cooperative from 1946 to 1966 or their father or
7 grandfather was in which there was no, we know,
8 net earning on patronage during that time, no net
9 process assessments under your plan, that person
10 would get zero dollars?

11 A. If under those assumptions, yes. And
12 it sounds as though under the proposed plan here
13 that somebody who contributed in a year that did
14 not generate any patronage would be receiving some
15 patronage which means by definition of zero some
16 gain that somebody is receiving the less than they
17 contributed to the patronage. So there's an
18 inequity built into exactly the -- the mechanism
19 you're talking about here.

20 Q. Yeah. Have you -- have you done this
21 analysis to figure out how many members of this
22 class and class action might, in fact, receive
23 zero dollars if the class were to prevail?

24 A. No, I've not.

25 Q. Okay. Do you think the class of

1 farmers know this, that given the hundreds of
2 thousands of members out there, there could be a
3 substantial portion that at the end of this
4 litigation might receive zero dollars?

5 A. If they are seeking to recover net
6 patronage interest and that they know that they
7 have contributed in years in which there was no
8 net gains, then I presume that they know that.

9 Q. So if they've suffered no harm, are
10 they properly part of this class?

11 A. I beg your pardon? I don't understand
12 that.

13 Q. Well, you're saying then even if
14 successful, those class members aren't entitled to
15 any damages, right?

16 A. If the damages are being calculated
17 with respect to net patronage interest, then --
18 and allocated on that basis, and that's only one
19 of the factors that one might take into account,
20 the answer is, no. But there could be a
21 settlement or there could be a decision that says
22 that all members are entitled to something and
23 we're forgetting for the moment a 5-dollar
24 recovery. Let's put that aside. There may be a
25 settlement that gives something to everybody. I'm

1 just telling you -- you asked me the method that I
 2 had to determine net patronage interest, and if
 3 somebody has not contributed and suffered a damage
 4 from not being paid that, then they should get
 5 zero.

6 Q. Okay. You agree that the settlement
 7 plan that's been proposed, in fact, tries to give
 8 every member of this class some amount of recovery
 9 without one person obtaining a windfall if there
 10 aren't a significant number of claims, right?

11 A. It does that by actually taking money
 12 away from people who have contributed to net
 13 patronage interest. Let's assume everybody is
 14 under 15,000 just for argument sake just to
 15 clarify. The only way that you give money to
 16 people who contributed zero -- that have zero
 17 patronage interest is by taking a dollar away from
 18 people who have -- who have generated patronage
 19 interest. So that strikes me as -- as fairly
 20 obviously inequitable.

21 Q. Do you -- have you had any discussions
 22 with members who were members of this cooperative
 23 and farmed tobacco from '46 through '66 and
 24 potentially believe that they played a vital role
 25 in the ongoing kind of success of the cooperative

1 that under this class action that they might again
 2 not obtain any recovery?

3 A. No, but I don't know what you mean by
 4 kind of success. That strikes me as a very vague
 5 term.

6 Q. We'll jump back to this in a second.

7 MR. FORST: I want to mark the next
 8 exhibit, Exhibit 7.

9 (EXHIBIT NO. 7 MARKED.)

10 A. Thank you.

11 Q. Sir, you told me that you visited the
 12 frequently asked questions on -- for the
 13 settlement website, correct?

14 A. That's correct.

15 Q. And I think you've said you read those,
 16 right?

17 A. I don't recall there being as many of
 18 these but, yes, I have -- I did have a look at it.

19 Q. Do you have any reason to doubt that
 20 this is not the frequently asked questions and
 21 answers that are on the website and have been
 22 there since it was launched?

23 A. Well, I -- the only reason -- the only
 24 thing I have to believe is that these are the
 25 frequently asked questions as of today because

1 that's the date that you've got printed here. But
2 they may have been there.

3 Q. I said, do you have any reason to doubt
4 that these were there when the settle -- when the
5 web page was launched?

6 A. Yes, because I haven't seen an image of
7 the website at that date.

8 Q. Okay. Do you turn to the second
9 payment, No. 47. It says, Can I submit both a
10 Group 1 and a Group 2 claim? The answer is, yes,
11 right?

12 A. Yes, I see the answer is, yes, you can
13 file both a Group 1 and a Group 2 claim whether at
14 the same time or separately. You may be eligible
15 to receive a payment both from Group 1 and Group 2
16 if the claims administrator determines that your
17 claim for each group is valid.

18 Q. Right. So that addresses the very
19 question on whether they can receive payment under
20 both claims, right, or under both groups?

21 A. That's correct. And that was unclear
22 from the notice that was sent out.

23 Q. Okay. But -- but, again, you don't
24 recall seeing this on the FAQs --

25 A. No, I don't.

1 Q. -- even though you visited it?

2 A. No, I don't.

3 Q. Okay. What date did you visit it?

4 A. Well, prior to January the 9th, 2018.

5 Q. Okay. I think you were asked to
6 undertake this engagement in September and I'm
7 just curious when you visited the -- the website
8 to the best of your recollection?

9 A. It would have been sometime after that.

10 Q. Okay. Does this clear up your
11 confusion?

12 A. No. It actually tells me that there's
13 some information in the FAQs that was a source of
14 ambiguity in the notice that was sent and I was
15 asked to evaluate the notice. It certainly
16 clarifies for me an answer to that question but,
17 again, as I say in my affidavit, I'm evaluating
18 the notice that was sent out and clearly that
19 notice had a lot of details that were -- needed to
20 be resolved.

21 Q. Fair enough. I mean, you've pointed
22 out one detail. But, again, I think what you're
23 saying is, if to the extent you and Mr. Runyan
24 perhaps your wife were confused over the notice
25 letter, reading this FAQ would clear that up,

1 right?

2 A. Please don't mention my wife in that
3 context.

4 Q. I thought you did.

5 A. No, but I don't appreciate it.

6 Q. Okay.

7 A. I'm just letting you know I don't
8 appreciate that.

9 Q. I'll re-ask the question.

10 A. Thank you.

11 Q. And it's just simply I thought you said
12 you were confused, Mr. Runyan was confused and you
13 chatted with him and that I think what you're
14 saying now is reading this FAQ would have cleared
15 up that confusion.

16 A. It clears up that confusion, yes. But
17 it does mean that those people who simply are
18 reading the notice remained confused. It's not
19 everybody that go -- that has access to the web or
20 that goes and reads FAQs.

21 Q. And I do apologize for mentioning your
22 wife. I wasn't attempting to offend at all. I
23 was -- really I thought you had you had a
24 conversation with her to get her reading, a
25 conversation with Mr. Runyan to get her reading.

1 A. I did. I appreciate the apology.

2 Q. Okay. You mentioned -- well, I then
3 want to go back to the pro rata distribution under
4 Group 1, and that is --

5 MR. FORST: Can we mark this as
6 Exhibit 8?

7 (EXHIBIT NO. 8 MARKED.)

8 A. Thank you.

9 Q. Do you recognize this document?

10 A. Yes, it appears -- it is my affidavit
11 of 2005.

12 Q. Okay. And -- and what was the purpose
13 of this affidavit?

14 A. The purpose of this affidavit was to --
15 to examine the proposed settlement of the Louis
16 case that was presented to the courts around 2005.

17 Q. Okay. And your opinion on this is that
18 the settlement -- settlement at that time was
19 inadequate, right?

20 A. That's correct.

21 Q. I want to focus -- two things strike me
22 about this, and I want to turn to page 4 in
23 paragraph 7. You can read it, I know it's been a
24 while, to refresh your memory. But I think what
25 it's doing is it's critiquing the aspect of the

1 settlement that returns the \$26.8 million for the
2 redemption of certificates, right?

3 A. That's correct.

4 Q. My question is, isn't that the total
5 amount of certificate equity interests that were
6 issued from '67 through '73 and the settlement is
7 paying out those moneys or proposing to?

8 A. Yes.

9 Q. So it's proposing to pay out
10 100 percent of the moneys that were requested by
11 the class action, at least this button ***?

12 A. No. Actually, if you read what I
13 wrote, I said, It's -- quote, Thus it is simply
14 creative semantics to label something
15 quote/unquote a benefit when one is paid what one
16 is already owed, * false stop. So my point was to
17 represent something as a benefit to the class to
18 be paid something that they're already owed
19 strikes me as disingenuous at best.

20 Q. I understand that, but isn't that the
21 the case in any lawsuit in a breach of contract?
22 I perform a service for you, you say it's not
23 adequate, I say it is, you withhold money from me,
24 I sue you for that return of money because we
25 disagree over it, right?

1 A. That's one aspect of it, yes.

2 Q. Yes, and if my settlement offer is to
3 say, okay. I'll give you all that money back that
4 you're -- I'm claiming I don't have to return and
5 you're -- or I'm owed and you're claiming you
6 don't have to give, why is that an inadequate
7 settlement if the dispute of the -- of the case is
8 over who has the right to that money?

9 A. Because it doesn't strike me and I -- I
10 am happy to concede that this is a matter of law,
11 but that is actually in dispute who owns the --
12 the entitlement to the -- to the amount of the
13 certificate of interest.

14 Q. So you don't understand these lawsuits
15 to include the cooperative's position that it was
16 entitled to keep these moneys in a reserve and use
17 it at the discretion of the board?

18 A. The idea of keeping 40 percent or
19 60 percent of these amounts in reserves strikes me
20 as extraordinarily high given my understanding
21 that there is already some amounts deducted for --
22 for handling the cost of these things, and that
23 can include -- that should include actually, if
24 one is doing proper risk management, the amounts
25 needed for reserves.

1 Q. I understand that, but my question was
 2 simply this. You understand the point of view of
 3 this lawsuit is given the governing documents that
 4 we talked about saying we -- the cooperative can
 5 retain a reserve, given the membership agreements
 6 that say they can deduct something for a
 7 reasonable reserve at its discretion, the gravamen
 8 of the lawsuit is, although you're attempting to
 9 claim these moneys be paid back, the cooperative
 10 is disagreeing and saying there's no legal right
 11 to those moneys. We're entitled to keep them,
 12 right, that's the disagreement?

13 MR. RUNYAN: Object to the form.

14 THE WITNESS: I don't remember that in
 15 the claims and it strikes me as -- as -- I'm not a
 16 lawyer, but it strikes me as disingenuous. And I
 17 agree that this may be a matter of law, but the
 18 certificates of interest are certificates of
 19 interest and there's been amounts deducted
 20 beforehand for the regular operation. Risk
 21 management reserving is a part of the regular
 22 operation of a company. That's the point I'm
 23 making. So I simply had no idea how somebody
 24 could call that a benefit. Now, I agree that we
 25 disagree, but I'm just saying that I'm looking at

1 this as an economist, as someone who understands
 2 accounting. That's my understanding of the
 3 certificate of interest.

4 Q. But hypothetically, I'm just taken it
 5 out, you agree with me, let's say, there's a
 6 lawsuit, a plaintiff is claiming I'm owed a
 7 thousand dollars for whatever reason, the
 8 defendant disagrees and says that's my money,
 9 you're not owed it. And then a settlement that
 10 returns a thousand dollars would be fair in your
 11 mind?

12 A. Yes, it would be. But in this
 13 interest -- it's a certificate of interest. It
 14 actually says these are the interests that you --
 15 you have in -- from patronage.

16 Q. And probably in my hypothetical, if
 17 you're talking a settlement, you would agree as an
 18 expert that it's unfair to the defendant to settle
 19 and give a hundred percent of the -- the dollars
 20 claimed?

21 MR. RUNYAN: Object to form.

22 THE WITNESS: I find that astonishing.
 23 I mean, to me it's fair to do what is right. This
 24 is something that is earned by the farmer, to me.
 25 Forgive me, I'm just an economist here. Somebody

1 has earned this money and the only fair thing it
2 seems to me is actually give them the money that
3 they're owed. So the idea that stabilization is
4 being generous by honoring its contract and
5 doing -- all this lawsuit seems to be doing even
6 then is saying, do your job, pay the -- pay the
7 patronage interest. And to couch that as it's --
8 we're being generous if we give a hundred percent
9 of what we already owe strikes me as -- as
10 astonishing.

11 Q. I understand your personal capacity.
12 You think the right thing to do, the fair thing is
13 that plaintiffs should prevail on the case, right?

14 A. No. In this instance, I -- I believe
15 that if they have a certificate of interest,
16 that's a -- that's -- I think I understand what
17 that -- what that instrument is. That
18 stabilization should simply do what it's supposed
19 to do and pay those out when requested.

20 Q. And you're not -- my question though
21 is, you're -- you're giving no thought or weight
22 to the underlying agreements, the governing
23 documents that permit the cooperative to retain
24 moneys in reserve and use it at its discretion.

25 A. No, no, no, no, no. Those are

1 different documents. They don't necessarily say,
2 as far as I'm aware, that the 40 percent or
3 60 percent is a hundred percent reserved. It just
4 says those will be withheld by -- by
5 stabilization. And if they are reserves, those
6 are very, very high. So there are separate
7 documents saying that stabilization may form
8 reserves. I'm agreeing with that, no problem
9 about that. But I do not understand that the 40
10 or 60 percent that is retained as the certificate
11 of interest is meant entirely as reserve. If it
12 is, it's astonishing and it's bad accounting
13 because the reserves should have been built into
14 the fees that were extracted prior to the
15 determination of patronage interest.

16 Q. We looked at the marketing agreement in
17 '71, right? It's an exhibit where it said at the
18 end of it, if there's a profit, the cooperative at
19 its discretion can retain it for reserve in
20 exchange for a certificate of interest?

21 A. That's --

22 MR. RUNYAN: Object to form.

23 Q. Right?

24 A. -- that's -- that's correct.

25 Q. Okay.

1 A. But it didn't say that all of that is
2 to be retained as a reserve.

3 Q. I understand, but it said at the
4 court's discretion, right?

5 MR. RUNYAN: Object to the form.

6 THE WITNESS: Yeah. That's not --
7 again, that's not the point. The point is it said
8 you may retain some of it as a reserve.

9 Q. Okay.

10 A. And the reserve is -- it's -- it's
11 absurd that the reserve would be 40 or 60 percent.

12 Q. I agree you disagree with the bottom
13 line number, but the documents and the agreements
14 between the parties reserve the right for the
15 board to exercise its discretion and keep moneys
16 in reserve. You've not quarreling with that,
17 right?

18 MR. RUNYAN: Object to form.

19 THE WITNESS: No, I'm agreeing with
20 that. But I'm just saying that the certificate of
21 interest, if it means anything, if it means
22 anything as a certificate of interest, that it
23 means that it is somebody's interest, the farmer's
24 interest in the patronage. It's a measure of
25 that.

1 Q. I understand that. And the deal was by
2 agreement is if the board exercises discretion to
3 say we need that in reserve, we are entitled to
4 keep it. Do you think?

5 A. No, I'm disagreeing.

6 Q. Okay.

7 A. I'm agreeing that the board has a right
8 to set reserves. I'm not agreeing that anything
9 in the marketing agreement says and that
10 40 percent or 60 percent will be fully retained as
11 reserves, nor can I think of any reasonable basis
12 for that amount to be retained as reserves.

13 Q. Again, I understand that you disagree,
14 but you haven't yet done the exercise of what's
15 reasonable or what's not, right?

16 A. That is correct.

17 Q. Okay. Are you aware that in 1975 the
18 cooperative wrote the growers and told them that
19 they were retaining this money in reserve for the
20 rainy day when federal price support might go
21 away?

22 A. I don't recall that particular
23 document.

24 Q. Okay. Have you seen documents like
25 that? Have you asked for documents like that?

1 A. No, I've reviewed documents. I just
2 don't recall seeing one.

3 Q. Okay. If we turn back to your 2005
4 affidavit, I want to look at specifically
5 paragraph 9.

6 A. Okay.

7 Q. And you can read it. Here you're,
8 again, criticizing the proposed settlement I think
9 to say, my concern here is that there appears to
10 be an effort to wipe out the claims of 797,000 or
11 so growers that have contributed to the net assets
12 of stabilization over the decades of its
13 operation. Do you see that?

14 A. Yes.

15 Q. This would not be a major concern if
16 the net assets accumulated over that period were
17 being returned to the grow -- growers who
18 production attributed to them, but they are not.
19 Do you see that?

20 A. Yes.

21 Q. Isn't the proposed distribution plan
22 giving back money to the entire membership class
23 and, in fact, all potentially 797,000 growers?

24 A. Potentially, yes.

25 Q. Okay. And you were criticizing this

1 settlement at the time for not doing that.

2 A. Yes, because at the time I didn't
3 understand the complexity of the calculations of
4 net patronage interest fully.

5 Q. Okay. So the proposed settlement plan
6 addresses this concern at this time though, right?

7 A. No, no, no, no.

8 Q. Okay. But it is giving the membership
9 for years that they were members a pro rata
10 portion of this settlement, right?

11 A. Wrong. If pro rata means -- pro rata
12 of net patronage interest, it is not. It is
13 taking money away from people who have contributed
14 to net patronage interest to give to others who
15 have not. So that's one of the things it's doing.

16 Q. Here -- here though, I just want to
17 make sure I understand this because I read this as
18 you're saying the settlement there is suspect
19 because the full scope of the membership, roughly
20 800,000 people, are not going to receive money,
21 right?

22 A. Correct.

23 Q. Okay. I'm saying to the extent
24 claimants submit, no matter when they were
25 members -- in the present settlement, to the

1 extent a claim comes in, it's treated as Group 2,
2 years of membership, those people are going to
3 receive money in connection with the settlement,
4 right?

5 A. That's correct. And that's
6 inconsistent with -- with -- with recoveries being
7 on the basis of net patronage interest. That's
8 what I said in 2012. At this point in 2005, I
9 didn't have access to the full stabilization
10 records. I didn't know the extent of the
11 variation, the heterogeneity across particular
12 crop years. I do now know that and that's
13 precisely why I fashioned a discussion in 2012 to
14 explain how one can come up with an equitable and
15 fair allocation that respects the contributions in
16 different years where there were net gains.

17 Q. I understand that. But doesn't your
18 distribution -- you understand reasonable minds
19 can disagree on the appropriate distribution
20 scheme given a class that spans 60 years and with
21 this complexity, right?

22 A. Actually, no, I don't think so. I
23 think it's a perfectly straightforward issue
24 considering the law and considering the methods of
25 allocation and the information that's available.

1 Q. Have you done it?

2 A. I've outlined in my 2012 affidavit how
3 one could do that calculation. When asked to do
4 it, I'll do it.

5 Q. Okay. I mean, do you have the records?
6 Have you asked for the records from stabilization
7 or otherwise the cooperative in order to run that
8 calc?

9 A. Yes.

10 Q. Do you have those?

11 A. Yes.

12 Q. So you have data for growers from,
13 let's say, 1946 to 1950 in order to determine
14 every year whether or not they should be entitled
15 to any recovery in the case?

16 A. In principal, yes. I -- I don't -- as
17 I sit here immediately, it's a two gigabyte file.
18 I don't recall if it goes back to those earlier
19 years, but I believe it does. I believe it is the
20 complete data file.

21 Q. Okay. And I think though what we're
22 all agreeing is there was no net gain up until
23 '67, right?

24 A. I think that's correct, yes.

25 Q. Okay. And so under your distribution

1 scheme at the end of this case, no matter what the
 2 settlement is or even if the Fisher Louis
 3 plaintiffs are successful and obtain \$200 million,
 4 those people for those 20 years, to the extent
 5 they're not in other groups and only in that time
 6 period, would get \$5 I suppose for their
 7 membership?

8 A. No, that's not correct. I'm
 9 calculating what the allocation would be if the
 10 settlement -- if there is a settlement. If the
 11 court -- there could be a court case and the judge
 12 gives a judgment or there could be a settlement.
 13 If there's -- the judge may decide on any
 14 allocation that he -- he decides. I will inform
 15 the judge if he's making an allocation based on
 16 pro rata net patronage contribution. In that
 17 instance, those individuals that you're talking
 18 about will receive zero. The judge may decide
 19 that they should receive something more than their
 20 \$5 in present value terms. If there is a
 21 settlement, there could be some other allocation.

22 Q. Right.

23 A. As we talked about earlier. So it
 24 could be that the class in the settlement says we
 25 want at least a certain amount of money for

1 everybody, realizing that doing so will take money
 2 out of the pockets of those who have contributed
 3 to net patronage interest, which is what the
 4 proposed Speaks allocation does.

5 Q. Okay.

6 A. I regard that as inequitable if one
 7 wants to allocate according to net patronage
 8 interest.

9 Q. Okay. But if one doesn't want to
 10 allocate according to that, is it a reasonable
 11 distribution scheme for this settlement?

12 MR. RUNYAN: Object to the form.

13 THE WITNESS: Given that the claims seek
 14 recovery of net patronage interest not paid, my
 15 answer is, no.

16 Q. Right. But you've already said you
 17 don't know one way or the other how successful
 18 those may or may not be, right, those claims,
 19 right?

20 A. You're talk about the legal.

21 Q. Yes?

22 A. Agreed. I was not asked to look into
 23 those questions.

24 Q. Okay. And, again, this is a
 25 settlement. This is a compromise where we're not

1 assuming they're successful on those claims, that
2 they're entitled to net patronage interest and
3 maybe the cooperative isn't totally right either.
4 It's a compromise. It's somewhere in the middle,
5 right?

6 A. Now, if you're asking me, do they have
7 any net patronage interest, then I -- the answer
8 is I believe that can be calculated quite easily.
9 This is easily liquidated amounts. There are some
10 calculations to be done. Nothing terribly
11 complicated. In order to do what you're
12 proposing, one would have to take money from
13 people who have earned net patronage interest over
14 the years and give it to other people. One may do
15 that in a settlement, the court may decide to do
16 that for some reason. That's not my -- that's not
17 my remit. My remit is to say, how should net
18 patronage interest be recovered in an equitable
19 manner? And it is not equitable if you've
20 contributed \$30,000 for us to take a certain
21 amount of money away from you so that people who
22 have contributed nothing get something if the
23 objective is an allocation of net patronage
24 interest.

25 Q. I understand that. But two things I

1 want to say to that. One, you haven't had a
2 conversation with a named representative in
3 Speaks, the named representatives in Fisher Louis
4 who haven't opted out or objected or even the
5 larger class membership, which we're not entitled
6 to speak to but you're entitled to speak to under
7 a court order to ask whether they deem this as an
8 equitable and fair settlement. Clearly, some
9 number do, namely the Speaks' Plaintiffs, right?

10 MR. RUNYAN: Object to form.

11 THE WITNESS: I don't want to draw those
12 inferences. There's a whole chain of inferences
13 in there and I just don't want to...

14 Q. I just might -- it's really not. I'll
15 break it down. You haven't spoken to any member
16 of the class to get their take on whether this
17 distribution scheme is fair and equitable in their
18 view?

19 A. That's correct. I was not asked to.

20 Q. Okay. I understand you weren't asked
21 to. But as an expert in your approaching this and
22 thinking about it, don't the opinions and views of
23 the very class who's bringing this lawsuit and
24 choosing to settle it matter to you as an expert?

25 MR. RUNYAN: Object to form.

1 THE WITNESS: Not for the questions I
 2 was asked to evaluate, no.

3 Q. Okay. You would though credit there's
 4 at least some number that agree with it, namely
 5 the -- the named plaintiffs in Speaks.

6 A. It's not obvious to me. Again, I don't
 7 want to infer beliefs and intentions about people
 8 I haven't spoken to just by some actions. Their
 9 actions might have been done because they didn't
 10 understand it. Their actions might have been
 11 informed by a notice that was sent out that seems
 12 not to reflect the way the allocations actually
 13 occurring. So if somebody has read that notice
 14 and not gone to the FAQ to take the specific issue
 15 you raised earlier, then they have a
 16 misunderstanding of how the actual allocation is
 17 going to be done. I think there are more
 18 egregious misunderstandings at play here. So it's
 19 not obvious. It's simply because somebody has
 20 read the notice that they have indeed understood
 21 what's actually going to happen.

22 Q. Is it your contention that the Speaks
 23 named representatives who reached the settlement
 24 read the notice before the Speak settlement was
 25 reached?

1 A. I would hope they did.

2 Q. All right. You would agree with me the
 3 mediation occurred. It occurred in May 2017. The
 4 mediation would occur first, correct?

5 A. Yes, yes.

6 Q. Okay. A settlement in principal would
 7 be reached, correct?

8 A. Yes.

9 Q. Okay. That would be submitted to the
 10 court for preliminary approval in connection with
 11 a notice plan after that, right?

12 A. Yes.

13 Q. Okay. And then the notice would
 14 follow, right?

15 A. Yes.

16 Q. Okay. So the settlement and -- and the
 17 discussions on how the distribution plan would
 18 follow would have to be negotiated with the
 19 names -- the named representatives before they
 20 could come to an agreement on the settlement
 21 agreement which they signed and presented to the
 22 court for approval?

23 MR. RUNYAN: Object to form.

24 Q. You understand that.

25 A. Yes, but if the settlement agreement

1 included the information in the notice, then they
 2 were misinformed about how it was actually going
 3 to be allocated by the claims administrator if
 4 what you've told me is correct.

5 Q. Sir, what I've told you is simply this.
 6 Group 1 claims come in. Do you know how many have
 7 been submitted so far?

8 A. No.

9 Q. Okay. Thousands. So thousands come in
 10 and those are submitted. And then it's a
 11 computation we walk through. A pro rata
 12 distribution -- a determination for every member,
 13 how much tobacco they contributed, right? A pro
 14 rata distribution on the total amount of tobacco
 15 that you distributed. That's what this settlement
 16 agreement says and the notice says, right, for
 17 Group 1?

18 A. Yes.

19 Q. Okay. So I think we agree what that
 20 means is, we understood it, I thought it was
 21 fairly simple, you sum up the total poundage for
 22 each person, you get a total, you come up with a
 23 percentage, you multiply it by 16.5 million and
 24 then you determine their payout under Claim 1,
 25 correct?

1 A. Correct, yes.

2 Q. That -- that's what the settlement says
 3 and the notice and you understood it that way,
 4 right?

5 A. Yes, yes.

6 Q. Okay. All right. So that's not
 7 confusing, right?

8 A. Yes, because you said that there was
 9 something about how the claims administrator is
 10 going to take into account the specific years that
 11 people contributed poundage and not just the
 12 total.

13 Q. That's --

14 A. Well, that was the confusing part.

15 Q. Okay. Well, it's not confusing to say,
 16 if I have a spreadsheet of -- you agree with me,
 17 the members of this cooperative patronized on an
 18 annual basis or had the opportunity to. Every
 19 crop year they went to the cooperative to deliver
 20 pounds of tobacco, right?

21 A. Yes.

22 Q. It wouldn't surprise you to learn that
 23 the cooperative's records then reflect potentially
 24 how much for every member or farm the poundage for
 25 a particular year that was delivered, right?

1 A. Right. I know, I've seen the records.
2 Q. Yeah.
3 A. I have them.
4 Q. Agreed. So what the claims
5 administration does when a claim comes in, is it's
6 able to go there, figure out what was patronized
7 and add it up on an annual basis for every one
8 person to say, this is how much they gave us over
9 the relevant time period. That's not confusing,
10 right?
11 A. No.
12 Q. Okay. That's what's happening.
13 A. But --
14 Q. And that's consistent with the
15 settlement agreement, isn't it? What I just
16 explained right now is consistent with the
17 settlement agreement; is it not?
18 A. It's consistent with it. I don't think
19 it's equitable or it raises conflicts, but my
20 point is you -- you implied to me earlier that
21 there was some other method being used by the
22 claims administrator that took into account the
23 specific years in which pounds were contributed
24 other than just simply add them up.
25 Q. No.

1 A. Because you don't need to do that.
2 Q. I think that's how you understood it
3 because I think that's what you're saying the
4 distribution scheme needs to follow whether or not
5 there was a profit or loss on any given year for
6 any given member. That's what you're advocating,
7 correct?
8 A. Correct. If you're -- one is to get at
9 net patronage interest, yes, one has to do that.
10 Q. And what I'm saying is, you understand
11 and you're faulting the distribution plan because
12 it's not doing that, right?
13 A. Hence it's going to be inequitable
14 amongst those --
15 Q. I --
16 A. Well, you're agreeing. Okay. Great.
17 Q. No, no, I'm not agreeing. I understand
18 that you -- I said, my question was you're
19 faulting it for not doing that.
20 A. Correct.
21 Q. Okay. What I'm explaining to you is --
22 so we're agreeing, there's no implication. The
23 claims administrator for every crop year takes the
24 amount and sums the total pounds of tobacco
25 irrespective of whether there was profit or loss

1 because that raises conflicts in the class, so
 2 it's the total pounds of tobacco. You understand
 3 at least that's what the claims administrator is
 4 doing.

5 A. No, no, no, if -- if you throw in that
 6 line because it's raises conflicts in the class to
 7 take into account the specific years, I think
 8 that's exactly wrong. That's -- that's going to
 9 be completely wrong if your objective is to look
 10 at net patronage interest. If your objective is
 11 to recover what has been contributed and is -- is
 12 being sought in the claim or my understanding of
 13 the claim to be recovered.

14 Q. Yeah, right. That's right. I think
 15 what you're saying, the distribution plan that
 16 you're recommending needs to take out for every
 17 individual farmer their -- they have an
 18 entitlement to their net patronage interest on an
 19 individual basis, right?

20 A. Correct.

21 Q. So you're saying that's the -- that's
 22 their lawsuit, right, that's -- say, that's what
 23 I'm contributed that's what I'm owed, right?

24 A. Correct.

25 Q. Okay. So your distribution plan,

1 you're saying a plan can only be successful if --
 2 if plaintiffs are right, if they have a patronage
 3 interest in the way you're defining it and so they
 4 should be compensated on that basis, right?

5 A. I think that's right, yes. In other
 6 words, if I've calculated the net patronage
 7 interest correctly and understood it correctly and
 8 if the lawsuit is seeking recovery of net
 9 patronage interest --

10 Q. Right.

11 A. -- then that's the correct calculation.

12 Q. I got it. But the cooperative
 13 disagrees that's the purpose of the lawsuit, that
 14 that claim has no valid legal merit and that's not
 15 the way because you have no entitlement to these
 16 moneys that it should be paid out. You understand
 17 that's the cooperative's position, right?

18 A. Yes, I don't understand that position.
 19 But I understand you're representing its position,
 20 I just don't understand how it makes sense.

21 Q. I get it. But you also -- okay. But
 22 then a settlement was reached given these
 23 differing views and a promise was struck to come
 24 up with this settlement in a distribution plan
 25 that meets the parties claims in the middle,

1 right?
2 A. The Speaks parties claims in the
3 middle, yes.
4 Q. Right.
5 A. Some parties claims in the middle, not
6 all.
7 Q. It's not saying the distribution plan
8 is going to follow what your legal claims are and
9 the way you think you're entitled to money. It's
10 somewhere -- it's a compromise that's in the
11 middle and you can recognize, I think you said,
12 people can view this differently and decide that
13 this plan is at least one rational way to do it?
14 MR. RUNYAN: Object to the form.
15 THE WITNESS: No, no, no, no, no. I --
16 too many words in there I can't agree with.
17 However, the whole point about the court
18 evaluating a settlement is to precisely put it
19 beside what is a reasonable outcome of the lawsuit
20 in respect to net patronage interest. And my
21 point is it -- it's vastly different than that.
22 Q. Okay.
23 A. And we have --
24 MR. FORST: Take a break?
25 THE WITNESS: Take a break. Thank you.

1 VIDEOGRAPHER: Going off the record.
2 The time is 3:17 p.m.
3 (A BRIEF RECESS WAS TAKEN.)
4 VIDEOGRAPHER: Going back on the record.
5 The time is 3:31 p.m.
6 BY MR. FORST:
7 Q. All right. Dr. Harrison, am I correct
8 that you -- your affidavit that you submitted in
9 this lawsuit is on behalf of Mr. Pender Sharp and
10 Sharp Farms?
11 A. I believe so, yes.
12 Q. Okay. Did you speak to Mr. Sharp?
13 A. No, I did not.
14 Q. Did you speak to anybody from Sharp
15 Farms?
16 A. No.
17 Q. Do you have any understanding one way
18 or the other whether Mr. Sharp is a member of the
19 cooperative or has ever been a member of the
20 cooperative?
21 A. No, I haven't -- no, I do not, I mean.
22 Q. Okay. Did you review his deposition
23 testimony that he gave in connection with the
24 Fisher Louis lawsuits?
25 A. No, I have not.

1 Q. I want to turn back to page 5 of your
2 2005 affidavit.

3 A. Okay.

4 Q. You talked about this criticism that
5 you advanced at the time of the 2005 settlement
6 that effectively that the -- a large majority of
7 the growers wouldn't really obtain any meaningful
8 money in connection with this settlement, right?

9 A. That's correct.

10 Q. Okay. This was an objection that you
11 were bringing on behalf of the Fisher Plaintiffs
12 at the time, right?

13 A. That's correct, yes.

14 Q. Okay. And so at that time, the Fisher
15 Plaintiffs were complaining that not everybody was
16 going to get paid under the settlement, right?

17 A. I don't know what they were complaining
18 about.

19 Q. Well, you were an expert on their
20 behalf, right?

21 A. Yes.

22 Q. Okay. And so this was submitted in
23 their name, the Fisher Plaintiffs objecting to
24 this settlement at the time, right?

25 A. Oh, so you're saying the Fisher

1 Plaintiffs were -- I'm sorry, are you saying
2 because I wrote this, they're agreeing with me?

3 Q. Well, I would hope so. You were
4 submitting an objection to the Louis settlement on
5 behalf of the Fisher named representatives, right?

6 A. This was my opinion, yes, at the time.

7 Q. Okay. But it was submitted in
8 connection with the Fisher Plaintiffs'
9 representatives objecting to the settlement,
10 right?

11 A. Correct.

12 Q. Okay. So you were acting on their
13 behalf as the expert to offer objections for the
14 court to consider, right?

15 A. Correct.

16 Q. Okay. And at the time, the Fisher
17 Plaintiffs through you were objecting that the
18 settlement that Louis was proposing was unfair in
19 part because not everybody was going to be paid,
20 right?

21 A. No, I -- I disagree with that
22 characterization. Their agent, the lawyers, did
23 not object, but I don't know that any of the
24 plaintiffs -- named plaintiffs read this and
25 agreed with it. And as I've indicated earlier, my

1 statement here, particularly in the last lines of
2 page 5, if I can read it. Quote, the proposed
3 settlement does not appear to provide any
4 compensation whatsoever for growers of crops
5 between 1946 and 1966, end quote.

6 At that point, I did not have
7 information on whether there were net gains or net
8 losses during those years. That's something I
9 obtained subsequently when I got the data -- data
10 from stabilization.

11 Q. Okay. I understand that. But my --
12 but when you -- do you recall in 2005 before
13 submitting your expert affidavit on behalf of the
14 Fisher Louis objections speaking to them about the
15 issues that they had with the settlement?

16 A. No.

17 Q. Did you want to do that?

18 A. I did not need to do that to form my
19 opinions.

20 Q. Okay. But it's -- I'm correct at least
21 that the current settlement addresses at least
22 this objection as you articulated in 2005, right?

23 A. No, because that objection that I
24 articulated 2005 was without information on which
25 years there was net patronage interest. So I was

1 making this statement under the presumption that
2 there was some net patronage interest that could
3 have been during those years. And I subsequently
4 obtained information, as you know, as I've
5 explained, I obtained stabilization's information
6 and that's reflected in my 2012 affidavit.

7 Q. Okay.

8 A. So understanding the facts, I -- I
9 don't believe that the Fisher Plaintiffs would
10 have agreed with this if they were seeking to
11 recover net patronage interest.

12 Q. Okay. But -- but you don't know one
13 way or the other whether that's true because you
14 didn't have a conversation with them at that time,
15 right?

16 A. That's correct.

17 Q. Okay. You've submitted an affidavit in
18 connection with Mr. Sharp and Sharp Farms. Do you
19 understand them to be a named representative in
20 any lawsuit against the cooperative?

21 A. Not that I'm aware of.

22 Q. Okay. Do you understand them to have
23 the authority to speak on behalf of the class?

24 A. Not that I'm aware of. That would call
25 for a legal opinion, but I'm not aware of that.

1 Q. Okay. Did any named representative or
2 plaintiff come to you and discuss this settlement
3 in either Fisher Louis or -- or -- or Speaks?

4 A. I think I've answered that many times.
5 The answer is, no.

6 Q. Okay. If I -- if I read this right,
7 you now understand that between the years 1946 and
8 '66 and 1974 and '81, there wasn't any net gains
9 realized for those crop years, correct?

10 A. Yes, because I now have data that shows
11 that, yes.

12 Q. I understand. And so under your
13 preferred distribution scheme, I think a
14 resolution of a case, it's possible that all these
15 members in these years could receive potentially
16 nothing more than \$5. Is that fair?

17 A. Yes, if indeed the claim is to recover
18 net patronage interest, then that would be an
19 appropriate recovery for them to receive zero,
20 because to do otherwise would be taking money out
21 of the hands of others.

22 Q. Okay. But -- but would you support a
23 settlement if you had conversations with class
24 members who said that they were okay with taking
25 money so that the collective, the membership in

1 its entirety could share in some of -- of the
2 moneys disbursed at the end of the case or in
3 connection with settlement?

4 A. I don't know how to answer that in the
5 abstract or unconditionally because I would want
6 to make sure that I at least or counsel had had a
7 chance to explain to them the true cost of what
8 they're doing in that. And then it would be up to
9 them because it's their settlement.

10 Q. Okay. But if that was their preferred
11 approach after having that conversation, you would
12 not present any objection, fair?

13 A. It's not my business to do that. That
14 calls for a legal opinion and I don't want to do
15 that.

16 Q. What -- what calls for a legal opinion?

17 A. An assessment on how I would draw
18 conclusions from individual class representatives
19 making certain claims because they may or may not
20 be provided with all of the information.

21 Q. No, I understand, but I'm not asking
22 for a legal conclusion. I'm just wondering if you
23 make room for the possibility that you could sit
24 down, have a conversation with class
25 representatives, they could agree to a

1 distribution scheme whereby everybody got paid
 2 something north of \$5 and they would be contented
 3 with that and you would not object to that scheme?

4 A. I would agree with everything you said
 5 until the last phrase. I would still object to
 6 that scheme if -- and I would remind them that if
 7 they're in this lawsuit to in order to recover net
 8 patronage interest, then the fact that some people
 9 are receiving net patronage interest has to be
 10 taken out of the pockets of somebody who would
 11 receive less than they are due and are they going
 12 to be comfortable with that? It's a bit like you
 13 play a game of golf. And even though you end
 14 up -- you're told that you're going to get a
 15 million dollars for first prize and \$200,000 for
 16 second prize and at the end someone says, well,
 17 can we give some money from the million -- from
 18 the winner to the people that came last? By some
 19 metrics, there's an equity aspect to that, but
 20 other metrics you'll say that was the nature of
 21 the lawsuit to recover patronage interest. So I'm
 22 perfectly happy if people want to propose any
 23 settlement they like. But if you're asking me is
 24 that a fair and equitable conflict free
 25 settlement, the answer is, no.

1 Q. Okay. But you're making room for the
 2 possibility that others could believe that to be a
 3 rational way to disburse funds, fair?

4 A. No, I don't want to use the word
 5 rational either because that actually -- it --
 6 others could believe that's an appropriate way to
 7 disburse funds. I accept that. That's not a
 8 problem. I'm just concerned that they be aware of
 9 the cost of doing that, that one is taking money
 10 out of the pockets of people who have net
 11 patronage interest.

12 Q. Okay. But taking your analogy though
 13 as an example, if there's a golf tournament and
 14 you're into day four of the last round and there's
 15 going to be a winner and a loser and the winner
 16 gets a million dollars and second place gets
 17 \$500,000, there could be a compromise between
 18 though two that says, let's not play the round so
 19 we don't know who wins or lose and instead both
 20 split \$750,000 between us.

21 A. Sure.

22 Q. That's a settlement, right?

23 A. That's a settlement and that's a
 24 capitalist act between consenting adults.

25 Q. Okay. So, again, what happened in

1 Speaks is a negotiation between the Plaintiffs,
2 Defendants, we don't know who's going to win or
3 lose. We can't say you're right, you're entitled
4 to these moneys. The cooperative's right. We're
5 going to weigh that, but at the end of the day
6 come up with a settlement that we're both happy
7 with and decide to move forward with it, right,
8 that's what occurred?

9 A. No. It --

10 MR. RUNYAN: Object to the form.

11 THE WITNESS: Sorry, no. It's a
12 negotiation -- it's a discussion between some
13 plaintiffs and stabilization. Not all plaintiffs
14 and stabilization.

15 Q. Okay. If there was a settlement
16 reached in Fisher Louis, would you think that all
17 plaintiffs need to participate in that to approve
18 it?

19 A. All plaintiffs should participate.
20 Whether they -- participation amounts to them
21 getting nothing north of \$5 in present value terms
22 is a separate issue.

23 Q. Let me reframe that because that was
24 unclear. If there were a settlement, let's say
25 that was negotiated in the Fisher Louis class

1 action, is it your view that all class members
2 should participate in that settlement in order to
3 to reach it?

4 A. If they are seeking to recover their
5 pro rata share of net patronage interest, then
6 they should recover their share of net patronage
7 interest. If they choose something else, that is
8 their -- their choice.

9 Q. Okay. What's in front of you has been
10 marked Exhibit 9 and also has the Bates number
11 SC-GA 12704, also Bates number SC 07578. You can
12 take a moment and then let me know if you've ever
13 seen this document before.

14 A. Yes, I believe I have.

15 Q. Okay. And -- and can you generally
16 describe what it is?

17 A. Yes, it's a letter from Moot Trulock,
18 who's the contract officer at the USDA,
19 specifically in the CCC, the Commodity Credit
20 Corporation to the general manager of
21 stabilization. And it's dated -- it's not dated,
22 but it's subsequent to the 2004 termination of the
23 tobacco marketing quote and price support loan
24 programs.

25 Q. Okay. And do you understand that this

1 was the tobacco that was ceded back to the
2 cooperative at the -- during the enactment of
3 FETRA?

4 A. Yes, I do.

5 Q. Okay. And you understand that the
6 cooperative retained this tobacco and -- and later
7 sold it at a net profit, right?

8 A. That's my understanding, yes.

9 Q. Okay. And do you see in this letter
10 where Mr. Trulock writes, this in the second
11 paragraph towards the middle, Once this tobacco
12 has been transferred to the association, the
13 association may utilize these lots of tobacco in
14 any manner that it desires.

15 Do you see that?

16 A. Yes, I do.

17 Q. What does that mean to you?

18 A. It means that the association may use
19 them as they wish. It may -- well, if the words
20 speak for themselves, but the association, of
21 course, is the membership. So presumably the
22 association's doing something on behalf of the
23 members.

24 Q. Okay. Do you understand that in
25 connection with FETRA that the tobacco growers

1 obtained a buyout of roughly \$10 for a combination
2 of the -- the flue-cured tobacco that they had
3 produced and their quotas?

4 A. That's about right, yes.

5 Q. Okay. Do you understand whether or not
6 the cooperative itself and its board members
7 played any role in negotiating that buyout on
8 behalf of its membership?

9 A. I understand from the reports in the
10 annual reports and some of the minutes of the
11 meetings that they did play some role there.

12 Q. Okay. And do you understand that the
13 cooperative attempted to negotiate for as much of
14 a buyout as possible for the flue-cured tobacco
15 growers because the price support program was
16 going away?

17 A. Yes.

18 Q. And do you credit that some of these
19 members and even participants in this class when
20 the buyout occurred obtained millions of dollars?

21 A. Some of them did obtain substantial
22 amounts of money, yes.

23 Q. Okay. Do you also agree that the
24 tobacco that was ceded back to the cooperative
25 from the government in 2004 was tobacco from which

1 growers had already been paid under the price
 2 support program?
 3 A. No.
 4 Q. Okay. You understand that tobacco was
 5 tobacco that went under loan to the cooperative,
 6 correct?
 7 A. Correct.
 8 Q. Okay. And when members brought that
 9 tobacco to be sold under the program, they
 10 received either the price of auction less their
 11 assessment, right?
 12 A. Correct.
 13 Q. Or the price -- if it didn't get sold
 14 to a third party, they received the price support
 15 price at that time, right?
 16 A. That's correct, yes.
 17 Q. Okay. So those members, in fact, when
 18 they delivered that tobacco got paid for it,
 19 right?
 20 A. They received a payment for it. When
 21 you say they got paid for it, you make it seem as
 22 they they got paid in full for it. It's possible
 23 that their activities were generating an asset
 24 that generates net patronage interest.
 25 Q. Okay. You agree with me the only

1 tobacco that went under loan is tobacco that
 2 couldn't be sold at auction to a -- another
 3 willing buyer, right?
 4 A. That's correct, yes.
 5 Q. Okay.
 6 A. That was the way the program worked,
 7 yes.
 8 Q. Exactly. So they actually got a price
 9 above the market price at the time that they
 10 brought it?
 11 A. Sigh. yes. The reason I'm sighing is,
 12 as an economist, we have to be very careful when
 13 we talk about support prices and market prices
 14 because a lot of these things were negotiated.
 15 But, yes, they did receive a price. All I'm
 16 saying is, the fact that they were paid some
 17 moneys for it, I agree completely on that --
 18 that's the way their system worked -- does not
 19 mean that their entire interest in the -- in the
 20 asset was paid -- paid out. That's all.
 21 Q. I understand. So --
 22 A. Now, we may disagree on that but, I
 23 mean, that -- my point is that's why I'm trying to
 24 step back from, yes, they got paid, but it -- if
 25 you just look at that phrase, it can mean they got

1 paid in full for their interest, their patronage
2 interest and that's what I'm disagreeing with.

3 Q. I understand. We do disagree on that
4 point --

5 A. Okay.

6 Q. -- but I appreciate it. So they did --
7 at least when they brought that, they received the
8 price support price for that tobacco that they
9 delivered, right?

10 A. That is correct, yes.

11 Q. Okay. And then at the end of FETRA,
12 this tobacco was released to the cooperative by
13 the CCC, correct?

14 A. Correct.

15 Q. And it was released after the CCC
16 obtained assessments or -- or offset whatever
17 loans they have from the grower assessments and
18 also the assessments from purchasers, importers
19 and manufacturers, right?

20 A. That's correct. All of the net no cost
21 fees plus other assessments.

22 Q. Plus other assessments. And because
23 the CCC received those moneys, it then ceded the
24 tobacco back to the cooperative, right?

25 A. That's correct.

1 Q. Okay. My question to you, sir, is
2 isn't there -- do you make room for the
3 possibility that this tobacco that the
4 manufacturers who got the special assessment and
5 paid into the CCC have some interest in the
6 profits generated from this tobacco?

7 A. Yes.

8 Q. You do. Okay. Does your distribution
9 scheme or would it take that into that account?

10 A. Yes.

11 Q. Do you understand -- and if we look
12 again at the Trulock letter that was in front of
13 you as Exhibit 9 --

14 A. Yes.

15 Q. -- that the cooperative's position in
16 this lawsuit is that the government told it, it
17 could use the tobacco in any manner that it
18 desires without forcing it to pay any of the net
19 proceeds to its membership?

20 A. No, I -- I don't see -- I see the first
21 part because you're reading correctly from the
22 letter. The last part is your own construction.

23 Q. I just said, do you understand that's
24 the cooperative's position? That was my question.

25 A. Oh, I -- yeah. To be quite honest, I

1 really don't know what the cooperative's position
 2 is, but I -- if you warrant that that is, then
 3 I'll accept that that's the cooperative's
 4 position.

5 Q. Okay. Do you -- do you understand that
 6 the FETRA statute had another subsection * 519 B,
 7 and we can look at it, which specified that there
 8 was a \$7 million cash amount that the government
 9 told the cooperative it had to pay back to its
 10 members? Do you understand that component of
 11 FETRA?

12 A. I recall that, yes.

13 Q. Okay. So there was an aspect of FETRA
 14 where the government directed cooperative and said
 15 to comply with this, you have to pay the growers
 16 this money, right?

17 A. Yes. And I believe that was because of
 18 the reasons of the -- those funds were
 19 accumulated. There was some politics in that.
 20 But, yes you're correct in that.

21 Q. Okay. And you'll credit at least they
 22 didn't go so far as to say with this ceded
 23 tobacco, if you sell it down the road at a profit,
 24 you need to return those profits to your
 25 membership. The government didn't say that,

1 right?

2 A. No, because the government might have
 3 assumed that that's what cooperatives are supposed
 4 to be doing anyway. I think that's -- that's
 5 where the lawsuit is -- my sense of what the
 6 lawsuit is about is the lawsuit is trying to get
 7 stabilization to do what it believes plaintiffs
 8 believes it ought to be doing. So arguably the
 9 government might take the -- might have taken the
 10 same view. I agree it doesn't say that. It just
 11 says you may do what is -- as you -- in any manner
 12 that it desires, but it may have assumed that a
 13 cooperative is a cooperative, that it's acting on
 14 behalf of its members and would return the net
 15 profits to those who have patronage interest.

16 Q. I understand. I just want to make sure
 17 we're on the same page with the question and
 18 answer. You agree with me that there's nothing in
 19 the statute or by letter or anything that you're
 20 aware of where the government said, if you realize
 21 a profit on this ceded tobacco, you must return
 22 those moneys to your membership, right?

23 MR. RUNYAN: Object to the form.

24 THE WITNESS: It was not explicit in the
 25 statute with respect to the ceded tobaccos nor

1 with respect to this letter, but a -- an
2 alternative interpretation, which I understand is
3 going to be part of the lawsuit, is that that's
4 what the cooperative would do on behalf of its
5 members.

6 Q. I understand, but I really just want
7 you to answer this question, which was simply
8 you're not aware of anything in the statute or
9 letter or any document that says the cooperative
10 has to return any net profit from the ceded
11 tobacco to its members?

12 MR. RUNYAN: Object --

13 Q. You're not aware of of the document.

14 MR. RUNYAN: Object to the form.

15 THE WITNESS: I'm not aware of any
16 document that says that.

17 Q. Okay. You've hypothesized that maybe
18 that was the government's assumption, but you
19 don't have any evidence to support that
20 assumption, right?

21 A. Other than my understanding of what
22 associations are supposed to do.

23 Q. Right. But you haven't spoken to
24 anybody -- you didn't speak to Mr. Trulock, right?

25 A. No, no, no, no.

1 Q. Okay.

2 A. Given my understanding of that's what
3 associations are supposed to do. The association
4 doesn't exist independently of the members.
5 It's -- that's an association. So the association
6 can't independently own these things without the
7 members owning them.

8 Q. I understand all that. You said
9 earlier it might have been that the government
10 assumed the cooperative would give it back. I'm
11 saying you have no evidence, a conversation,
12 document or otherwise, to support that the
13 government assumed that would happen, right?

14 A. That is correct, yes.

15 Q. Okay. That's all.

16 MR. FORST: Can we mark Exhibit 10?

17 (EXHIBIT NO. 10 MARKED.)

18 A. Thank you.

19 Q. Exhibit 10, Dr. Harrison, is -- has the
20 Bates label SC 08650 and it goes through 651.
21 Take a moment and let me know if you recognize
22 this.

23 A. Yes. This is a letter from the Tobacco
24 and Peanuts Division of the USDA, the
25 Stabilization Conservation Service. It's dated

1 7th of May 1992 to the CEO of the stabilization.

2 Q. Right. And I want to focus your
3 attention to the third paragraph. Well, you
4 understand that this is, again, another aspect of
5 tobacco that was ceded to the cooperative in
6 exchange for, I guess, the '83 crop year because
7 of MMC moneys that went to pay off the loan --

8 A. That --

9 Q. -- that the CCC had given the
10 cooperative, right?

11 A. That is correct, yes, yes.

12 Q. Okay. And here, if we look here, it
13 says in the paragraph, By redeeming the 1983 and
14 '84 crops, stabilization may retain the sales
15 proceeds resulting from the sale of the remainder
16 of these crop inventories once the 1983 and 1984
17 loan accounts with CCC have been closed.

18 Do you see that?

19 A. Yes.

20 Q. Okay. So this is the government
21 telling the cooperative that it can, in fact,
22 retain the sales proceeds from this tobacco, isn't
23 it?

24 A. Yes.

25 Q. Okay.

1 A. But that's not inconsistent with
2 stabilization doing what it's supposed to do.

3 Q. I --

4 A. And that is if there's a net patronage
5 gain, paying it to the farmers.

6 Q. I understand. Did you consider this
7 and these documents, the statute, these letters
8 from the government in weighing whether or not the
9 settlement in Speaks is fair and reasonable?

10 A. I've looked at these and these are --
11 as I've said, completely consistent with the USDA
12 in both cases making the obvious assumption that
13 stabilization is acting in the interest of its
14 members as distinct from some other interest.

15 Q. Yes. Fair. All I'm trying to say is
16 you understand that the cooperative in connection
17 with the lawsuit, among other things, points to
18 these documents, the statute, federal preemption
19 and various things in saying that the legal claims
20 being advanced against it in Speaks and in Fisher
21 Louis do not have legal merit. You understand
22 that, right?

23 MR. RUNYAN: Objection to the form.

24 THE WITNESS: Yeah. I'm not a lawyer
25 and it just sounds silly -- to me, personally,

1 that sounds silly because the cooperative is its
2 members. So I don't know how cooperative can or
3 should advance claims that are -- that are
4 violently inconsistent with its members. But
5 that's what you're doing, so.

6 Q. Yeah.

7 A. That's fine.

8 Q. So I just want to make sure. You
9 understand that that's the position in the
10 lawsuit, right?

11 MR. RUNYAN: Object to form.

12 THE WITNESS: Without being a lawyer,
13 yes, I believe I do.

14 Q. Okay. And I just want to be clear
15 again, I think we've done this, but you didn't
16 weigh the relative merits, including these
17 positions and arguments in these documents, when
18 deciding whether the absolute aggregate adequacy
19 of \$22 million was fair or not?

20 A. Oh, yes, I did. I think that view is
21 nonsense. I think it's nonsense. And I'm not a
22 lawyer, but I think it's nonsense as a matter of
23 my understanding of what a cooperative is and my
24 understanding of what the -- who the
25 cooperative -- the stabilization is. The

1 stabilization is an agent on behalf of its
2 members. So even if I had looked at these literal
3 lines, I would still have formed the same
4 opinions.

5 Q. I see. So you've said a lot today that
6 you didn't weigh the relative merits of the
7 lawsuit. Are you saying now that you did?

8 A. No.

9 Q. You didn't, right?

10 A. No.

11 Q. Okay. Would you agree with me that
12 under your distribution scheme that some members
13 between '82 and '84 that paid -- strike that.
14 You would agree that some members over
15 the course of the no net cost era paid assessments
16 for their tobacco and for their quota when they
17 delivered to the cooperative even though their
18 tobacco didn't go under loan to the cooperative,
19 right?

20 A. That is correct, yes.

21 Q. Okay. And so there are specific
22 individuals whose tobacco presumably you can trace
23 to what was ceded back from the government, let's
24 say, at the end of FETRA. Fair?

25 A. Yes.

1 Q. Okay. Is it your position and
2 distribution scheme only those members who
3 patronized and it is their tobacco that they're
4 the ones who should receive payment for any net
5 sales and proceeds from that tobacco?

6 A. That requires more attention to the
7 complete history of transactions and that's the
8 nature of the post-'82 era, that you have to look
9 at the entire sequence and you have to track each
10 person and see where they're -- where their
11 poundage contributions, where there no net cost
12 fees contributions are. So I can't answer that
13 hypothetical.

14 Q. Okay. But --

15 A. And I have -- I'm sorry, I have not
16 done that calculation.

17 Q. Okay. But I just want to -- I want
18 from a -- not really a hypothetical, but the way
19 that you're thinking about this as an economist
20 and thinking about the distribution plan that
21 should be appropriate or is equitable, is it your
22 position that if I paid no net cost assessments
23 from '82 to 2004 --

24 A. Uh-huh.

25 Q. -- and my tobacco was Grade A, the best

1 and would -- never went under loan because it was
2 always purchased by Phillip Morris --

3 A. Okay.

4 Q. -- that I should be entitled to some of
5 the proceeds from the sale of the ceded tobacco
6 that went under loan to the cooperative and was
7 subsequently sold in 2004?

8 A. Yes, because of the no net cost fee
9 contribution. And I understand from our
10 discussion earlier, we can -- we may disagree on
11 that. But that plays a role in the evaluation of
12 how much tobacco is to be ceded at the end of this
13 period.

14 Q. Okay. So you -- I think what you're
15 saying is because some of my NNC's moneys
16 potentially were used to pay off the loan at the
17 end of FETRA and that tobacco came back, even
18 though that tobacco's not traceable back to me, I
19 have a claim to the proceeds?

20 A. Correct.

21 Q. Okay.

22 A. And that's because of the nature of net
23 patronage in this case.

24 Q. I understand.

25 A. In the post-'82 period, yes.

1 Q. That assumes that the NNC's moneys, the
2 assessments paid are patronage income or patronage
3 rather?

4 A. Well, they play a role in determining
5 patronage. And I understand from what you said
6 earlier, you disagree with that, but that's --

7 Q. Okay. I gotcha.

8 A. It is what it is.

9 Q. Would you agree though in part that
10 that might be -- well, have you discussed that
11 component with the class at all to say the way
12 that you see this playing is some whose tobacco
13 wasn't ceded back should still share in a portion
14 of -- of the settlement or a resolution of this
15 case?

16 A. No, because my charge was to evaluate
17 net patronage interest. And to the extent that
18 the class wants a calculation of net patronage
19 interest, I'm providing that. So I have not
20 checked with them if they agree with my
21 calculation or not.

22 Q. I want to pivot to your current report
23 2017 and look at page 7, which it talks about
24 conflicts. Now, paragraph 15, page 7. Did I say
25 that?

1 A. Yes, I have that. Thank you.

2 Q. Okay. Here again, I think is your next
3 criticism and it's titled Conflict, correct?

4 A. That's correct.

5 Q. Okay. I want to be clear that you've
6 never been proffered or qualified as an expert in
7 federal court to discuss intraclass conflicts in
8 terms of whether or not a class should be
9 certified, right?

10 MR. RUNYAN: Object to the form.

11 THE WITNESS: Actually, I -- I can't --
12 I don't believe so. I can't recall. I've had a
13 lot of cases.

14 Q. Okay. But sitting here today, you
15 can't recall?

16 A. No.

17 Q. Okay. And I think it -- well, let's go
18 through this. Your first conflict that you
19 identify for the Speaks lawsuit is those members
20 whose tobacco produce gains and those members
21 whose tobacco did not. Did I read that right?

22 A. Yes.

23 Q. You say that's a conflict inherent in
24 this class, right?

25 A. Correct.

1 Q. Would you agree with me that conflict
2 would exist in the Fisher Louis class?

3 A. Not if the calculation is done
4 correctly, no, of net patronage interest. And
5 specifically what I'm talking about there is
6 taking into account the specific years that one
7 made contributions. That's the key piece of
8 information that is not included in the allocation
9 for Speaks.

10 Q. Right. Okay. So just to be clear
11 though, when you're bringing up conflicts, you're
12 not saying these are conflicts that would be
13 disabling to the certification of any class,
14 whether in Fisher Louis or in Speaks, but rather
15 these are conflicts that render the distribution
16 scheme under the settlement inappropriate in your
17 view?

18 MR. RUNYAN: Objection to the form.

19 THE WITNESS: Yeah. Opining on what
20 would disqualify certification calls for a legal
21 opinion. I'm not the judge, as I've been pointing
22 out. However, I am able to point out that in this
23 case, there's a conflict because there are people
24 who have generated patronage interest and people
25 who did not, even though those people might have

1 contributed the same poundage. But if they did it
2 in different years, then one gets a conflict
3 because the Speaks settlement is not looking into
4 which years that the -- the poundage was
5 contributed.

6 Q. I -- I understand and I think we're on
7 the same page. Again, your opinion here is just
8 economic in nature when it comes to the
9 distribution scheme that should follow for this
10 class action or the class action in Fisher Louis,
11 right?

12 A. Well, yes, but it's more specific than
13 that. It's -- it's targeted, as I've said
14 repeatedly, on net patronage interest. So it's
15 economic, but it's something that I understand to
16 be in net claims to recover net patronage
17 interest.

18 Q. Yes. I got it. Even though you're
19 saying these conflicting interests exist, I think
20 I -- I think what you're saying is this class can
21 still be certified under Rule 23, right? You
22 don't have an opinion on that?

23 MR. RUNYAN: Objection to the form of
24 the question.

25 THE WITNESS: I would have to be a

1 lawyer and more specifically a judge to make that
2 opinion. I'm not -- I'm neither of those.

3 Q. Okay. All right. No. 2 says, Those
4 who remember patrons in the years where there was
5 no gain and those who remember patrons in the
6 years of gain, that renders this settlement and
7 the distribution proposed inadequate or conflicted
8 in your mind, right?

9 A. A potential conflict, yes.

10 Q. Right. I honestly and, I mean this
11 genuinely, I don't understand the difference
12 between 1 and 2, so what are you saying in 2
13 that's different in 1?

14 A. Two -- well, actually, 2 is subsumed by
15 1 in a sense because you have to have produced --
16 irrespective of being a member, you have to have
17 actually provided some poundage. So 1 includes 2.

18 Q. Okay. So it's --

19 A. 2 implicitly assumes -- sorry to
20 interrupt -- 2 implicitly assumes it's a member
21 patron in which you are contributing.

22 Q. Okay. So it's -- effectively you're
23 raising the same thing. If you're a member and
24 you produce in a year where there's gain, there's
25 not a gain, you need to take that into account in

1 the distribution plan, in your view?

2 A. Yes. And 2 is -- is perhaps poorly
3 worded in a sense because it's also trying to
4 distinguish pre'82 and post'82 periods where there
5 is a contribution and a no net cost fee
6 contribution. But I talk about that later as
7 well.

8 Q. Okay. No. 3 I think is referring to
9 '67 through '73, but specifically it says, those
10 whose patronage interest in certain years have
11 already been determined and those who have no
12 patronage interest in those years.

13 A. Yes, that's right.

14 Q. Okay.

15 A. And that's referring to the
16 certificates of interest that we talked about
17 earlier.

18 Q. Understood. You would agree that these
19 same members, this '67 through '73 class, are
20 members -- are in the Fisher Louis class, right?

21 A. That's correct, yes.

22 Q. Okay. You would also agree with 2, I
23 just want to be clear, that the member patrons in
24 years where there was no gain and member patrons
25 in years of gain, those members are also within

1 the scope of the Fisher Louis class?

2 A. That's correct.

3 Q. Okay. 4 says, Those who are due the
4 book value of their share of stock because of its
5 cancellation and those whose shares have not been
6 canceled, what does that mean exactly?

7 A. Well, that's referring to the culling
8 of the membership and the claim that that was done
9 illegally. And by that I mean involuntarily
10 without a hearing.

11 Q. Okay. And you would agree that those
12 individuals -- these members that are present in
13 the Speaks class are also in the Fisher Louis
14 class, right?

15 A. I'm not sure. Oh, you mean with
16 respect to this Item 4.

17 Q. Yes.

18 A. I don't know that actually, but I --
19 they may well be. I just don't know that.

20 Q. Okay. Those with -- I'm reading 5.
21 Those with patronage interest derives from the '82
22 through '84 period when patronage interest could
23 only properly be determined by considering no net
24 cost assessments for the total period and those
25 that did not pay no net cost fees or who did but

1 whose interest varied because of the difference in
2 assessments paid. You would agree with me that
3 this class, which extends back to '46 in the preno
4 net cost era, includes these members, right?

5 A. Yes.

6 Q. And the Fisher Louis class, which
7 extends back to '46, includes these members too.

8 A. Correct. And the Fisher Louis class,
9 per my -- the methods proposed in my 2012
10 affidavit, takes these issues -- these potential
11 conflicts into account and the Speaks settlement
12 does not. That's the point of this paragraph.

13 Q. Right. Okay. I want to flip to page 8
14 and paragraph 18, which is about reference -- the
15 representatives of the Speaks class.

16 A. Okay.

17 Q. Here I think you have a slight
18 criticism because, as you see it, the named
19 plaintiffs in the Speaks litigation are from North
20 Carolina only, right?

21 A. That's one of the points I'm making,
22 yes.

23 Q. Okay. Are you aware, sir, as you sit
24 here whether or not any claim that's advanced
25 either in Speaks or in Fisher Louis depends on the

1 geographic location of any member of the class?

2 A. No, I'm not aware of that.

3 Q. Do you agree with me that the class
4 action in -- in Fisher Louis and the potential
5 class here says all the members, regardless of
6 where they're located, have the same legal claim
7 against the cooperative in these lawsuits?

8 A. That's my understanding, yes. And the
9 issue here was really the question about the
10 weighted contributions in terms of them being
11 North Carolina members or nonNorth Carolina
12 members and --

13 Q. I --

14 A. -- North Carolina fraction is in excess
15 of two-thirds.

16 Q. I understand that. But when it comes
17 to the actual right to the patronage interest that
18 you're saying this class is entitled to, it makes
19 no difference geographically where they're
20 located. A person in North Carolina has the same
21 right and claim as the person who is a member in
22 South Carolina.

23 A. That is correct, yes.

24 Q. Okay.

25 A. All other things being equal, of

1 course.

2 Q. Sure. And you're not aware of any
3 disparate treatment in the proposed settlement
4 between people based on their geographic location,
5 right?

6 A. That's correct.

7 Q. Nor would you advocate that, right?

8 A. Certainly not, no.

9 Q. Okay. And so it's your understanding
10 or maybe you don't know that a class member or
11 representative from North Carolina can adequately
12 represent the interest from another state in terms
13 of their legal claim against the cooperative,
14 right?

15 A. Yes, if by that you mean the same
16 inequity in the Speaks settlement that applies to
17 North Carolina claimants will apply to South
18 Carolina claimants, the answer's, yes.

19 Q. Okay. Okay. Sir, we -- we talked --
20 THE WITNESS: Could we take maybe a
21 five?

22 MR. FORST: Sure.

23 THE WITNESS: Later in the day, that's
24 going to happen.

25 MR. FORST: Yes, that's all right.

1 VIDEOGRAPHER: Off record. The time is
2 4:13 p.m.

3 (A BRIEF RECESS WAS TAKEN.)

4 VIDEOGRAPHER: Going back on the record.
5 The time is 4:25 p.m.
6 BY MR. FORST:

7 Q. Dr. Harrison, before we had touched a
8 little bit on attorneys' fees in connection with
9 the settlement. Do you recall that this morning?

10 A. Yes, I do.

11 Q. Okay. And I know you said you weren't
12 offering a specific opinion in this case about
13 that, correct?

14 A. That's correct.

15 Q. Okay. You recognize, of course, I
16 think that -- that in a settlement that -- or case
17 that payments from a resolution of the case, that
18 the cooperative payments from the cooperative
19 would be shared among class counsel and class
20 members, right?

21 A. That's correct, yes.

22 Q. Okay. You understand, of course, that
23 the money that goes to class counsel won't go to
24 class members, right?

25 A. That's correct, yes.

1 Q. Okay. Do you have any understanding of
2 what Louis counsel was contemplating in terms of
3 attorneys' fees at the time of settlement in 2005?

4 A. None whatsoever.

5 Q. Okay. Do you have any understanding of
6 what the Fisher Louis --

7 A. Actually, sorry. Sorry. Forgive me.
8 If I can correct my memory, I think I actually did
9 say something about this. Let me just check my
10 affidavit.

11 Q. Sure.

12 A. 2005. Yes, if I may, on page 6,
13 paragraph 10. And I'll just paraphrase it
14 actually, that there was no upper limit or
15 specificity with respect to the fees that lawyers
16 would receive or the administrative cost of
17 defendants expect -- expect would incur. In my
18 experience, those things are normally presented as
19 an upper bound and I've had a lot of experience in
20 these, in lawyers' fees, et cetera, et cetera.

21 Q. Okay. So there, if I --

22 A. I'm sorry, if I may say one more thing.

23 Q. Of course.

24 A. As a fact witness, not a as an expert,
25 so.

1 Q. Meaning you've had lots of experience
 2 with attorneys' fees as a fact witness --
 3 A. Correct.
 4 Q. -- and not as an expert?
 5 A. And I'm not trying to pretend that I'm
 6 an expert on that, so.
 7 Q. Right. So you're not saying even then,
 8 I'm an expert that can opine on the correct amount
 9 of attorneys' fees, correct?
 10 A. Correct. Correct.
 11 Q. However, it is something that you would
 12 consider potentially in connection with a class
 13 assessment, how much is going to class members and
 14 how much -- really how that would reduce the pot
 15 available to class members?
 16 A. Yes. My first obligation would be to
 17 calculate the -- the amount due to class members
 18 and usually it's a separate judgment as to what
 19 goes to lawyers.
 20 Q. Understood. Sitting here today, do you
 21 know what the Fisher Louis counsel seeks in
 22 attorneys' fees in collection with their class
 23 action?
 24 A. No, I don't.
 25 Q. Have you investigated or asked the

1 amount of money that the Fisher Louis counsel are
 2 seeking in attorneys' fees in connection with that
 3 lawsuit?
 4 A. No, I haven't.
 5 MR. FORST: Okay. Okay. All right. I
 6 have no further questions at the moment. I will
 7 pass the witness to Mr. Gary Shipman for the time
 8 being. Of course reserve rights and then
 9 potentially to Mr. Runyan and reserve rights to
 10 follow up as necessary.
 11 THE WITNESS: Thank you.
 12 MR. FORST: Gary, do you want to switch
 13 or?
 14 MR. SHIPMAN: No, I'm good.
 15 EXAMINATION
 16 BY MR. SHIPMAN:
 17 Q. Doctor, can you hear me?
 18 A. Yes, I can. Thank you.
 19 Q. We met seemingly eons ago. Gary
 20 Shipman representing the Plaintiffs.
 21 Doctor, you're not an agricultural
 22 economist, are you, sir?
 23 A. No, although I have published in the
 24 area of agricultural economics and agricultural
 25 policy.

1 Q. You would not even consider yourself an
2 expert in agricultural economics, would you?

3 A. Well, some areas of agricultural
4 economics, I would. I've published in the
5 American Journal of Agricultural Economics and
6 I've published many papers. So depending on the
7 topic that you're asking me, I might consider
8 myself an expert.

9 Q. All right. What topics do you consider
10 yourself to be an expert on agricultural
11 economics?

12 A. I'm an expert with respect to the
13 valuation of assets, valuation of water rights,
14 for example, which is one very important aspect of
15 agriculture, particularly in the west and
16 southwest. I'm -- most definitely would consider
17 myself to be an expert on agricultural policies
18 and in particular trade policies and their
19 negotiations. That would be sufficient for now.

20 Q. You wouldn't consider yourself an
21 agricultural economist with any degree in the U.S.
22 tobacco market, would you, sir?

23 A. With any degree? I don't understand
24 the question, sorry.

25 Q. What didn't you understand?

1 A. I don't know what you mean. A degree,
2 a Ph.D.?

3 Q. With any degree of expertise in the
4 U.S. tobacco market.

5 A. Oh, goodness, I've got enormous
6 expertise there because of my work on the -- on
7 tobacco litigation for more than 20 years.

8 Q. Yes, sir, but that was only pertaining
9 to an allocation of moneys from the settlement by
10 the AG, correct, with the tobacco companies,
11 correct?

12 A. No, that's not correct. That was only
13 one -- that was one important aspect of it. The
14 other aspect was calculating damages for the
15 states in their recovery and hence I understood a
16 lot about the industry. I have also served in a
17 capacity for estate on tax allocation matters with
18 respect to a tobacco manufacturer, which I'm not
19 at liberty to name. And I've also served in
20 studying the industrial organization of the
21 tobacco industry in North America as part of
22 ongoing litigation in Canada.

23 Q. Doctor, you would agree with me that
24 your damages methodologies have not always been
25 accepted by courts, have they, sir?

1 A. No, actually, I think they have been.
2 I don't realize -- I don't -- I'm not aware of any
3 instances where they've not been accepted.

4 Q. How about the city of Saint Louis
5 versus American Tobacco Company? Your damages --
6 I'm looking at the case. Your damages methodology
7 was rejected in that case, wasn't it?

8 A. No, it wasn't.

9 Q. Okay. Now, when was the Agricultural
10 Adjustment Act, the Tobacco Price Support Program,
11 when was that created, what year?

12 A. I believe that was in the early 1930s
13 or late 1930s. I can't remember the precise year,
14 but it was depression, postdepression, depression
15 era is my recollection.

16 Q. And have you studied the history of
17 agricultural cooperative marketing acts and
18 specifically the one under which this particular
19 cooperative was created?

20 A. Not the history, no, I haven't studied
21 that.

22 Q. Why not?

23 A. Didn't need to.

24 Q. Why didn't you?

25 A. I don't believe I needed to in order to

1 present opinions for the questions that I was
2 asked. I did review some of the statutes, as I've
3 referred to earlier, that provide certain
4 guidelines as to what cooperatives and
5 specifically agricultural cooperatives can do in
6 North Carolina, but I didn't review the long
7 history of them and the statutes.

8 Q. Tell me how the tobacco price support
9 program worked.

10 A. In years prior to 1982, it worked
11 differently than after 1982. So prior to 1982,
12 there was a -- essentially a determination -- and
13 I'm going to choose my words carefully here.
14 There was a determination of expected purchases
15 intent to purchase was the term of art that was
16 often used by both domestic manufacturers and by
17 exporters. At that point, there was -- and that
18 relied on -- in a later period, that actually came
19 with some sanctions. But in the early stages,
20 that was simply a USDA determination of the
21 expected demand in the coming -- in the coming
22 year.

23 There was then a -- an agreement that
24 farmers who agreed to market their product through
25 the co-op, that's called stabilization in North

1 Carolina, would agree -- voluntarily agree to
2 restrict their -- their poundage that they would
3 produce and market. And that's what -- that's
4 referred to the quota. The idea was that the
5 quota was set at some price that -- it was set
6 such that it would deliver at auction, if the
7 demand was as expected, a price that was above the
8 support price. So if the support price is the
9 price that would clear the market if everyone
10 produced as much as they wanted to produce, then
11 the idea was people would have some cutback, agree
12 to some cutback. Let's say it's 10 percent. One
13 can then infer what is the price that would be
14 received at auction. In principal, and this is
15 important to state it this way, in principal the
16 price support should not be triggered because
17 the -- the price support -- the price should clear
18 above. However, if there was a mistake in the
19 assessment of the expected demand, the price
20 support would be triggered. So the logic and,
21 again, this is all prior to 1982, was that the
22 farmers were told in return for reducing your
23 output and giving up some -- some possible
24 revenues, we will guarantee you a price floor. In
25 theory, that price floor should not be triggered.

1 In fact, it was and I could go into more as to why
2 it was and that's a more technical discussion.

3 After 1982, as we have discussed, there
4 was introduction of no net cost fees for various
5 reasons. We don't need to go into why. The idea
6 was that the stabilization -- the price support
7 should not be a burden on taxpayers. Strictly
8 speaking, it should not be a net burden on
9 taxpayers over a period of years. It may actually
10 have been a burden in some specific years, but
11 over -- over several years it should not be and
12 that the farmers and other -- other agents in this
13 market, specifically manufacturers and importers,
14 should pay some fees in order to self-finance the
15 stabilization from year to year as one fluctuates.
16 That's essentially the working of the price
17 support system until it was terminated in 2004.
18 And then there were some transition arrangements
19 made at that time.

20 Q. Did the price support program have a
21 positive or negative effect on demand for U.S.
22 tobacco?

23 A. That's too complicated a question to
24 answer easily.

25 Q. So you don't know.

1 A. My own view -- no. It's too
2 complicated a question to answer correctly. Let
3 me put it that way. I can answer that question,
4 it's just -- it's very, very complicated.

5 Q. Okay.

6 A. In part because -- if I may, in part
7 because if -- if the count effect is very
8 difficult to -- to -- to derive. That's a
9 complicated economic calculation. Let me put it
10 that way. That's what I'm trying to say.

11 Q. Well, you recognize that there's
12 experts that have published in peer-reviewed
13 agricultural journal articles that have opined
14 about that. You know that, don't you?

15 A. No, I don't actually and I'm not sure
16 that I would trust their calculations because this
17 is a calculation that requires a very careful
18 calculation -- count effectual calculation. What
19 happens in the -- what would have happened in the
20 absence of this program? That in turn requires
21 some very careful calculations about what are the
22 demand elasticities? What are the demand curves
23 and supply curves once you get away from the
24 observed data? That requires some very formal
25 technical modeling, which I'm not sure I've seen

1 in some of the literature. I know because I've
2 contributed to that literature.

3 Q. Have you looked?

4 A. I have seen --

5 Q. Have you looked for it?

6 A. I have seen some papers on this topic
7 and they are what we call in technical terms,
8 partial equilibrium analyses. What I mean by that
9 is, they look solely at the tobacco -- you don't
10 want me to answer, sir?

11 Q. No, go ahead. Go. I'm just -- did you
12 look?

13 A. Yes.

14 Q. Did you look and try to find it?

15 A. Yes, I did and I do not regard those as
16 particularly reliable calculations. Partly
17 because I'm an expert in that field of what is
18 called general equilibrium modeling. You need to
19 take into account the full supply and demand
20 implications of the removal of the price support
21 program.

22 Q. Before the elimination of the price
23 support program, have the tobacco -- U.S. tobacco
24 leaf market faced increased demand or declining
25 demand?

1 A. Declining demand. There's been an
2 increase in imports due to relatively low cost
3 production in other countries and also as a result
4 of the MSA, the tobacco settlement, which has
5 increased the price of cigarettes in order to
6 recover the healthcare -- the additional
7 healthcare expenditures from smoking the addictive
8 product.

9 Q. After the elimination of the price
10 support program, the tobacco industry became more
11 competitive, didn't it, producers?

12 A. I'm not sure I'd characterize it as
13 more competitive in the way that term is correctly
14 used in industrial organization. If you look at
15 something such as what's known as the Herfindahl
16 Index that's used by the U.S. Government in
17 bringing antitrust actions, it's not obvious to me
18 that that's the case. One also has to look at the
19 global market. I think it's a mistake to think of
20 the U.S. market in isolation.

21 Q. Have you ever read any studies in
22 peer-reviewed articles that refer to the tobacco
23 market as manifesting monopsony power, almost
24 monopoly power?

25 A. Yes, I think that's a misleading

1 characterization. I think what they're talking
2 about there -- again, one has to be very careful
3 if you're talking about the U.S. market or the
4 global market. In the U.S. market, Phillip Morris
5 is the giant, so what they're referring to
6 there -- or has been traditionally the giant.
7 What they're referring to there is the idea that
8 they may be one large firm that essentially sets
9 prices and quantities, taking other firms as
10 residuals. That's actually called a dominant firm
11 equilibrium in the technical literature.
12 Monopsony is not the right way to characterize it.
13 Monopsony characterizes it as if you've got a
14 single seller, a single purchaser of inputs and
15 Phillip Morris is not that large.

16 Q. Who are the five largest cigarette
17 companies?

18 A. Globally?

19 Q. In the United States?

20 A. In the United States? At the moment,
21 it would be Phillip Morris, R.J. Reynolds and I
22 can't be sure beyond that.

23 Q. You don't know.

24 A. I didn't say that. I can't be sure.
25 That's the sort of thing I'd look up. I don't

1 like to speculate.

2 Q. Now, how has international production
3 impacted United States tobacco industry among
4 producers since the end of price support?

5 A. If you're talking about production of
6 leaf, then it's -- because there's been a supply
7 of relatively low cost leaf which U.S. growers
8 would claim has -- has an inferior grade. I -- my
9 understanding is that that's not obvious. It's
10 largely the lower labor costs that one encounters
11 in some of these other countries and that's been a
12 major issue in the U.S.

13 Q. Is the major market segment -- segment
14 in the United States for unprocessed tobacco, does
15 that come more from the United States or
16 internationally?

17 A. I believe it still comes from the
18 United States. For unprocessed tobacco?

19 Q. Yes, sir.

20 A. I believe the U.S. I'm not sure.

21 Q. Have you looked at that?

22 A. No, not lately.

23 Q. Do you know whether imports of the
24 share -- as a share of domestic demand have
25 increased or decreased since the end of price

1 support?

2 A. Inputs of what?

3 Q. Leaf?

4 A. Leaf. Okay. Could have been
5 cigarettes. I -- I believe that they have
6 increased.

7 Q. Now, you've never written nor provided
8 any consulting services to any agricultural co-op,
9 have you?

10 A. That's correct, I don't believe I have.

11 Q. And you've never published on equity
12 redemption and member equity allocation practices
13 of agricultural cooperatives, have you, sir?

14 A. No, I have not.

15 Q. And you would consider those who have
16 to have more expertise. Agricultural economists
17 who have published in peer-reviewed journals would
18 have more expertise about equity redemption and
19 member equity allocation practices than you,
20 wouldn't you?

21 A. No, not obviously. Not unless I know a
22 lot more about their technical background and
23 their skill sets. Many of these topics, despite
24 the long-terminology and the long acronym, are
25 fairly transparent once one spends ten minutes

1 studying the issues and general training might
2 then be far more important than having spent time
3 in that corner of the agricultural market.

4 Q. You've never even been on the faculty
5 of a university that had a terminal degree in
6 agricultural economy, have you, sir?

7 A. That's not usually a badge of honor for
8 somebody in academia but, no, I haven't.

9 Q. All right, sir. What do you recognize
10 to be the leading agricultural economic
11 universities in the United States?

12 A. I believe North Carolina State is one
13 of them, and I don't know the others beyond -- oh,
14 yes, certainly University of Maryland, the arec
15 department, agricultural and resource economics
16 department, and the University of California at
17 Berkeley has a -- a large agricultural college.
18 It's called the * Giannini College. Those would
19 be three that come to mind as a researcher.

20 Q. Are you familiar with the Center for
21 Cooperatives at the University of California?

22 A. No.

23 Q. Have you attempted to access any of the
24 material for the Centers for Cooperatives at the
25 University of California in connection with any

1 opinions that you have?

2 A. No. Which University of California are
3 you talking about, because there are many of them?
4 I actually had my Ph.D. from UCLA, so I'm aware --

5 Q. The University of California Center for
6 Cooperatives, have you ever heard of that?

7 A. No, they're the same words you just
8 mentioned. I'm asking which UC campus, is it? Is
9 it UC Davis? Is it UC -- it depends. I might
10 know it and I might know the people. Probably
11 it's UC Davis would be my guess because that's the
12 part of the University of California system that
13 does a lot of work on agricultural extension.

14 Q. My question, sir, was, are you familiar
15 with the University of California Center for
16 Cooperatives?

17 A. No.

18 Q. Now, are you familiar with any of the
19 publications from the United States Department of
20 Agriculture written by agricultural economists
21 regarding equity redemption and member equity
22 allocation practices?

23 A. No, not as such.

24 Q. Have you attempted to look for them?

25 A. No.

1 Q. Why not?

2 A. I'm not sure what that last term of art
3 refers to, the equity redemption. So I've looked
4 at many publications at the USDA and many of them
5 as they pertain to this case and I've listed them
6 in the documents, but I haven't looked for those
7 particular things.

8 Q. Now, with respect to cooperatives, the
9 concept of agricultural cooperatives, I take it
10 then that you do not know that equity redemption
11 and allocation practices of agricultural
12 cooperatives are unique financial characteristics
13 of cooperatives? You don't know that, do you?

14 A. I have no idea what that means. That
15 sounds like gibberish to me.

16 Q. Okay. Now, you agree with me that a
17 cooperative's bylaws govern its allocation and
18 redemption practices, don't you?

19 A. They should. Sometimes they don't.

20 Q. If that's the case, why aren't the
21 bylaws listed in the materials that you reviewed?

22 A. I thought they were listed and I have
23 looked at them. They might have been listed in
24 the prior affidavit and I know them in general.

25 Q. All right. Well, find them, if you

1 will, on your report in this case. I want you to
2 see the -- the report that you have given in which
3 you indicate this settlement's not fair and
4 reasonable. See if any of the things that you
5 indicated that you've relied upon from those
6 opinions include the bylaws.

7 A. I don't see anything listed explicitly
8 other than the references to the -- in
9 particular -- let's be precise here -- in
10 particular, references to the annual reports and
11 some of the minutes whereby those laws were --
12 some parts of the bylaws were included.

13 Q. Well --

14 A. I have reviewed them.

15 Q. Okay. But you have not relied upon the
16 bylaws or you would have listed them in your
17 report, wouldn't you, sir?

18 A. I did not need to rely on them, but I
19 have reviewed them.

20 Q. All right, sir. Now, so tell me what
21 the bylaws provide in terms of if the cooperative
22 were liquidated, how the assets of the cooperative
23 would be distributed?

24 A. I don't recall, but I would assume that
25 they would be distributed to the members.

1 Q. How?

2 A. I don't recall that the bylaws specify
3 how they should be distributed. I don't recall as
4 I sit here. I'd want to have a look at the
5 bylaws.

6 Q. So I take it that given that you -- you
7 don't recall what they provide, then you've not
8 relied upon any of the provisions of the bylaws in
9 rendering the opinions that you have in this case.
10 Is that right, sir?

11 A. No, I don't need to rely on the bylaws
12 in terms of my opinions. For example, my opinion
13 about liquidation is, as I've explained several
14 times, having to do with the stabilization's own
15 statement of net worth, and that as a general
16 accounting matter has certain assumptions built
17 into it. As I said, for example, that they are
18 not fire sales. So there are statements there
19 about the process by which one might liquidate.
20 But I don't recall the specific bylaws as I sit
21 here right now.

22 Q. But you would agree with me that if the
23 bylaws provide for a method of distribution upon
24 liquidation of this corporation, those bylaws
25 would control over any opinion that you have about

1 how they should be distributed, correct?

2 A. The bylaws will -- would be binding,
3 yes. So, again, a net worth is -- you intended
4 not to say that one must dissolve, but to provide
5 an upper bound on the net patronage interest in
6 the co-op.

7 Q. Now --

8 A. And it does not necessarily involve
9 liquidation of the corporation.

10 Q. And as I understand it, a criticism
11 that you have about the proposed method of
12 distribution of the settlement here is that it is
13 not strictly based upon pounds produced; is that
14 correct, sir?

15 A. No.

16 Q. What then is your criticism about the
17 pounds produced versus just total number of years
18 if somebody patronizes?

19 A. There are many and they're listed in my
20 affidavit. The first level is that the only
21 information that is requested is total poundage
22 and that's the so-called Group 1 claimants. And
23 the only information that is requested for Group 2
24 claimants is total crop years. So both of those
25 groups ignore the specific year in which pounds

1 were contributed, and that has implications for
 2 net patronage interest being zero, being positive
 3 and also has implications for no net cost fees.

4 Q. And I take it, sir, that you don't know
 5 whether the cooperative's bylaws call for a
 6 distribution of its assets upon liquidation based
 7 simply on the number of years that somebody
 8 participated, not poundage?

9 A. No, I -- I don't recall that.

10 Q. All right.

11 A. And that's --

12 Q. Assume that the court should find from
 13 the evidence and its greater weight that this
 14 cooperative's bylaws call for a distribution based
 15 upon the number of years each person actively
 16 participated. According to you, that wouldn't be
 17 fair, would it?

18 A. No, that doesn't follow at all. First
 19 of all --

20 Q. Would that be fair?

21 A. No, let me answer your question. The
 22 first point is that in -- there is no -- no
 23 request for -- for stabilization to be liquidated,
 24 so that's actually not necessarily on the table.
 25 So my understanding, particularly in the Fisher

1 Louis class, is that they are not asking for
 2 liquidation. So that bylaw, my understanding is
 3 that bylaw would not be binding. My charge was to
 4 ask, what is net patronage interest irrespective
 5 of how it is actually implemented? And we're not
 6 proposing that stabilization be liquidated and
 7 hence that bylaw would not be operative and
 8 relevant.

9 Q. Do you believe that the term net
 10 patronage interest among agricultural economists
 11 who advise agricultural cooperatives, do you
 12 believe that term net patronage interest has a
 13 meaning?

14 A. I'm sure it does.

15 Q. Now, this particular cooperative,
 16 what's the concept under which this cooperative
 17 operates?

18 A. I don't understand what you mean by
 19 concept under which it operates.

20 Q. Okay. So you're not familiar, I take
 21 it from your answer, with the cooperative
 22 principles under which agricultural cooperatives
 23 operate. You're not -- you're not familiar with
 24 what I'm talking about?

25 A. No, it doesn't follow at all. I don't

1 know where you're coming with that conclusion.

2 You asked me a specific question which seemed to
3 me very vaguely defined. What is the concept
4 under which it operates? That's an
5 extraordinarily broad question and I have no idea
6 how one would start to answer that question.

7 Q. What's the owner user principal mean?

8 A. The owner user principal refers to the
9 fact that somebody might be both an owner of
10 assets within some cooperation or association, but
11 might also be using that association to undertake
12 their transactions to take the example of
13 stabilization where stabilization acts both as an
14 agent in collating and pulling together --
15 physically pulling together and warehousing some
16 of the commodities. It acts as an agent in
17 running the auction system and it acts as an agent
18 in negotiating with the CCC under the times of the
19 federal price support policy. But the members
20 that contribute and use the services of
21 association are also the owners of the
22 association. So that's my understanding of the
23 concept.

24 Q. What's the user control principal mean?

25 A. I'm not familiar with that concept.

1 Q. What's the user benefit principal mean?

2 A. I'm not familiar with that concept.

3 Q. Now, have you attempted to ascertain
4 whether or not the manner in which this
5 cooperative has managed its equity is consistent
6 or inconsistent with other agricultural
7 cooperatives?

8 A. No.

9 Q. Why not?

10 A. Didn't need to for the purposes which I
11 was asked to evaluate the proposed settlements.

12 Q. Why -- why didn't you need to do that?

13 A. It's not obvious that those other
14 associations represent best practice or have been
15 doing things correctly. They may also have had
16 different bylaws. They may also have had
17 different modes of operation over the years.

18 Q. Is this cooperative one of the top 100
19 agricultural cooperatives in the United States?

20 A. I doubt that, but it may well be. I
21 don't know.

22 Q. Do you know who the top 10 are?

23 A. I don't know what metric of top you're
24 talking about. Is it gross sales, is it profit --
25 payment of the salaries of the CEO? I've got no

1 idea what you're talking about in terms of top 100
2 or top 10.

3 Q. So can you name me the No. 1 top
4 producing agricultural cooperative in the United
5 States? Can you tell me what that is?

6 A. No, because it would depend if you're
7 talking about volume or if you're talking about
8 value. No, I don't know which one it is.

9 Q. Now, do you know whether or not there
10 is any distinction made in the management of a
11 cooperative's equity between the source of income
12 that a cooperative has?

13 A. Yes, there probably should be,
14 particularly if the income comes from the members
15 directly as distinct from other sources.

16 Q. Now, you would agree with me then that
17 there's a distinction with how income from
18 patronage activities versus income from
19 nonpatronage activities has been treated by
20 agricultural cooperatives, correct?

21 A. In some cases, but I'm -- I'm a little
22 at a loss because when you say nonpatronage
23 interest, I have no idea what they are because the
24 association is the farmers. I mean, it is there
25 for the farmers. So it is -- they -- they own the

1 association. It has no independent status than
2 the farmers. So I don't understand the term
3 nonpatronage interest because every action of the
4 association, they're an agent of the farmers who
5 own it.

6 Q. Let me understand what I think you just
7 said. You do not understand the meaning of the
8 term nonpatronage activity?

9 A. I understand the meaning of the term,
10 but I don't understand it in the context of the
11 question you asked because I think it was an
12 ill-formed question.

13 Q. Do you know what the term nonmember
14 income means?

15 A. Yes.

16 Q. What does that mean?

17 A. It means income received from people
18 who are not members of the association.

19 Q. All right, sir. Now, CCC was not a
20 member of this association ever, were they?

21 A. Correct. They were not.

22 Q. And the cigarette manufacturers who
23 paid no net cost funds were never members of this
24 cooperative, were they?

25 A. Correct.

1 Q. Now, so would moneys received from the
2 forgiveness of the loan stocks by CCC on the two
3 occasions, is that considered nonmember income or
4 member income?

5 A. It is actually nonmember income in the
6 immediate sense. However if it is a part of the
7 patronage activity, which it was, then it may give
8 rise to net patronage interest.

9 Q. Do you know the difference between
10 allocated and unallocated equity as that term is
11 used by agricultural cooperatives?

12 A. No, I don't.

13 Q. What is the purpose of equity in an
14 agricultural cooperative?

15 A. Well, the purpose of equity in an
16 agricultural cooperative is the same as it is in
17 any -- any corporation, and that is to be able to
18 provide funds to be able to undertake the
19 activities of the corporation, in this case, the
20 association.

21 Q. Do you know whether the United States
22 Department of Agricultural -- Agriculture
23 Cooperative Extension Service has published in
24 publications regarding managing your cooperative's
25 equity, what equity in a cooperative should be?

1 A. I really don't understand that
2 question. I don't know what you mean --

3 Q. Well, you -- you -- you --

4 A. Sir, I'm sorry, I'm just -- you're
5 asking a question I just don't understand the
6 English, what the equity should be. I don't know
7 what you're asking.

8 Q. What part of the English that I just
9 said did you not understand?

10 A. The last part where you said what the
11 equity should be. Should it be \$3? Should it be
12 this type of equity? There's like -- I have no

13 Q. As a percentage of assets, as a
14 percentage of total assets.

15 A. Oh, no, there may be some guidelines,
16 but I don't know what that guideline is?

17 Q. Why not? Have you looked?

18 A. No. Doesn't interest me in particular.

19 Q. Well, then but yet you say here that 40
20 to 60 percent is too much, as I understand,
21 correct?

22 A. No, no, no, you're comparing apples and
23 peanuts. The 40 and 60 percent have to do with
24 the amount of the patronage interest that was
25 earned prior to 1982 that was retained by --

1 retained by stabilization and written into the
2 certificates of interest. The other amounts were
3 paid in cash, the 60 percent or 40 percent were
4 paid in cash. So that's got nothing to do with
5 those percentages of overall percentages of
6 equity. I think that's -- that's just a miss -- I
7 think you're misunderstanding the accounting
8 terminology there.

9 Q. Don't think that, sir. Please don't.

10 A. Okay.

11 Q. Now --

12 A. But that explains the question. That's
13 all I'm trying to get at.

14 Q. Just -- just -- just please don't
15 assume what I don't understand.

16 A. Okay.

17 Q. All right, sir? Is that fair?

18 A. Sure.

19 Q. Now, so I take it then you don't have
20 any opinions as to what as a percentage of total
21 assets this equity -- that this cooperative should
22 maintain as equity, do you?

23 A. No, that -- and that strikes me as an
24 ill-posed question. And that's not a reflection
25 on you. It's just I don't know why one would seek

1 a particular percentage there. I mean, the real
2 issue is percentages of reserves as a percentage
3 of assets or net shareholder equity. Those are
4 the real interests in this case, it seems to me.

5 Q. But what is the purpose of equity in an
6 agricultural cooperative?

7 A. Well, the purpose can be, as I said, to
8 get on with the business of the -- the activity
9 that you need some funds in order to build the
10 warehouses, to -- to negotiate with the -- when
11 the federal price support program was in place,
12 you need to have money to be able to get on with
13 the business of generating profit on a good day.
14 Equity can also refer to retained equity, which is
15 the earnings, the net earnings from those
16 activities. And that's the focus of the lawsuits
17 it seemed to me, the recovery of the net patronage
18 interest.

19 Q. You would agree with me, sir, that
20 adhering to cooperative principles is a critical
21 aspect of effective equity management in a
22 cooperative, isn't it?

23 A. That sounds like a motherhood
24 statement. Without more precise details and what
25 anyone means by those words, I can't really agree

1 or disagree.

2 Q. Well, let's break it down then.
3 Effective equity management. That's a term that's
4 familiar to you, is it not, sir?

5 A. Yes, it is, but it's a bit like saying
6 why would one ever recommend ineffective equity
7 management? I mean, the term is so general that
8 it's hard to put any -- anything on it. Yes,
9 effective equity management is a good thing.

10 Q. But adhering to cooperative principles,
11 agricultural cooperative principles is important
12 to effective equity management for an agricultural
13 cooperative, correct?

14 A. Again, to me that sounds too logical.
15 That's my concern here. That says nothing about
16 what the percentages of reasonable reserves are.
17 It says nothing about how one should -- at what
18 size of net shareholder equity one should have and
19 so on.

20 Q. Have you studied how unallocated equity
21 is distributed to members of agricultural
22 cooperatives? Have you studied the history of
23 that?

24 A. No, I have not.

25 Q. Why not?

1 A. Didn't think it was necessary for the
2 questions I was asked to look at.

3 Q. Have you studied how under the IRS
4 rules that incomes from member activities versus
5 nonmember activities is taxed?

6 A. No, I have not.

7 Q. Why not?

8 A. I'm not a -- I'm not a tax expert.

9 Q. Well, why haven't you looked at them?

10 A. It's not necessary for the opinions I
11 was asked to render.

12 Q. Who do you recognize to be the leading
13 agricultural economist? Do you know of any by
14 name?

15 A. Yes, in particular, Gordon Rausser,
16 R-a-u-s-s-e-r.

17 Q. Who else?

18 A. Oh, I can't think of any as I sit here.
19 No, John List, L-i-s-t, formerly of the University
20 of Maryland at the arec. There are others.

21 Q. Who -- who do you recognize as
22 agricultural economists that you consider experts
23 on agricultural cooperatives?

24 A. I don't know of any in that particular
25 area. And I'm also very loathed to designate

1 somebody as an expert because I fully understand
2 how that term is used in a legal context. And so
3 the reason I'm doing that is because I never want
4 to -- even if somebody is an expert in a certain
5 academic area, it doesn't mean that they're --
6 they're a reliable expert in a litigation setting.
7 I've had enough experience with the differences
8 between the two.

9 Q. I'm not asking your -- for purposes of
10 your question because, of course, you've made it
11 clear you're not a legal expert. In an academic
12 sense, who do you consider -- any individual that
13 you consider to be an expert on equity management
14 in agricultural cooperatives?

15 A. I don't --

16 Q. Do you know of anybody?

17 A. I don't know of any.

18 Q. Have you looked?

19 A. No.

20 Q. Do you believe that it's important as
21 an expert for you to seek out opinions that are
22 different than yours?

23 A. Yes.

24 Q. What have you done to seek out opinions
25 that are different than yours?

1 A. I have reviewed the relevant literature
2 and I have not found any that disagrees with my
3 opinions.

4 Q. And the relevant literature -- you
5 decided what the relevant literature was, right?

6 A. That's right. I'm the expert.

7 Q. And none of the relevant literature
8 that you've listed includes the equity redemption
9 and member allocation or member equity allocation
10 practices of agricultural cooperatives, correct,
11 sir?

12 A. That's correct, yes.

13 Q. Do you know the range that among
14 agricultural cooperatives that unallocated equity
15 should be as a percentage of total assets?

16 A. I'm not sure how I understand the
17 question because should be suggests that there are
18 some guidelines, and without knowing what those
19 guidelines -- what the rationale is behind those
20 guidelines, I'm not usually prepared to accept
21 some fixed percentage range, whether that's
22 conventionally done or not because very often
23 those are a result of poor analysis.

24 Q. And I take it you've not looked for any
25 guidelines, have you, sir?

1 A. No.

2 Q. And would you consider the United
3 States Department of Agriculture to be a poor
4 source of information regarding guidelines for
5 agricultural cooperatives?

6 A. No, it would generally, particularly in
7 its extension facilities, be a reliable source.

8 Q. Would they be made more reliable source
9 than you?

10 A. That's not for me to determine. In my
11 areas of expertise, they're not more reliable.
12 But in some other areas, they might be.

13 MR. FORST: Gary, can we break real
14 quick only because I need to use the restroom?

15 MR. SHIPMAN: Oh, yeah, sure.

16 VIDEOGRAPHER: Going off the record.
17 The time is 5:08.

18 (A BRIEF RECESS WAS TAKEN.)

19 VIDEOGRAPHER: We're back on the record.
20 The time is 5:16 p.m.

21 BY MR. SHIPMAN:

22 Q. Doctor, as I understand your testimony,
23 when you use the term "fairness and equity,"
24 that's not a legal standard about which you're
25 testifying, correct?

1 A. That's correct. I'm presenting an
2 opinion in terms of the economics of the proposed
3 allocations.

4 Q. And when you're speaking about the
5 economics of the proposed allocations, you're not
6 even speaking of the accepted equity redemption
7 and member equity allocation practices of
8 cooperatives, are you, sir?

9 A. Nor would they be relevant to what I've
10 been asked to present an opinion on.

11 Q. So the answer to my question would be,
12 no?

13 A. That's correct because they don't
14 strike me as relevant to the questions I've been
15 asked to present opinions on.

16 Q. Now, assume that I engaged you as an
17 expert and asked you to make the assumption that
18 no single member of this cooperative was entitled
19 to any distribution other than that voted upon by
20 its board of directors. I want you to accept that
21 as an assumption.

22 A. Okay. Okay.

23 Q. Okay. Now, do you believe that this
24 proposed settlement is based upon that assumption
25 is not fair and equitable?

1 A. No, in principal I can't because it
 2 could be that the board of directors actually has
 3 the interest of the members at heart and that does
 4 happen apparently in some associations. So it
 5 could be that they would, in fact, say as a board
 6 of directors, we should correctly ascertain what
 7 the net patronage interest is and make those
 8 contributions. So the way you posed it, I
 9 couldn't disagree with that.

10 Q. Now, correctly calculated according to
 11 what?

12 A. According to stabilization's own
 13 records and according to the rules by which
 14 patronage interest have been calculated through
 15 the life of stabilization up to 2004.

16 Q. Okay. Well, what are the rules by
 17 which patronage have been calculated up until
 18 2004?

19 A. Well, those are the rules that we've
 20 been talking about, so they're the rules that, for
 21 example, lead to these certificates of interest
 22 and the -- the ones that have not been redeemed,
 23 of course, and that are being defined as net
 24 patronage interest in the accounts of
 25 stabilization since 1982 when we take into account

1 the contributions of no net cost fees as part of
 2 the process of generating net earnings.

3 Q. Now, is it your testimony that beyond
 4 1967 to 1973 that this cooperative ever generated
 5 profits?

6 A. Say that again because --

7 Q. Sure.

8 A. -- I lost the years that you were
 9 referring to.

10 Q. '67 to '73.

11 A. No, my understanding is that they did
 12 not during that period.

13 Q. All right. Well, other than that
 14 period, between '67 and '73, has this cooperative
 15 ever generated profits?

16 A. By "profits," do you mean a net
 17 patronage interest or a net shareholder equity?
 18 The answer so that is, yes. If you're thinking of
 19 net shareholder equity, that's definitely been
 20 positive. And if we're talking about patronage
 21 interest, that has been positive during that
 22 period.

23 Q. Now, assume again for purposes of my
 24 question or questions, I'm asking you to assume
 25 that a court has concluded, conclusively

1 concluded, for purposes of my question, that the
 2 only period of time in which this cooperative
 3 generated profits was 1967 to 1973. Now, would
 4 your opinions change if I asked you to assume
 5 absolutely that it was a 100 percent true that
 6 this cooperative only generated profits from '67
 7 to '73, whether it's profits under your definition
 8 or profits as a court has defined it, would your
 9 opinions change?

10 A. If I may, I think it's sort of too
 11 vaguely presented because I don't know -- there
 12 are too many unknowns in what you're asking me
 13 to -- to consider. I don't know what they mean by
 14 "profits." You mean if there were positive
 15 profits assisting from what the actual accounts
 16 say? I'm not understanding the question.

17 Q. No, sir. My -- you know what the term
 18 profit means, don't you?

19 A. Yes, I do.

20 Q. All right, sir. And I'm asking you for
 21 purposes of my question to assume that this court
 22 will find from the evidence and its greater weight
 23 that the only period of time in which this
 24 cooperative generated profits was 1967 to '73.
 25 I'm asking you to assume that. That that is a

1 fact, that that is established. Would your
 2 opinions change?

3 A. If -- no, if -- well, they would change
 4 because you're -- I'm only considering now a very
 5 limited period of time assisting from the whole
 6 history of the actions up until 2004.

7 And secondly, I would ask one
 8 clarification. I understand what the word profit
 9 means, but profit is not the same thing as
 10 patronage interest. And so patronage interest,
 11 the profits could be thought of in another sense.
 12 So we're talking about net earnings because there
 13 can be gross profit and there can be net profit.
 14 So by the term "profits," are you meaning -- do
 15 you want me to answer or not, sir?

16 Q. Go ahead, sir. Go ahead.

17 A. Okay. By profits do you mean net
 18 profits and, if so, do you mean net earnings in
 19 the sense of net patronage interest in which case
 20 my opinions would only change because you're
 21 asking me to * delimit the period over which I'm
 22 considering rather than the whole period of the
 23 action.

24 Q. No, sir, once again, you misread my
 25 question. I'm asking you to assume for the entire

1 period of time prior to 2004, the only period of
2 time in which this cooperated -- cooperative
3 generated a product as you defined it was 1967 to
4 1973.

5 A. Okay.

6 Q. Okay. Now, would that change your
7 opinions regarding the fairness and adequacy of
8 this settlement?

9 A. It could. It might not. Yeah.

10 Q. One of the things that you indicated
11 was that one of the things that you considered was
12 my history in the case. Is that accurate?

13 A. Not that I considered. I think I was
14 aware of it, that's all.

15 Q. Well, what are you aware of?

16 A. I'm aware of what was in the
17 Plaintiffs' briefs, that you were -- forgive me if
18 I mischaracterize it, but you were a part of
19 the -- you had an original group and then you
20 joined with the broader group and then you left or
21 asked to leave the other group and then you formed
22 your own group. That's -- that's one paragraph in
23 the Plaintiffs' agreement. That's all I know.

24 Q. Have you assumed that to be true?

25 A. No. Just it doesn't affect my opinion

1 what -- at all whatsoever. I was simply asked a
2 question, which I responded to. Was I aware of
3 your role in this -- in this litigation? That's
4 the extent of my awareness.

5 Q. And so what my role was or wasn't and
6 whether I was ever affiliated with Mr. Runyan at
7 all, I believe today is the second time in my life
8 I've spoken to Mr. Runyan. Now, that has no
9 impact on your opinions, correct?

10 A. Of course not.

11 Q. Now, one of the things that you've
12 written about is risk aversion, correct?

13 A. Yes.

14 Q. And what's your understanding of the
15 role of a lawyer when negotiating a resolution of
16 a case like this? Do -- are they supposed to
17 calculate risk, both sides, the counsel for the
18 cooperative, counsel for the class members, are
19 they supposed to calculate risk?

20 A. Yes, and indeed I have written on this
21 in peer-reviewed published journals.

22 Q. And one of the things that you've
23 written that you find remarkable is that
24 individuals tend to be significantly less risk
25 diverse when they make decisions over another

1 person's money compared to decisions that they
2 make over their own money, correct?

3 A. That's not true. You're taking that
4 way out of context. But, yes, I have written on
5 the question of are people more risk averse
6 than -- over other people's money. So there is
7 some evidence in the laboratory setting. It
8 hasn't been replicated in a field setting, which
9 is the one that's relevant if you're going to
10 apply it to the activities of lawyers. And it
11 hasn't been applied in the field context of
12 negotiations in the shadow of the law.

13 Q. Well, but you wrote an article called
14 Are You Risk Diverse Over Other People's Money
15 published in 2011 in the Southern Economic
16 Journal, correct?

17 A. That is correct.

18 Q. And one of your conclusions were that
19 when people are asked to make decisions for
20 others, they tend to make decisions closer to risk
21 neutral preferences, correct?

22 A. That is correct in the context of that
23 study, which as I was explaining to you, is a
24 laboratory experiment conducted with students. It
25 has not been replicated to this date in a field

1 context. It has not been replicated to this date
2 in the context of litigation bargaining in the
3 shadow of the law and it would need to be before
4 one would apply it to the negotiations of lawyers
5 on behalf of clients. I still think it's a great
6 paper.

7 Q. You've used the term several times
8 today, "expert with limited remit." What's that
9 mean?

10 A. Oh, it means in context that I'm not a
11 lawyer, I'm not the judge on this case, and I'm
12 not -- I have not been asked to make any legal
13 opinions. There may have been some legal
14 assumptions in under -- underlying things that
15 I've done. I've tried to be explicit about those.
16 For example, thinking of net worth as an upper
17 bound on -- on recoverable damages here. But my
18 use of that phrase is to make it very, very clear
19 to you and to the court that I'm not trying to
20 make legal -- bring -- make legal opinions here.

21 Q. But the term "limited remit," what does
22 that mean?

23 A. What I just explained. It means that
24 I've been asked to use my skills as an economist
25 to look at the settlement. And so when I look at

1 the fairness and the conflicts, I'm not using
2 those terms as a judge might use those terms in a
3 broader decision taking into account other
4 characteristics of the lawsuit which a judge is
5 evaluating the veracity of a proposed settlement.

6 Q. Well, that limited remit would also
7 include your failure to access materials from the
8 United States Department of Agriculture regarding
9 management of agricultural cooperatives equity,
10 wouldn't it?

11 A. No, that's a misuse of the English word
12 remit.

13 Q. Okay. Well, tell me what you mean by
14 that term, remit.

15 A. "Remit" means a request by somebody to
16 do something in terms of the task that I was asked
17 to present an opinion on. The accessing of
18 documents is -- is a completely separate matter.

19 Q. Do I take it that when you talk about
20 the "upper bound," you're referring to what's
21 shown on this cooperative's annual reports,
22 correct?

23 A. That's correct. And the one that I
24 particularly reference was the 2016 annual report,
25 the latest that is available.

1 Q. Well, you would agree with me that
2 Judge Dever doesn't need an expert to look at the
3 annual reports to determine the upper bound, does
4 he?

5 A. I do not know. I don't know the
6 expertise of the judge and it may be that the
7 judge welcomes somebody providing at least some
8 benchmark in reminding the judge that that is
9 indeed the meaning of net worth. It represents
10 net shareholders equity. So I don't want to
11 assume what information a judge has before him or
12 not and what interpretation he has.

13 Q. What benefits does this cooperative
14 provide currently to its members that it was also
15 providing prior to price support that came into
16 existence in 1938?

17 A. And you're talking about the current
18 limited number of members that -- what benefits
19 it's providing to the current limited number of
20 members by comparison to the previous, I assume?

21 Q. Yes.

22 A. Okay. I don't think they're providing
23 any actually. I think they're doing -- they've
24 changed their focus to become a manufacturing
25 concern and also to become a warehousing concern.

1 Now, those were some surfaces -- warehousing was
2 some services that were providing previously, but
3 now they've been doing that on a more elaborate
4 basis with the number of marketing and warehousing
5 centers around North Carolina.

6 Q. Let me see if you agree with this
7 statement. The enemies of the cooperative system
8 would be delighted if the courts withhold that a
9 cooperative association is not permitted to use
10 its own money in establishing warehouses,
11 processing plants, prize houses, redrying and were
12 forced to depend for those facilities upon terms
13 that the association can make with its competitor.

14 Would you agree with me that -- first,
15 do you believe there are enemies of the
16 cooperative system?

17 A. No, no, I don't know what that would
18 mean. I don't know who they would be. What that
19 would mean.

20 Q. Big tobacco. The big -- the tobacco
21 manufacturing companies, the top five, that you
22 believe that they're enemies of the cooperative
23 system?

24 A. That's not for me to make a judgment
25 like that. I mean, I think that would be actually

1 professionally inappropriate, particularly since I
2 have engaged in litigation against those entities
3 for many, many years. I don't think it would be
4 appropriate for me to use that terminology.

5 Q. Would it be appropriate for a court to
6 use that terminology?

7 A. That's not for me to say.

8 Q. The no net cost program. Tell me
9 again, have you -- have you looked at the
10 legislation and the subsequent amendments to the
11 legislation from the no net cost program about
12 what cooperatives were permitted to do with
13 proceeds from the sale of this tobacco loan
14 stocks? Have you looked at what congress
15 authorized?

16 A. I have reviewed those statutes as
17 amended in 1986 and some later years. I don't
18 recall the specific provisions that you're talking
19 about.

20 Q. Okay. Well, assume that the court
21 should find from the evidence and its greater
22 weight that congress specifically authorized the
23 utilization of moneys received by this cooperative
24 for the benefit of the cooperative. Now, what do
25 you believe are activities that are beneficial to

1 this cooperative?

2 A. Nothing other than hosting for the
3 beneficial for the members, the patrons, full
4 stop.

5 Q. And are the current activities
6 beneficial to the current members?

7 A. I am not in a position to make that
8 determination. I focused on the -- the patrons up
9 until and including 2004. And as you well know,
10 there's been a massive culling of memberships
11 since then. So the current members are not
12 representative of those who were members prior to
13 2004, and that's been my focus and that's the
14 focus of this lawsuit.

15 Q. I'm sure that you've looked at the
16 membership culling practices of agricultural
17 cooperatives, haven't you, sir?

18 A. I've certainly looked at the practices
19 of stabilization, yes.

20 Q. How about other cooperatives? Have you
21 looked at the membership culling practices of
22 other cooperatives other than stabilization?

23 A. No, I didn't -- wasn't asked to do
24 that.

25 Q. All right, sir. I take it then that

1 you do not know then that it is common among
2 agricultural cooperatives to cull their membership
3 roles. Do you know that?

4 A. No. And I think also one has to be
5 very careful because culling can referring to the
6 simple act of identifying, as they did in the
7 earlier years, people who had stated no intention
8 to produce and had no net patronage interest and
9 so it was simply a matter of cleaning out the
10 books of people that didn't have any residual
11 claim other than their \$5 and, indeed, they
12 returned those. So culling can also -- can be an
13 innocent and normal practice. What I'm referring
14 to is the practices alleged in the claims that
15 there was some involuntary culling without a
16 hearing. Now, again, those are matters of law
17 that will be settled, but those are the ones I'm
18 referring to.

19 Q. What litigation are you aware of
20 that -- besides the Louis Fisher case and this
21 action, what litigation are you aware of that this
22 cooperative has been involved in, specifically
23 with respect to how it has managed its equity?

24 A. I'm not familiar with any other.

25 Q. Would that be important to know how --

1 whether courts have passed upon the equity
2 management practices of this cooperative? Would
3 that be important for you to know?

4 A. Not relevant for the particular issue
5 that I was asked to look at, which is the
6 calculation of net patronage interest and the
7 extent to which it is ignored in the proposed
8 settlement.

9 Q. You have no opinions as to what
10 constitutes a reasonable reserve for this
11 cooperative, correct?

12 A. At this point, no.

13 Q. You could have done that.

14 A. Yes, I could have done that, but I'm
15 waiting on documents and information that has not
16 been provided as yet. I am an expert in the
17 determination of reserves. It's what professors
18 of risk management teach and do all the time.

19 Q. But you've testified that you believe
20 that the reserve is unreasonable as stabilization
21 exists today given the current plans; is that
22 correct?

23 A. I'm not sure. Did I say that?

24 Q. I mean, I'm a pretty good typist. I
25 think I typed it as you said it.

1 A. I don't recall saying that.

2 Q. All right. Well, do you -- do you
3 share that opinion, that given the current plans,
4 that their reserves are unreasonable?

5 A. No. I just said, I'm not in a position
6 to make a determination on whether they're
7 reasonable or not.

8 Q. Would you agree with me that the board
9 of directors of this cooperative is who speaks for
10 its members?

11 A. They are the board of directors and
12 they speak on behalf of the members. And my
13 understanding is that they're required every now
14 and then to consult with the members on terms of
15 policies. But they do represent the members.
16 That's the role of the board of directors.

17 Q. So when you talk about in your
18 testimony about what it is that members want,
19 members express what they want through the board
20 of directors, don't they?

21 A. Oh, no, no, no, no, no, no, no. What
22 I'm getting at there is as many claims by the
23 board of directors in their annual reports or the
24 board by the chief operating officer, whoever it
25 is. We've spoken to members and they're

1 enthusiastically supporting our moving into
2 manufacturing. And I literally asked Mr. Runyan,
3 are there any documents to support any claim that
4 anybody in the board of directors on a systematic
5 basis checked with the membership? And he said,
6 none that I'm aware of. So that was my concern.
7 So it is not the case. In fact, it's quite
8 opposite the case given the actions of the board
9 of directors, given the minutes that I've been
10 reading. They're not speaking on behalf of
11 members. They're speaking on behalf of somebody
12 else.

13 Q. So how do they keep get reelected?

14 A. Good question.

15 Q. Well, answer it.

16 A. I -- perhaps the members are not aware
17 of what's been going on. Maybe the members are
18 sufficiently disenfranchised with the activities
19 of the board of directors. Like I said, the only
20 way we can actually get our address is by bringing
21 a lawsuit and they've been trying to do that for
22 13 years. So indeed, many of the people were
23 subsequently culled. I mean, an example is the
24 people who were culled as a result of the letter
25 sent out on December 20th, 2004, requiring a

1 response or an agreement to sign an exclusive
2 marketing agreement by February the 2nd -- by
3 January the 2nd, not allowing much time to query
4 or check with counsel. So many of the people who
5 are -- who are upset at -- at the previous
6 behavior of the board are no longer members
7 because they were culled, it is claimed, in an
8 improper manner.

9 Q. But you don't have an opinion about
10 that, do you?

11 A. I have a strong opinion about that. I
12 think that's an inappropriate activities by the
13 board of directors and it's actually leading to a
14 situation where there are very, very few members
15 now who are disenfranchised with the board because
16 they were culled. And that means that the -- the
17 democracy that is supposed to work through elected
18 board of -- board of directors is not working. As
19 I say, it's perfectly reasonable for the members
20 at the end of 2004 to be disgusted,
21 disenfranchised with the board of directors and to
22 think the only way they'll get justice and
23 fairness is to bring about a lawsuit.

24 Q. Now, what percentage after price
25 support of flue-cured tobacco farmers grow under

1 contract with manufacturers versus the
 2 cooperative?
 3 A. My understanding is that it became
 4 quite large. In fact, it was becoming a majority
 5 because that was one of the issues that prompted
 6 in 2004, so this is right around the end of that
 7 period. That was one of the issues that
 8 explicitly in the annual reports and in the
 9 minutes of the board of directors prompted them to
 10 say, we need to do something to generate some
 11 activity that will bring people back. For
 12 example, we have to have exclusive marketing
 13 agreements to force people to sell solely to
 14 stabilization. So around that period, the premise
 15 of those urgent actions by the board of directors
 16 was precisely the declining use of stabilization
 17 and the auction system by former members, current
 18 members, former members, and they were having
 19 direct marketing contracts largely with Philip
 20 Morris and RJR.

21 Q. Which means that those former members
 22 were no longer patronizing the cooperative,
 23 correct?

24 A. Not necessarily. They may not have
 25 chosen to provide all of their -- all of their

1 crop to under direct marketing arrangement.
 2 Indeed many of them, it's my understanding, were
 3 doing a bit of both. They remember providing some
 4 poundage -- guaranteed amounts to Philip Morris
 5 and RJR and other companies and also providing
 6 poundage to stabilization under some nonexclusive
 7 marketing agreements. It was precisely in
 8 December 2004 where the board took the position of
 9 requiring exclusive marketing agreements, which
 10 was causing some members to say they are forcing
 11 us to make a decision that we don't want to make.

12 Q. Well, that was so -- 13 years ago.
 13 What about today? How about in 2017, how's it
 14 done today?

15 A. How is what done today, sir?

16 Q. Exclusive, nonexclusive; do you know?

17 A. I believe it allows nonexclusive, but
 18 I'm not terribly interested in what it's done
 19 today if I'm interested in calculating net
 20 patronage interest as of 2004 or the period prior
 21 to 2004.

22 Q. And do I understand that your
 23 calculation of patronage interest is based upon no
 24 net cost funds paid?

25 A. That is a factor, yes, based on the

1 information given to me by stabilization.

2 Q. And give me support, any -- any
3 literature that you're aware of that supports that
4 that's how patronage would be determined. Can you
5 give me like any resources for that?

6 A. Well, net earnings, the manner in which
7 the -- the manner in which the program operates,
8 no net cost funds were used in order to -- to
9 operate the system and it generate -- they were a
10 factor along with the poundage in generating some
11 net earnings. And so they --

12 Q. When?

13 A. -- played a role.

14 Q. When?

15 A. After 1982.

16 Q. Okay. When?

17 A. I can't remember the precise years
18 here. I would need to look that up in the data.
19 And I haven't done that calculation.

20 Q. Why?

21 A. Wasn't asked to.

22 Q. So it's your opinion that after 1982,
23 that at some time, you don't know when, this
24 cooperative generated profits?

25 A. The cooperative -- I don't want to use

1 the word profits. I want to use the term
2 patronage because it's, again, the distinction in
3 accounting between a gross profit, a net profit.
4 Patronage is a net earnings, so there was indeed
5 some net earnings generated after 1982. The exact
6 years I would need to look up and in my -- purpose
7 of my 2012 affidavit where I was looking to these
8 issues was not to calculate for specific years.
9 It was to present to the court, and I believe it
10 was certified by the court, that one could do this
11 calculation in a way that avoided conflict and it
12 was equitable and fair.

13 Q. But you don't know what percentage of
14 this cooperative's earnings from 19- -- from and
15 after 1982 were from member versus nonmember
16 activity, do you?

17 A. No, I haven't been asked to do that
18 calculation. I've simply been asked to outline a
19 method of settlement -- a method of allocation
20 that would be equitable and fair and avoid
21 conflict.

22 MR. SHIPMAN: That's all the questions I
23 have, sir.

24 THE WITNESS: Thank you.

25 Q. * All right.

1 MR. FORST: Actually, let me say on the
2 record that we still consider, again, this is an
3 ongoing deposition. The client has been sworn *
4 systemic basis -- or the client rather --

5 THE WITNESS: Deponent.

6 MR. FORST: -- the expert and that we
7 don't think it would be appropriate for -- for
8 Dr. Harrison to confer with Plaintiffs' counsel
9 about the content of his testimony.

10 MR. RUNYAN: Yeah. This deposition is a
11 discovery deposition. He's been noticed by me for
12 a de bene esse deposition tomorrow. If you --
13 it's my understanding this deposition's over
14 unless you want to continue questioning him.

15 MR. FORST: So you have no -- you have
16 no -- you're not intending to ask any followup to
17 our questions?

18 MR. RUNYAN: I'm not going to ask
19 questions based on your questions. I'm going to
20 do a direct examination under my own notice, so I
21 think I can communicate with him.

22 MR. FORST: Okay. Well, it's our
23 position that, again, these depositions blend
24 together. We're doing this testimony for purposes
25 potentially in lieu of Dr. Harrison's appearance.

1 Again, we're of the position that he should
2 attend. *

3 MR. RUNYAN: Understood.

4 MR. FORST: We think, again, we will
5 double check the law but our position is it would
6 be inappropriate to speak with the witness about
7 the content of his testimony.

8 We reserve all rights.

9 MR. RUNYAN: My silence doesn't agree,
10 but I get it.

11 VIDEOGRAPHER: This concludes the video
12 deposition. Time going off the record is
13 5:46 p.m.

EXHIBIT DD

Form 1

**ORIGINAL
COPY**

51679

Flue-Cured Tobacco Cooperative Stabilization Corporation**No. 167606****AGREEMENT AND RECEIPT**

The undersigned grower of flue-cured tobacco (hereinafter referred to as the "grower") applies for membership in the **FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION**, a non-profit cooperative organized under cooperative laws with its principal office at Raleigh, North Carolina (hereinafter referred to as the "Stabilization Corporation") and herewith makes payment of \$ 5.00 to the undersigned agent for 1 share(s) of common stock at \$5.00 per share.

The grower as stockholder and member agrees that the Stabilization Corporation may handle, take title to and sell in such manner as it may deem to be most advantageous to its members all tobacco received by it from the grower.

The Stabilization Corporation agrees (1) to receive, handle and sell, in accordance with terms of such program as it may announce for the crop of flue-cured tobacco grown in each year, such tobacco as the grower may elect to deliver to the Stabilization Corporation, and (2) that in addition to the amount paid to the grower upon delivery of tobacco, it will distribute to him his prorata share of any net gains remaining after payment of operating and maintenance costs and expenses and a reasonable deduction for reserves as determined by the Board of Directors.

B. A. Kirby
(Print Name of Grower)

B. A. Kirby
(Signature of Agent)

101 Prosperity Hill
(Print Address of Grower, Route and Box No.)

8 PUNCHED JUN 1 1946

The undersigned, as agent of the Stabilization Corporation, acknowledges receipt of the amount shown above for forwarding to the Corporation.

Nov 16, 1946
(Date)

F. H. ...
(Name, Address and Signature of Agent)

SMF29057

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN, ROBERT
POINDEXTER, MIKE MITCHELL, ROY L.
COOK, ALEX SHUGART, H. RANDLE
WOOD, ROBIN ROGERS and DANIEL LEE
NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

**DECLARATION OF EDWARD W. KACSUTA IN SUPPORT OF
DEFENDANT U.S. TOBACCO COOPERATIVE INC.'S RESPONSE TO OBJECTIONS**

I, Edward W. Kacsuta, declare as follows:

1. My name is Edward W. Kacsuta. I am the Chief Financial Officer and interim Chief Executive Officer of the United States Tobacco Cooperative, Inc. (the "Cooperative"), the Defendant in the above action ("*Speaks*").

2. I joined the Cooperative in September 2014. I make this declaration based on personal knowledge with respect to events occurring after I joined the Cooperative, and on the basis of documents and information that have been provided to me with respect to events occurring before I joined the Cooperative.

3. I am familiar with this litigation and I participated on behalf of the Cooperative in the mediation before Judge Bullock that resulted in the Parties' arm's-length settlement. I am also familiar with the parallel consolidated class action *Lewis v. Flue-Cured Tobacco Coop.*

Stabilization Corp., 05 CVS 188, and *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 1938 (“*Fisher-Lewis*”) currently proceeding in North Carolina Superior Court.

4. I understand that the plaintiffs in *Speaks* and *Fisher-Lewis* claim that they are entitled to receive a cash distribution of funds, particularly as represented by three line items in the stockholder’s equity portion of the Cooperative’s balance sheet: the Capital Equity Credits, the Additional Paid-In Capital, and the Contributed Capital (the “Disputed Funds”).

5. In this declaration, I discuss the Cooperative’s formation and organization, chronicle the Cooperative’s receipt of the Disputed Funds during the Tobacco Price Support Program, detail its uses of the Disputed Funds after the close of the Tobacco Price Support Program, explain how its uses of the Disputed Funds have both benefited flue-cured tobacco growers and adhered to the Board’s authority, and explain why I consider the settlement in this action reasonable in light of the Cooperative’s current business strategy and financial position.

The Cooperative’s Organizing Documents Grant Broad Powers To The Board of Directors

6. The Cooperative, then known as the Flue-Cured Tobacco Cooperative Stabilization Corporation, was established in 1946.

7. The North Carolina Marketing Act governs the creation and organization of state agricultural marketing cooperatives (including the Cooperative). The Act seeks “to promote, foster, and encourage the intelligent and orderly producing and marketing of agricultural products through cooperation.” N.C. Gen. Stat. § 54-129. It gives the Cooperative the express power to “engage in any activity in connection with the producing, marketing, selling, . . . processing . . . or utilization of any agricultural products produced or delivered to it by its members and other farmers; or the manufacturing or marketing of the by-products thereof,” to “borrow money,” and to “establish reserves and to invest the funds . . . in bonds or such other property as may be provided in the bylaws.” *Id.* § 54-151(1), (2), (5).

8. The North Carolina Marketing Act requires an agricultural cooperative to prepare Articles of Incorporation setting forth the “purposes for which it is formed,” and permits an agricultural cooperative’s Articles to “contain any provision consistent with law with respect to management, . . . financing, indebtedness,” and other aspects of the cooperative’s operation. *Id.* § 54-134.

9. The Cooperative’s initial Articles of Incorporation explained that its purposes were to “engage in any activity involving or relating to the business of receiving, grading, processing, drying, packing, storing, financing, marketing, selling, and/or distribution, on a cooperative basis, of flue-cured tobacco or products or byproducts derived therefrom of its members, or conducive thereto, and to engage in the handling of such tobacco cooperatively either on an agency or a purchase and sale basis.” **Ex. A** (Amended Art. of Incorpor., Art. II) at SC 16253.¹

10. The Articles further established that the Cooperative had broad power to “engage in any activity in connection with the marketing, selling . . . processing, manufacturing, . . . or utilization of flue-cured tobacco produced or delivered to it by its members . . . or the manufacture or marketing of products or by-products derived therefrom, or in the financing of any such activity.” *Id.*, Art. VII(1), at SC 16256-57.

11. The Articles provided that the Cooperative’s Board of Directors could “enact and determine” its by-laws. *Id.*, Art. X, at SC 16259. The Cooperative’s by-laws, which its directors enacted soon after the Cooperative’s formation, granted the Board the power to “[t]o conduct, manage and control the affairs and business of the association,” “[t]o make and enter into agreements for the processing, manufacturing, warehousing . . . and marketing of the tobacco

¹ Included as Appendix 1 is a list of Exhibits attached to this Declaration. To the best of my knowledge, each Exhibit is a true and correct copy of the original.

handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities,” and to borrow money “for any corporate purposes.” **Ex. B** (1947 By-laws, Art III, § 1(a), (d), Art. XV) at SC-GA 10774, 10780.

The Cooperative Acquires The Disputed Funds During The Federal Tobacco Program Era

12. In pursuing its longstanding and continuing mission to serve the interests of flue-cured tobacco farmers, the Cooperative played an important role in administering the Tobacco Price Support Program, a price support program for tobacco farmers. Under the Tobacco Price Support Program, growers of flue-cured tobacco agreed to limit their production of tobacco in exchange for minimum price guarantees provided by the federal government. If buyers of flue-cured tobacco (*i.e.*, tobacco manufacturers, such as cigarette companies) did not purchase flue-cured tobacco above the federal minimum price guarantee, the Cooperative would purchase the tobacco. To finance the purchase of tobacco, the Cooperative borrowed funds from the Commodity Credit Corporation (“CCC”), a division of the United States Department of Agriculture (“USDA”). The Cooperative then processed, stored, and marketed this tobacco, and used the funds obtained from its sale to pay off the CCC loans.

13. Farmers who patronized the Cooperative and participated in the Tobacco Price Support Program thus had a complete safety net. As long as they did not exceed the quota they were permitted to grow under the Program, they were guaranteed to receive the minimum price on their tobacco guaranteed by the federal government.

14. Until 1982, the loans that the CCC offered the Cooperative were non-recourse. Consequently, the CCC could not seek payment from the Cooperative if the Cooperative sold the loan tobacco at a price too low to pay off the loan for that year—it could only take title to the tobacco that the Cooperative purchased using the loans (or to the revenues the Cooperative earned

through selling the tobacco). From 1946 to 1982, the CCC sustained losses on the loans it provided to the Cooperative every year except for 1967 to 1973.

The 1967-1973 Capital Equity Credits

15. The Cooperative was able to resell tobacco that it purchased during the 1967 through 1973 crop years from its members at a price above the federal minimum price guarantee. In those years, the Cooperative was able to repay the money it borrowed from the CCC in full and earn a profit on the resale of the tobacco.

16. The Cooperative distributed a portion of this profit to its members in cash. Pursuant to its governing documents, the Cooperative's Board of Directors elected to keep the balance of this profit as a "capital reserve fund."²

17. The Cooperative informed its membership about the decision to establish and maintain a reserve in 1975. As explained in a December 1975 newsletter, the Board elected to create the reserve fund in order to "maintain the viability of Stabilization during periods of limited receipts and operations" and "prepare for rainy days." **Ex. C** (Dec. 1975 Newsletter) at SC 09834. It further explained to members in a February 1976 letter that "[t]he uncertainty in connection with the future of the tobacco program points up the wisdom and practical necessity of [the Cooperative] maintaining a capital reserve to be used if needed to continue operations and to meet other unforeseen emergencies." **Ex. D** (Feb. 17, 1976 Letter from F. Bond) at SMF00804. The Cooperative thus distributed the remaining profit earned from the sale of tobacco harvested from 1967 to 1973 in the form of capital equity credits that were redeemable at the Board's discretion.

² From the profits it acquired through the sale of the 1967 and 1968 crops, the Cooperative distributed sixty percent to members and retained forty percent as a reserve. From the profits it acquired through the sale of the 1969-1973 crops, the Cooperative distributed forty percent of the funds and retained sixty percent as a reserve.

See **Ex. A** (Amended Art. of Incorpor., Art. XI) at SC 16274 (“Certificates of interest shall be redeemable . . . out of the capital reserve only upon such terms and at such times as may be determined from time to time by the Board of Directors.”).

18. To the best of my knowledge, no member complained about the decision to establish a capital reserve.

19. A portion of the \$35 million in Capital Equity Credits currently recorded as part of the stockholder’s equity on the Cooperative’s balance sheet refers to the funds from the sale of tobacco from the 1967-73 crop years that the Board elected to retained. **Ex. E** (2017 Financial Statements) at USTC-FL000874.

1982-1984 Additional Paid-In Capital

20. In 1982, Congress enacted the No Net Cost Act in an attempt to protect taxpayers from losses from the Tobacco Price Support Program. The No Net Cost Act required growers to pay assessments on flue-cured tobacco. In 1982, 1984, and 1985, only growers paid assessments. In 1983, growers and quota owners paid assessments. Beginning in 1986, purchasers of tobacco began to pay assessments. The No Net Cost Act effectively ended the Cooperative’s ability to pay patronage to its members—if it made a profit on the sale of tobacco in a given year, it paid that profit to the CCC to offset losses in other years.

21. For the 1982-84 crop years, the Cooperative maintained a No Net Cost fund and issued certificates of retain or preferred stock to growers who paid No Net Cost assessments. Under this arrangement, federal tax law required members to pay income taxes on those certificates, even though they could not receive a cash distribution from the Cooperative because of the Act’s assessment requirement.

22. Consequently, in 1985, the Cooperative transferred the money from the fund to an account maintained and controlled by the CCC, which eliminated the tax consequences. See **Ex.**

F (Dec. 11, 1985 Letter from USDA) at SC 08879. The Cooperative then canceled the retain certificates and preferred stock. The cancellation of the retain certificates and preferred stock allowed growers to offset the tax liability they had accrued upon their receipt of the certificates of retain and preferred stock. *See Ex. G* (Jan. 17, 1986 IRS News Release) at SMF23944 (“[T]he cancellation of the preferred stock and per-unit retain certificates in [the Cooperative] makes them worthless. Therefore, growers will have a business loss on the 1985 tax return equal to the value of preferred stock and certificates issued for the 1982 and 1983 crops and the value of certificates to be issued for the 1984 and 1985 crops.”). Growers were thus made whole on their previous tax payments related to the No Net Cost fund.

23. During the time the No Net Cost Act was in effect, the Cooperative served as the middleman collecting assessments on behalf of the CCC. The Cooperative did not hold those funds in its own interest and could not put those assessments to use to benefit its members. Rather, it merely held the assessments in a fund for the benefit of the CCC.

24. In 1990, the CCC agreed to use money contained in the No Net Cost fund to redeem the loans it had provided to the Cooperative to purchase the 1982 crop and released the remaining unsold tobacco inventory to the Cooperative. *See Ex. H* (Jun. 8, 1990 Letter to F. Bond) at SC-08740 (“Your request . . . to redeem the 1982 flue-cured crop loan collateral inventory by using approximately \$164 million of the No-Net Cost Assessment . . . collections from the 1982-1984 crops has been approved.”). The Cooperative sold that tobacco and earned \$110 million in net profit (\$165 million in revenue). The Cooperative elected to hold this capital as a reserve, which appears on the balance sheet as the Additional Paid-In Capital portion of stockholder’s equity.

25. The Cooperative promptly informed members of the decision to hold in reserve the funds it earned on the sale of this tobacco. In a July 1990 newsletter sent to members, the

Cooperative explained that “[a] major long term benefit of this use of these funds [obtained from the sale of the 1982 tobacco crop] is to provide security for the operation of a market stabilization program in the event that tobacco is excluded from participation in USDA commodity programs. Even though the tobacco price support program operates on a no-net-cost basis to American taxpayers, the no-net-cost legislation is subject to repeal by Congress . . . In the event such [repeal] legislation is adopted by Congress, the Board of Directors would be in position with surplus No Net Cost funds and reserves to operate a program to protect and stabilize the market for flue-cured tobacco growers.” **Ex. I** (July 1990 Newsletter) at SC 09631.

26. Similarly, in 1992, the CCC agreed to use money in the No Net Cost fund to redeem loans it had provided to the Cooperative to purchase the 1983 and 1984 crops and released to the Cooperative the remaining unsold tobacco from those crops.

27. To the best of my knowledge, no member objected to the Board’s decision to hold the funds as a reserve.

2000-2004 Contributed Capital

28. In October 2004, Congress enacted the Fair and Equitable Tobacco Reform Act (“FETRA”), terminating the Tobacco Price Support Program. In connection with the Program’s termination, flue-cured tobacco growers and quota holders, including the Cooperative’s members, received approximately \$10 billion over ten years from cigarette manufacturers. 7 U.S.C. § 518f; **Ex. J** (Blake Brown, *The End of the Tobacco Transition Payment Program*, Nov. 14, 2013).

29. Separate from the quota/grower buyout provided by cigarette manufacturers to farmers, FETRA also required the USDA to call the remaining CCC loans. In 2005, CCC called the Cooperative’s loans and took title to its tobacco. CCC sold some of that tobacco and applied it to the loan balance. CCC also took possession of the No Net Cost assessments that the Cooperative had collected and held in the account on CCC’s behalf, and applied those assessments

to the loan balance. Although losses remained on CCC's loans to the Cooperative, CCC covered those losses through additional assessments it imposed on cigarette manufacturers and importers. CCC then ceded the remaining tobacco—approximately 83 million pounds—to the Cooperative. The Cooperative subsequently sold that tobacco for approximately \$81 million. When the Cooperative obtained this tobacco, it recorded an increase in the inventory line item on the asset side of its balance sheet, and recorded a corresponding increase on the stockholder's equity portion of the balance sheet (the "Contributed Capital").

30. FETRA instructed the Cooperative to pay \$7 million in cash to growers—money owed from importers who had not paid their share of assessments—and permitted the Cooperative to keep the rest. *Compare* 7 U.S.C. § 519(b) (returning funds "to the association [*i.e.*, the Cooperative] for disposal" an allotment of tobacco crop (as calculated by a statutory formula), specifying "the association shall be responsible for the disposal" of those funds) and **Ex. K** (Letter from J. Truluck) at SC-07578 ("Once this tobacco has been transmitted to [the Cooperative, it] may utilize these lots of tobacco in any manner that it desires.") *with* 7 U.S.C. § 519(d) (stating that the importer funds "shall be transferred to the association for distribution to the producers").

The Cooperative Develops A Post-Federal Tobacco Program Strategy To Benefit Its Members

31. Unlike other purchasers of tobacco, the Cooperative operates for the benefit of its members, growers of flue-cured tobacco. To support its growers, it has sought to: (1) maintain and increase the price of tobacco; (2) grow the quantity of tobacco purchased along with the international market for same; and (3) best position itself to potentially pay dividends to its membership. Although the tobacco market has become increasingly challenging since the end of the Tobacco Price Support Program, the Cooperative has been able to achieve these objectives. For example, health concerns and tax increases have driven a significant decline for tobacco in the

United States. Even so, the Cooperative has been able to survive and thrive, in large part because of its decisions to expand its business operations.

32. During the operation of the Tobacco Price Support Program, the Cooperative purchased freshly-grown tobacco (“tobacco leaf” or “green leaf”), processed that tobacco, and sold processed tobacco either to tobacco manufacturers (including RJ Reynolds and Philip Morris) for inclusion in their consumer products (such as cigarettes and cigars) or to leaf dealers. The Cooperative did not produce and sell its own consumer products.

33. After the termination of the Tobacco Price Support Program, the Cooperative needed to reposition itself. To ensure a sustainable, long-term market for flue-cured tobacco, the Cooperative’s Board made a number of strategic decisions in anticipation of and then in the wake of the Program’s termination, including:

34. ***Timberlake Acquisition:*** In July 2004, the Cooperative acquired the cigarette manufacturing and processing facility at Timberlake, North Carolina for \$25.8 million. **Ex. L** (2005 Audited Financials) at SC 01103. As the 2004 Annual Report explained, the Cooperative decided to purchase Timberlake because the Cooperative had “reached a point in [its] business where [it] must promote and sell [its] own products if [it] want[ed] to continue producing tobacco.” **Ex. M** (2004 Annual Report) at SC 00101. The Cooperative concluded that the best interests of its members could not rest simply on sales of tobacco to large domestic manufacturers and/or leaf dealers. Instead, it had to make efforts to generate demand for the tobacco its members grew. That assessment has proven correct.

35. ***Development of International Markets:*** The Cooperative sought to expand the market for processed flue-cured tobacco into other countries. These efforts were successful—China is now the Cooperative’s biggest customer. **Ex. N** (2007 Annual Report) at USTC-

FL000015. The Cooperative has also recently begun to sell leaf tobacco to Japan Tobacco International. The Cooperative's efforts to market products internationally, including both leaf tobacco and tobacco products, has played a significant part in maintaining and growing business and in increasing our profitability.

36. ***Creation and Acquisition of Cigarette Brands (1839, Premier, and King Maker):***

In 2007, the Cooperative launched its 1839 brand in an attempt to generate greater demand for tobacco products manufactured at Timberlake. *Id.* at 5. In October 2011, the Cooperative acquired Premier Manufacturing and its subsidiary, Franchise Wholesale, Co., L.L.C. for \$136.3 million (\$65 million in cash and \$71.3 million in other consideration). *See Ex. O* (2012 Audited Financials) at USTC-FL000332. In 2016, the Cooperative acquired King Maker, another cigarette company, and the cigarette brands "Ace," "Hi-Val," "Gold Crest," and "Checker." The Cooperative continues to sell member-grown tobacco in cigarettes that were previously manufactured in India and has benefited from additional tax exemptions associated with the Master Settlement Agreement ("MSA"), discussed below.

37. Through the Premier and King Maker acquisitions, the Cooperative was able to take advantage of substantial value from the MSA Grandfather Exemption possessed by those brands. The MSA charges cigarette manufacturers a tax per carton of cigarettes. But Premier's brands are permanently exempted from that payment obligation except to the extent that their market share exceeds a certain percentage of the total number of cigarettes sold in the United States. *Id.* By acquiring Premier, the Cooperative obtained the MSA Grandfather Exemption which is valued at approximately \$21 million per year. *Id.* The Cooperative realized the same type of value from the King Maker transaction.

38. ***Distribution:*** The Cooperative acquired two distributors of tobacco products—Big South Wholesale (for approximately \$8.7 million), *see* **Ex. P** (2011 Audited Financials) at USTC-FL000317, and Franchise Wholesale, Premier’s subsidiary. The Cooperative acquired these distributors in 2011 in an effort to increase its ability to distribute increasing quantities of tobacco and thus drive up the quantity of tobacco it could purchase from members. **Ex. Q** (2012 Annual Report) at USTC-FL007638. These acquisitions, like the others discussed, have allowed the Cooperative to remain a viable player in the tobacco market.

39. ***Marketing Centers:*** In the early 2000s, in response to many farmers abandoning the auction market in favor of direct contracting with cigarette companies, the Cooperative began to operate marketing centers so that farmers would have an alternative location at which to sell tobacco. *E.g.*, **Ex. R** (2002 Annual Report) at SC 0077 (The Cooperative “opened and operated two pilot marketing centers in 2001.”). The Cooperative currently operates six marketing centers to reduce the amount of time that members must travel to sell their tobacco (and the associated cost of transportation). If the Cooperative were operating solely to maximize its own profits, it would operate fewer marketing centers.

40. ***Green Storage Facility:*** In 2017, the Cooperative completed construction of a green tobacco storage facility. This facility, which cost approximately \$13 million to build, is climate-controlled and is located closer to the Timberlake facility than the Cooperative’s old storage facility. The new facility will enable the Cooperative to process a greater percentage of green tobacco that it purchases from its members into processed tobacco, thereby increasing yield and reducing waste and handling losses.

41. ***Marketing Agreements:*** The Cooperative began to offer its members marketing contracts. Generally, pursuant to these agreements, members deliver a certain quantity of tobacco

in exchange for a price set in advance by the Cooperative. This gives them a market in which to sell tobacco even if other tobacco purchasers do not want to buy their tobacco. The Cooperative also promised members who entered into marketing agreements an additional payment (based on the level of patronage) if the Cooperative could sell that tobacco for a profit. See **Ex. S** (Nov. 29, 2004 Letter from L. Edwards) at SC-GA5368; **Ex. T** (Dec. 20, 2004 letter) at SC-GA5364. The Cooperative has attempted to maximize the number of marketing contracts it can offer and the amount of tobacco it can purchase from each member.

The Cooperative Finances Its Post-Federal Tobacco Program Strategy

42. The Cooperative requires money to finance the purchase of its members' tobacco. The "lifecycle" of the tobacco market requires the Cooperative to have significant resources on hand to finance purchases of tobacco. Because it could no longer obtain loans from the CCC, the Cooperative needed the ability to pay for its members' tobacco up front and hold the tobacco as long as necessary to sell it to purchasers. It can take three years or longer to sell an entire year's crop of tobacco.

43. To finance the purchase of a greater volume of tobacco from members, and to provide funds to execute the post-Tobacco Price Support Program strategy described above, the Cooperative obtained a line of credit from Wachovia (now Wells Fargo). As currently structured, the line of credit allows the Cooperative to borrow up to \$195 million dollars at any one time, at low interest rates, to finance the acquisition of a greater quantity of members' tobacco than it would be able to absent the line of credit.³

³ The line of credit's two tranches allow the Cooperative to obtain financing for its tobacco purchases from members at the lowest possible rates.

44. In exchange for the low interest rate, however, the Cooperative has to keep substantial cash and investments on hand to serve as collateral for money borrowed through the line of credit. Some accounts receivable can also serve as collateral, but accounts receivable due from China, the Cooperative's biggest customer, cannot serve as collateral because Chinese companies are unwilling to enter into a letter of credit agreement.

45. The Cooperative has thus deployed its capital for two purposes, both in support of its mission to advance the interests of its members: (1) to allow it to make the acquisitions necessary to support the expansion strategy; and (2) to serve as collateral for the line of credit so that the Cooperative can finance larger purchases of members' tobacco.

The Cooperative's Post-Federal Tobacco Program Activities Economically Benefit Tobacco Farmers

46. The Cooperative's activities after the close of the Tobacco Price Support Program have provided a number of benefits both to its members and to flue-cured tobacco farmers who do not patronize the Cooperative:

47. *Increased Quantity of Tobacco Purchased From Members:* The Cooperative purchases approximately 9% of the green leaf that flue-cured tobacco farmers put on the market, and purchases tobacco from approximately 25% of all sellers of flue-cured tobacco. The Cooperative's purchases of green leaf from its members and sale of processed leaf to dealers and cigarette manufacturers generates losses. The Cooperative continues to operate this green-leaf business, however, because the size of this business benefits growers: the more green-leaf tobacco that the Cooperative buys from members, the more tobacco that members can grow and sell.

48. By contrast, the Cooperative's manufactured tobacco business (the sale of cigarettes, roll-your-own tobacco, and other consumer products) generates a substantial profit and effectively subsidizes the money-losing processed leaf business.

49. The Cooperative's unconsolidated income statements demonstrate the importance of its manufactured tobacco business. In fiscal year 2016, the corporate parent, U.S. Tobacco Cooperative Inc., where the processed leaf business resides, suffered an operating loss of approximately \$17.2 million and a net loss of \$14 million. **Ex. U** (2016 Financial Statements) at USTC-FL000510. By contrast, Premier Manufacturing, Inc., which manufactures consumer products, and U.S. Flue-Cured Tobacco Growers, Inc., which operates the Timberlake facility (and produces the 1839 brand), earned \$19.7 million and \$4.8 million operating gains, and \$19.9 million and \$5.1 million net gains, respectively. *Id.* The Cooperative as a whole had an operating gain of \$6.2 million and a net gain of \$9.5 million.⁴

50. ***Sustainable Operating Model:*** Without the manufactured tobacco businesses, the Cooperative's losses on its leaf business would eventually deplete its funds and force dissolution. Because it operates the profitable manufactured tobacco business that can subsidize the unprofitable leaf business, however, the Cooperative can sustainably operate for the benefit of tobacco farmers for the foreseeable future.

51. The Cooperative would have been unable to create its profitable manufactured tobacco business absent the strategic decisions made by the Board and enabled by the Cooperative's available assets at and after the end of the Tobacco Price Support Program. The acquisitions of Timberlake, Premier, and King Maker gave the Cooperative the ability to manufacture, market, and sell consumer products. The acquisition of distribution and storage support the Cooperative's manufactured tobacco business. In addition to other efforts, these

⁴ The operating gain or loss consists of gross revenue less cost of sales and selling, general, and administrative expenses. The net gain or loss also includes interest income and expenses, gains and losses on disposal of assets, income tax effects, and various other revenue gains or losses. **Ex. U** (2016 Financial Statements) at USTC-FL000479.

acquisitions permit the Cooperative to compete against large, well-funded tobacco manufacturers. These large players in the industry have substantially more resources at their disposal than the Cooperative and can operate with a higher degree of flexibility. To remain competitive on behalf of members and tobacco growers, the Cooperative must be sure that its use of available funds is efficient and effective.

52. Even with the notable successes created by the sustainable operating model the Cooperative has implemented, there remain many tough choices that the Cooperative will have to make in the years ahead to continue assisting current and future flue-cured tobacco growers in light of its limited resources. For example, each year members regularly want to deliver more leaf than the Cooperative can reasonably buy, and in today's market conditions, the Board must make difficult decisions about how the Cooperative will distribute contracts. These are hard business decisions and judgments to make, and the Cooperative must keep in mind the need to operate sustainably so that we can continue to support current and future flue-cured tobacco growers.

53. There are several ways to address growers' desires to deliver large quantities of leaf to the Cooperative. One option is to reduce the poundage permitted under contracts across all growers. Another option is to end contracting with low-performing growers. To minimize any such hardship for growers, the Cooperative's programs seek to grow the overall market for tobacco products, increasing demand for tobacco product and paving the way for profitable sales. This in turn increases the total pounds of leaf the Cooperative can buy from the growers each year.

54. ***Increased Prices on the Sale of Leaf Tobacco:*** The Cooperative sets its prices for tobacco earlier in the year than other purchasers, and it sets them at higher prices to serve the interests of its member. Without the Cooperative's activities, other purchasers, such as large cigarette manufacturers, would be able to exercise their bargaining power to drive down the price

of leaf, which would harm other farmers. But because the Cooperative sets higher prices, other purchasers of tobacco must set equal or higher prices to obtain high-quality flue-cured tobacco. Thus, the Cooperative's activities benefit all flue-cured tobacco farmers, including those who are not even members.

55. ***Return of Excess Capital to Members:*** To the extent that the Cooperative has had funds left over and above the amounts it uses to support its operations, it has returned those funds to members.

56. In every year from 2011 to 2016, the Cooperative has declared cash patronage dividends, returning available excess funds to its members. The Cooperative has paid \$24.3 million in cash patronage dividends since 2010. **Ex. V** (2016 Annual Report) at USTC-FL007746.⁵ No other players in the U.S. tobacco market provide this type of dividend to farmers—the Cooperative stands alone in this regard.

57. The Cooperative's Board also relatively recently exercised its discretion to offer 1967-1973 Capital Equity Credit holders the opportunity to redeem their Capital Equity Credits. In fiscal year 2012, the Cooperative offered an open call for redemption of Capital Equity Credits issued in 1967 and 1968. **Ex. W** (2013 Audited Financials) at USTC-FL000368. In 2013, the Cooperative extended that open call for redemption to years 1967-69 and 1971-72. **Ex. X** (2014 Audited Financials) at USTC-FL000411. During the fiscal year ending April 2015, the Cooperative extended that open call for redemption to all of the outstanding Capital Equity Credits. Each year, the Cooperative held the redemption period open for 3 to 4 months. Some Capital Equity Credit holders redeemed their credits, as per the table below. As of May 31, 2017, only

⁵ The Cooperative also offered patronage dividends in the form of capital equity credits in 2011-2016. *Id.*

approximately \$5.5 million of the approximately \$26.8 capital equity credits issued from 1967 to 1973 had been redeemed. **Ex. Y** (May 18, 2017 Email) at USTC-FL012354.

Redemption Period	Number of Checks Written	Number of Unique FC Numbers	Amount Paid
2011-12	259	215	\$30,086.84
2012-13	1,339	1,328	\$451,667.05
2014-15	10,729	7,385	\$3,072,018.09
2015-16	7,115	4,168	\$1,371,997.50
2016-17	3,568	2,249	\$549,934.15

58. Because the number of certificates that Capital Equity Credit holders called for redemption dropped substantially between 2015 and 2017, the Cooperative did not expect that many more Capital Equity Credit holders would seek to redeem their credits. Thus, the Cooperative believed that most of the remaining funds would likely not be paid to Capital Equity Credit holders.

59. **Tariff Rate Quota:** The Cooperative also acts to benefit its members in other ways. For example, the Cooperative is the only organization that is currently pressing Congress to change the Tariff Rate Quota. In 1995, in an effort to ensure that 75% of tobacco used in U.S. manufactured cigarettes was grown by American farmers, Congress limited the amount of tobacco that could be imported to 150,000 metric tons. The production of cigarettes has dropped substantially since 1995, but this quota has remained unchanged. Large cigarette manufacturers benefit from the higher TRQ because it allows them to import the bulk of the tobacco they use in their products from cheaper, foreign growers. If the TRQ were to be reduced, however, domestic growers of flue-cured tobacco would benefit because they could grow a greater quantity of tobacco and receive a better price. *See Ex. V* (2016 Annual Report) at USTC-FL007735.

60. **Grower Audits:** The Cooperative also benefits members by conducting audits of its growers to ensure that they are in compliance with Good Agricultural Practices. These audits require growers to show that they use legal labor, follow applicable worker safety guidelines, and

comply with environmental laws and regulations. These audits have enabled the Cooperative to sell tobacco to certain discerning customers.

The Cooperative's Organizing Documents Permitted Its Post-Federal Tobacco Program Activities

61. In addition to making economically sound, rational decisions, the Board has acted within the authority conferred upon it by the North Carolina Marketing Act, the Cooperative's Articles, and the Cooperative's by-laws at all relevant times.

62. Effectively, the Board has decided to (i) hold the Disputed Funds as a reserve; (ii) spend a portion of the reserve fund on acquisitions; and (iii) borrow money to support its acquisitions and decisions and to purchase greater quantities of tobacco from its members. All of these activities fall within the ambit of both the North Carolina Marketing Act and the Cooperative's organizing documents.

63. As I have already explained, the North Carolina Marketing Act, the Cooperative's initial Articles, and the Cooperative's initial by-laws gave the Board broad authority to retain funds, make investments (including in property) to serve its members interests, and borrow money to serve its members' interests. *Supra* ¶¶ 6-11.

64. Amendments to the Articles and by-laws confirm that the Board has the authority to direct the Cooperative to hold the reserve, make acquisitions, and borrow money.

65. The Cooperative amended its Articles in 1979, in accordance with applicable law and its organizing documents, to expressly permit it to maintain a capital reserve. *See Ex. A* (Amend. Art of Incorp., Art. XI) at SC 16274 ("The corporation shall have the right to establish and maintain a capital reserve for the future conduct of its business.").

66. The Cooperative's initial Articles granted the Board power to enact and amend the by-laws. *Id.* (Art. of Incorp., Art. X) at SC 16259. Throughout the Cooperative's history, the by-

laws have consistently given the Board discretion to retain and invest reserve funds. *See, e.g.* **Ex. B** (1947 by-laws, Art. XVI) at SC-GA 10780 (“Whenever in the discretion of the board of directors the capital reserves are found to be in excess of the amount deemed reasonably necessary for the sound financial operations of the association, such excess shall be applied to paying off” earlier capital contributions.); **Ex. Z** (Jun. 30, 1967 by-laws, Art. XVI) at SC 13216 (committing capital reserves to the Board’s discretion); **Ex. AA** (Aug. 12, 1983 by-laws, Art. XVII, § 4) at SC 13249 (permitting the Cooperative to “set aside and retain as capital” non-patronage net earnings and establishing that “amounts so set aside and retained may be used for such purposes of the association as shall be determined by the board of directors”); **Ex. BB** (Dec. 9, 2010 by-laws, Art XI, § 4) at SC 16023 (The Cooperative may “set aside and retain as capital for use in the business of the association the net earnings . . . derived from the association.”).

The Cooperative’s Current Financial Position Makes It Difficult To Pay A Large Settlement Without Harming Members

67. I understand that the *Speaks* Plaintiffs seek the Cooperative’s dissolution and a distribution of all of its assets to former and current members, and that the *Fisher-Lewis* plaintiffs seek a distribution of the Disputed Funds to former and current members.

68. Both sets of plaintiffs appear to believe that the Cooperative maintains the Disputed Funds in an account containing hundreds of millions of dollars that serves no other purpose, and could therefore easily pay a settlement from that fund. That is not the case.

69. The Disputed Funds are booked as stockholder’s equity on the Cooperative’s balance sheet. To pay a settlement, however, the Cooperative would have to sell its non-cash assets.

70. The vast majority of the Cooperative's assets are currently being deployed in pursuit of the strategy described above. As of May 31, 2017, *see* **Ex. E** (2017 Financial Statements) at USTC-FL000874:

71. The Cooperative holds approximately \$11.5 million in cash and \$129.5 million in short- and long-term investments in interest-bearing obligations. The Cooperative is currently using the cash to finance and build a green leaf storage facility. The Cooperative uses the investments to collateralize its line of credit, which allows it to acquire greater amounts of tobacco from its members. Without the line of credit, the Cooperative would not be able to purchase as much tobacco.

72. The Cooperative holds approximately \$52 million in accounts receivable. This reflects money owed to the Cooperative by customers on products that the Cooperative has already delivered. The Cooperative records accounts receivable at "net realizable value," which the Cooperative's management determines by "regularly evaluating individual customer receivables." *Id.* at USTC-FL000880. If forced to liquidate accounts receivable to pay a settlement, the Cooperative would obtain far less than \$52 million because, even assuming it could find a buyer, it would have to sell its receivables at a deep discount relative to book value.

73. The Cooperative has \$129.6 million in inventories, which consists of green leaf, processed leaf, consumer products, offshore tobacco, and raw materials. The Cooperative values its inventory at the lower of average cost or market value. If forced to liquidate its inventory in a fire sale to pay a settlement, the Cooperative would likely obtain far less than book value.

74. The Cooperative has \$40.6 million in property, plant, and equipment, primarily the value of the Timberlake facility. The Cooperative values its property, plant, and equipment assets at cost. If forced to sell the Timberlake facility (and other property, plant, or equipment assets) in

fire sales, the Cooperative would likely obtain less than book value. Moreover, it would not be able to manufacture cigarettes, which, in the long run, would inhibit its ability to use its manufactured products business to subsidize the purchase of leaf tobacco.

75. The Cooperative has \$156.5 million in intangible assets, which primarily consists of the MSA Grandfather Exemptions it obtained from the purchase of Premier Manufacturing and of King Maker. To maintain the MSA Grandfather Exemptions, the Cooperative would have to sell entire brands of cigarettes, which would require a willing buyer, would prevent the Cooperative from obtaining value from its present ownership of the MSA Grandfather Exemptions, and would inhibit its ability to subsidize the purchase of leaf through its more profitable manufactured tobacco business.

76. The remaining assets on its balance sheet are of negligible size.

77. The Cooperative thus has few liquid assets available to pay out in a settlement that would not inhibit its business strategy and harm its members. This is why it sought to structure the settlement to require a \$10 million payment in year one, followed by four additional smaller payments in succeeding years. This settlement structure allows the Cooperative to continue to execute its current business strategy with limited disruption (because it can maintain its line of credit and avoid defaulting on debt commitments).

Changed Circumstances Render The 2005 *Fisher-Lewis* Settlement An Inapt Comparison To This Settlement

78. I understand that the Cooperative and *Fisher-Lewis* plaintiffs agreed to a settlement in the state court class action in September 2005 that the North Carolina Superior Court refused to approve. That settlement arguably provided plaintiffs with a payout richer than this one. Specifically, the Cooperative offered redemption of the Capital Equity Credits, a book allocation of the Additional Paid-In Capital with triggers requiring the Cooperative to offer to members

opportunities to redeem if the Cooperative fell below a predetermined book value, a cash settlement fund of \$50 million for the Contributed Capital, and book allocations of retained earnings. I further understand that the objectors have argued that the terms of that settlement render this settlement unfair.

79. Initially, the terms of that settlement are not as different from the present settlement as would appear at first glance. The book allocations of the Additional Paid-In Capital would have allowed the Cooperative's Board to deploy its capital in a manner of its own choosing (subject to the triggers), which would have allowed it to pursue the same business strategy. Moreover, the Cooperative has offered to redeem the Capital Equity Credits issued from 1967 to 1973—one of the items offered in the September 2005 settlement—each year from 2011 to 2016. *Supra* ¶¶ 55-58.

80. To the extent that the 2005 *Fisher-Lewis* proposed settlement offers a distribution of a greater amount of money than does the present settlement, changed circumstances justify the smaller settlement amount. As I have discussed, the Cooperative's post-Tobacco Price Support Program strategy has generated substantial benefits for its members and to the flue-cured tobacco growing community at large. The Cooperative has put a much greater proportion of the Disputed Funds to use than it had in September 2005, through both its acquisitions and to collateralize a large line of credit. To distribute them now would cause substantially greater disruption to the Cooperative's strategy and correspondingly greater harm to its members—the people who are still in the business of actually growing flue-cured tobacco and whom it is the Cooperative's mission to support.

Conclusion

81. In sum, the Cooperative's post-Tobacco Price Support Program activities—the acquisition of tobacco manufacturing capabilities, additional consumer products brands,

distribution, and the line of credit—were designed to benefit members by growing the volume of tobacco the Cooperative could purchase and obtaining a higher price for that tobacco. These efforts were successful. The Cooperative's manufactured tobacco businesses effectively subsidize volume purchases of leaf tobacco, and its willingness to purchase leaf at high prices buoys the price of leaf for sales to other tobacco purchasers. This arrangement can sustainably continue for the foreseeable future for the benefit of current and future flue-cured tobacco farmers.

82. The Board acted within its authority by reinventing the Cooperative's business model after the end of the Tobacco Price Support Program.

83. This successful strategy required and continues to require use of the Disputed Funds. There is no large reserve of money available for distribution.

84. In light of the Cooperative's benefits to members and its financial constraints, in my view, the settlement is fair, adequate, and reasonable.

I declare under penalty of perjury that the foregoing is true and correct to the best of my recollection. Executed in RALEIGH, NC., this 11TH day of January, 2018.


Edward W. Kacsuta

APPENDIX 1

Attached hereto as Exhibits A-BB are, to the best of my knowledge, true and correct copies of the following documents:

Exhibit	Document
A	Cooperative Articles of Incorporation and Amendments
B	1947 Cooperative By-laws
C	December 1975 Cooperative Newsletter
D	February 17, 1976 Letter from F. Bond
E	2017 Cooperative Financial Statements
F	December 11, 1985 Letter from USDA to the Cooperative
G	January 17, 1986 IRS News Release
H	June 8, 1990 Letter from USDA to USTC
I	July 1990 Cooperative Newsletter
J	Blake Brown, <i>The End of the Tobacco Transition Payment Program</i> (Nov. 14, 2013).
K	Letter from J. Truluck
L	2005 Cooperative Financial Statements
M	2004 Cooperative Annual Report
N	2007 Cooperative Annual Report
O	2012 Cooperative Financial Statements
P	2011 Cooperative Financial Statements
Q	2012 Cooperative Annual Report
R	2002 Cooperative Annual Report
S	November 29, 2004 Letter from L. Edwards
T	December 20, 2004 Letter

U	2016 Cooperative Financial Statements
V	2016 Cooperative Annual Report
W	2013 Cooperative Financial Statements
X	2014 Cooperative Financial Statements
Y	May 18, 2017 Email from K. Forst
Z	June 30, 1967 Cooperative By-laws
AA	August 12, 1983 Cooperative By-laws
BB	December 9, 2010 Cooperative By-laws

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN,
ROBERT POINDEXTER, MIKE MITCHELL,
ROY L. COOK, ALEX SHUGART, H.
RANDLE WOOD, ROBIN ROGERS and
DANIEL LEE NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

INDEX OF EXHIBITS

Defendant U.S. Tobacco Cooperative Inc. (the “Cooperative”) respectfully submits the following exhibits in connection with the Declaration of Edward W. Kacsuta in Support of the Cooperative’s Responses to Objections, dated January 11, 2018:

Exhibit A: Attached hereto as Exhibit A is a true and correct copy of the Cooperative’s Articles of Incorporation and the Amendments thereto.

Exhibit B: Attached hereto as Exhibit B is a true and correct copy of the Cooperative’s by-laws, dated June 3, 1947.

Exhibit C: Attached hereto as Exhibit C is a true and correct copy of the Cooperative’s Newsletter, dated December 1975.

Exhibit D: Attached hereto as Exhibit D is a true and correct copy of a letter from Fred Bond, General Manager of the Cooperative, to members, dated February 17, 1976.

Exhibit E: Attached hereto as Exhibit E is a true and correct copy of the Cooperative's Consolidated Financial Statements, dated as of April 30, 2017 and 2016.

Exhibit F: Attached hereto as Exhibit F is a true and correct copy of a letter from the United States Department of Agriculture to Fred Bond, General Manager of the Cooperative, dated December 11, 1985.

Exhibit G: Attached hereto as Exhibit G is a true and correct copy of an Internal Revenue Service News Release, dated January 17, 1986.

Exhibit H: Attached hereto as Exhibit H is a true and correct copy of a letter from the United States Department of Agriculture to Fred Bond, Chief Executive Officer of the Cooperative, dated June 8, 1990.

Exhibit I: Attached hereto as Exhibit I is a true and correct copy of the Cooperative's Newsletter, dated July 1990.

Exhibit J: Attached hereto as Exhibit J is a true and correct copy of an article by Professor Blake Brown, titled "The End of the Tobacco Transition Payment Program," bearing the date November 14, 2013.

Exhibit K: Attached hereto as Exhibit K is a true and correct copy of a letter from John M. Truluck, of the United States Department of Agriculture, to Lioniel Edwards, the Cooperative's General Manager, dated March 21, 2005.

Exhibit L: Attached hereto as Exhibit L is a true and correct copy of the Cooperative's Consolidated Financial Statements, dated as of April 30, 2005 and 2004.

Exhibit M: Attached hereto as Exhibit M is a true and correct copy of the Cooperative's 2004 Annual Report.

Exhibit N: Attached hereto as Exhibit N is a true and correct copy of the Cooperative's 2007 Annual Report.

Exhibit O: Attached hereto as Exhibit O is a true and correct copy of the Cooperative's Consolidated Financial Report, dated as of April 30, 2012.

Exhibit P: Attached hereto as Exhibit P is a true and correct copy of the Cooperative's Consolidated Financial Report, dated as of April 30, 2011 and 2010.

Exhibit Q: Attached hereto as Exhibit Q is a true and correct copy of the Cooperative's 2012 Annual Report.

Exhibit R: Attached hereto as Exhibit R is a true and correct copy of the Cooperative's 2002 Annual Report.

Exhibit S: Attached hereto as Exhibit S is a true and correct copy of a letter from Lioniel Edwards, General Manager of the Cooperative, to members, dated November 29, 2004.

Exhibit T: Attached hereto as Exhibit T is a true and correct copy of a letter from Lioniel Edwards, General Manager of the Cooperative, to members, dated December 20, 2004.

Exhibit U: Attached hereto as Exhibit U is a true and correct copy of the Cooperative's Consolidated Financial Statements, dated as of April 30, 2016 and 2015.

Exhibit V: Attached hereto as Exhibit V is a true and correct copy of the Cooperative's 2016 Annual Report.

Exhibit W: Attached hereto as Exhibit W is a true and correct copy of the Cooperative's Consolidated Financial Report, dated as of April 30, 2013.

Exhibit X: Attached hereto as Exhibit X is a true and correct copy of the Cooperative's Consolidated Financial Report, dated as of April 30, 2014 and 2013.

Exhibit Y: Attached hereto as Exhibit Y is a true and correct copy of an email from Keith Forst, Esq. to counsel for Plaintiffs in the *Speaks* case, concerning the Cooperative's redemption of certificates of interest, dated May 18, 2017.

Exhibit Z: Attached hereto as Exhibit Z is a true and correct copy of the Cooperative's by-laws as amended through June 30, 1967.

Exhibit AA: Attached hereto as Exhibit AA is a true and correct copy of the Cooperative's by-laws as amended through August 12, 1983 and previously September 10, 1982.

Exhibit BB: Attached hereto as Exhibit BB is a true and correct copy of the Cooperatives by-laws as revised on December 9, 2010.

EXHIBIT A

52984

CERTIFICATE OF INCORPORATION.of

~~FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION~~
 FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION
 * * * * *

THIS IS TO CERTIFY that we, the undersigned, each of whom is engaged in the production of agricultural products, do hereby voluntarily associate together for the purpose of forming a non-profit cooperative association or corporation with capital stock under the Cooperative Marketing Act of the State of North Carolina, and Acts amendatory thereof, and for that purpose state the following:

ARTICLE IName

The name of this corporation is FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION
 CORPORATION.

ARTICLE IIPurposes

The purposes for which this corporation is formed are as follows:

To engage in any activity involving or relating to the business of receiving, grading, processing, drying, packing, storing, financing, marketing, selling, and/or distribution, on a cooperative basis, of flue-cured tobacco or products or by-products derived therefrom of its members, or conducive thereto, and to engage in the handling of such tobacco cooperatively either on an agency or a purchase and sale basis.

ARTICLE IIIPlace

The place where its business will be transacted in this State is in Raleigh, in the County of Wake, State of North Carolina, but the corporation may have one or more branch offices and places of business out of the State of North Carolina as well as in that State.

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ARTICLE IV.Term.

The term for which this corporation is to exist is fifty (50) years.

ARTICLE V.Directors

The number of directors of this corporation shall be not less than five (5), but the by-laws may provide for a larger number. The directors shall possess such qualifications and shall be elected for such terms of office as the by-laws may prescribe. The by-laws of the corporation shall be adopted by the directors at their first meeting. The names and addresses of those who are to serve as directors until the first annual meeting of the common stockholders, or members, of the corporation and until the election of their successors by such stockholders or members, are as follows:

<u>Name</u>	<u>Address</u>
H. G. Blalock	Baskettville, Va.
D. F. Bruton	Adel, Ga.
R. S. Rogers	Dillon, S. C.
Bill Hooks	Whiteville, N. C.
T. W. Allen	Creedmoor, N. C.
J. E. Winslow	Greenville, N. C.
W. W. Eagles	Macclesfield, N. C.
George Sockwell	Rt. 1. Elon College, N. C.
Carl T. Hicks	Walstonburg, N. C.

ARTICLE VICapital Stock

The total authorized capital stock of this corporation is Five Million Dollars (\$5,000,000.00), divided into Five Hundred Thousand (500,000) shares of common stock of the par value of Five Dollars (\$5.00) each, and Twenty-five Thousand (25,000) shares of preferred stock of the par value of One Hundred (\$100.00) Dollars each.

The common stock of this corporation may be purchased, owned or held only by producers who shall patronize the corporation in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the corporation. In the event the board

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of directors of the corporation shall find following a hearing that any of the common stock of this corporation has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the corporation (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the corporation shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the corporation, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the corporation may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the corporation may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this corporation may be transferred only with the consent of the board of directors of the corporation and on the books of the corporation and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the corporation. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This corporation shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the corporation. No dividends shall be paid upon the common stock. The foregoing conditions with respect to common stock shall be printed on the face of each certificate for common stock issued by the corporation.

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The preferred stock of this corporation shall carry no voting rights and may be transferred only on the books of the corporation; and may be redeemed in whole or in part on a pro rata basis at par, plus any dividends declared thereon and unpaid, at any time on thirty (30) days' notice by the corporation, provided said stock is redeemed in the same order as originally issued by years, and on the failure to deliver the certificate or certificates evidencing any such stock the corporation may cancel the same on its books. Stock which has been redeemed may, in the discretion of the board of directors, be reissued or retired. All such preferred stock so redeemed shall be paid for in cash at the par value thereof, plus any dividends declared thereon and unpaid; and such stock shall not bear dividends after it has been called for redemption. Noncumulative dividends of not to exceed six (6) percent per annum may be paid thereon when, if and as declared by the board of directors. This corporation shall have a lien on all of its issued preferred stock and on dividends declared thereon for all indebtedness of the holders thereof to the corporation. At the discretion of the board of directors, all dividends or distributions of the corporation or any part thereof may be paid in certificates of preferred stock or credits on preferred stock, or ad interim certificates representing fractional parts thereof, subject to conversion into full shares. Upon dissolution or distribution of the assets of the corporation, the holders of all preferred stock shall be entitled to receive the par value of their stock, plus any dividends declared thereon and unpaid before any distribution is made on the common stock. The foregoing conditions with respect to preferred stock shall be printed on the face of each certificate for preferred stock issued by the corporation.

ARTICLE VII

Powers

This corporation shall have the following powers:

- (a) To engage in any activity in connection with the marketing, selling,

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harvesting, preserving, drying, processing, manufacturing, packing, storing, handling, or utilization of flue-cured tobacco produced or delivered to it by its members, or received by it from other sources, or the manufacture or marketing of products or by-products derived therefrom, or in the financing of any such activity, all of which activities shall be conducted on a cooperative basis.

(b) To borrow money without limitation as to amount or corporate indebtedness or liability, and to give a lien on any of its property as security therefor in any manner permitted by law, and to make advance payments and advances to its members.

(c) To act as agent or representative of any member or members, and as agent or representative of any department, agency or corporation of the United States Government, in any of the activities mentioned in Article II hereof.

(d) To buy or lease such real or personal property, including facilities for the drying, handling, and warehousing of tobacco as may be deemed necessary or convenient for the conduct and operation of the business of the corporation and incidental thereto; and to enter into contracts with other concerns or corporations for the drying, handling and warehousing of tobacco and for other purposes in connection with carrying out the objects and purposes of this corporation.

(e) To draw, make, accept, endorse, guarantee, execute, and issue promissory notes, bills of exchange, drafts, warrants, certificates, and all kinds of obligations and negotiable and transferable instruments, for any purpose that is deemed to further the objects for which this corporation is formed, and to give a lien on any of its property as security therefor.

(f) To make rules and regulations governing the handling, standardizing, grading, marking, packing, and preparation for market of flue-cured tobacco handled or to be handled by this corporation.

(g) To have and exercise, in addition to the foregoing, all powers,

-6-

privileges and rights conferred on ordinary corporations and cooperative marketing associations by the law of this State, and all powers and rights incidental or conducive to carrying out the purposes for which this corporation is formed, except such as are inconsistent with the express provisions of the act under which this corporation is formed, and to do any such thing anywhere; and the enumeration of the foregoing powers shall not be held to limit or restrict in any manner the general powers which may by law be possessed by this corporation, all of which are hereby expressly claimed.

ARTICLE VIII

Incorporators

The names and post office addresses of the incorporators and the original members of the corporation are as follows:

<u>Name</u>	<u>Post Office Address</u>
Carl T. Hicks	Walstonburg, N. C.
R. S. Rogers	Dillon, S. C.
J. H. Yancey	Clarksville, Va.
W. S. Adkisson, Jr.	Clover, Va.
V. G. Arnette	Kingstree, S. C.
J. E. Winslow	Greenville, N. C.
George Sockwell	Elon College, N. C., Rt. 1
Mrs. Harry B. Caldwell	Greensboro, N. C.
W. J. Eason	Tarboro, N. C.
D. F. Bruton	Adel, Ga.
W. W. Andrews	Rt. #2, Goldsboro, N. C.
Sam/ A. Holder	Rt. 1, Mt. Airy, N. C.
J. T. Squires	Latta, S. C.
P. N. Taylor	White Plains, N. C.
A. C. Edwards	Hookerton, N. C.
W. W. Eagles	Manclesfield, N. C.
J. B. Allman	Rocky Mount, Va.
W. R. West	Axton, Va.
T. W. Allen	Creedmoor, N. C.

6

-7-

<u>Name</u>	<u>Address</u>
Samuel W. Land	South Hill, Va.
Walter L. Collatt	Rt. #1, Thomasville, N. C.
J. A. Jackson	Baskerville, Va.
W. A. Allen	Farmville, N. C.
H. G. Blalock, Baskerville	Baskerville, Va.

ARTICLE IX

No incorporator or member shall be responsible for or individually liable for any debts or obligations of the corporation.

ARTICLE X

The board of directors shall have power by majority vote to enact and determine the by-laws of the corporation and to amend the same from time to time.

In Witness Whereof, the undersigned, being the incorporators named herein, have hereunto set their respective hands and seals, on this the 1st day of June, 1946.

Carl T. Hicks (SEAL)
R. S. Rogers (SEAL)
J. H. Yancey (SEAL)
W. S. Addison, Jr. (SEAL)
V. H. Arnette (SEAL)
J. E. Winslow (SEAL)
Geo. Sockwell (SEAL)
Mrs. Harry B. Goldwell (SEAL)
W. J. Eason (SEAL)
D. F. Bouton (SEAL)
W. W. Andrews (SEAL)
Sam A. Holder (SEAL)

7

J. T. Squires J. T. Squires (SEAL)
P. N. Taylor P. N. Taylor (SEAL)
A. C. Edwards A. C. Edwards (SEAL)
W. W. Eagles W. W. Eagles (SEAL)
J. B. Allman J. B. Allman (SEAL)
W. R. West W. R. West (SEAL)
T. W. Allen T. W. Allen (SEAL)
Samuel W. Land Samuel W. Land (SEAL)
Walter L. Collett Walter L. Collett (SEAL)
J. A. Jackson J. A. Jackson (SEAL)
W. A. Allen W. A. Allen (SEAL)
H. G. Blalock H. G. Blalock (SEAL)

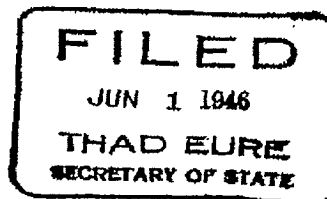
North Carolina)
 Wake County ,)

This is to certify that on this 1st day of June, 1946, before me, a Notary Public in and for the county and state aforesaid, personally appeared Carl T. Hicks, R. S. Rogers, J. H. Yancey, W. S. Adkisson, Jr., V. G. Arnette, J. E. Winslow, George Sockwell, Mrs. Harry B. Caldwell, W. J. Eason, D. F. Bruton, W. W. Andrews, Sam A. Holder, J. T. Squires, P. N. Taylor, A. C. Edwards, W. W. Eagles, J. B. Allman, W. R. West, T. W. Allen, Samuel W. Land, Walter L. Collett, J. A. Jackson, W. A. Allen and H. G. Blalock, who, I am satisfied are the persons named in and who executed the foregoing certificate of incorporation of Flue-Cured Tobacco Stabilization Corporation; and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal, this the 1st day of June, 1946.

Kate Humphrey
 Notary Public

My commission expires: May 11, 1948



56136

CERTIFICATE OF AMENDMENT TO THE CHARTER

OF

~~THE~~ FIVE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The location of the principal office in this State is at No. 411 Fayetteville Street,
in the City Raleigh of Wake County.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is L. T. Weeks, Secretary-Treasurer

RESOLUTION OF DIRECTORS

The Board of Directors of ~~the~~ Five-Cured Tobacco Cooperative Stabilization Corporation

a corporation of North Carolina, on this 3rd day of June, A.D. 1947,
do hereby resolve and declare that it is advisable that the charter of the corporation be
amended in the following respects:

I.

That Article V of the charter of the corporation be amended by adding at the end thereof the following sentence:

"That, in addition to the Directors herein provided for or hereafter appointed by the common stockholders or members of the corporation, there shall at all times be a public Director, who shall be appointed by the Governor of the State of North Carolina, to serve for the same term as other named Directors of the corporation, and such Director so appointed need not be a member or stockholder of the corporation but shall have the same powers and rights as other Directors, in accordance with the provisions of the General Statutes of North Carolina, section 54-146."

II.

That Article X of the charter be amended as follows: By striking out all of said Article X as it appears in the original Certificate of Incorporation and inserting in lieu thereof the following:

"The by-laws of the corporation may be altered or amended by a majority vote of a quorum of the common stockholders attending an annual or special meeting of the common stockholders of the corporation: Provided, that notice of any proposed amendment to the by-laws shall be included in the notice calling such annual or special meeting."

and they do hereby call a meeting of the stockholders, to be held at the company's office in the
City of Raleigh on Tuesday
the 3rd day of June, 1947, at 10 A. M., to take action upon the
above resolution.

CERTIFICATE OF CHANGE

~~THE~~ FLUE-CURED Tobacco Cooperative Stabilization Corporation

a corporation of North Carolina, doth hereby certify that pursuant to said resolution, and upon notice duly given to all voting stockholders, as provided by law and the by-laws of this corporation, a meeting of the stockholders was held at the time and place specified, and at least a ~~majority~~ quorum ~~in interest of a majority~~ of the stockholders of said corporation having voting powers being represented in person or by proxy, a resolution was unanimously adopted approving the amendment proposed by the Board of Directors, as follows:

RESOLVED that the resolution adopted by a meeting of the Board of Directors of the corporation held on the 3rd day of June, 1947, with respect to amendments to the Charter of the corporation be, and the same is, hereby in all respects ratified and approved, and that in accordance therewith the charter of the corporation be amended in the following particulars:

I.

That Article V of the Charter of the corporation be amended by adding at the end thereof the following sentence:

"That in addition to the Directors herein provided for, or hereafter appointed by the common stockholders or members of the corporation, there shall at all times be a public Director, who shall be appointed by the Governor of the State of North Carolina, to serve for the same term as other named Directors of the corporation, and such Director so appointed need not be a member or stockholder of the corporation, but shall have the same powers and rights as other Directors, in accordance with the provisions of the General Statutes of North Carolina, section 54-146."

II.

That Article X of the charter be amended as follows: By striking out all of said Article X as it appears in the original Certificate of Incorporation and inserting in lieu thereof the following:

"The by-laws of the corporation may be altered or amended by a majority vote of a quorum of the common stockholders attending an annual or special meeting of the common stockholders of the corporation: Provided, that notice of any proposed amendment to the by-laws shall be included in the notice calling such annual or special meeting."

That the foregoing amendments were first approved by at least two-thirds of the Directors and were thereafter adopted by a vote representing a majority of a quorum of the members attending a meeting, in the notice of which meeting notice of the proposed amendments had been duly given.

~~That the said amendments be adopted by a majority of the common stockholders having voting powers and be hereby approved:~~

In witness whereof, said corporation has caused this certificate to be signed by its President and Secretary, and its corporate seal to be hereto affixed, the 3rd day of June, A.D. 19 47.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

(L. S.)

Attest:

L. J. Weeks

Secretary

By [Signature]

President

STATE OF North Carolina
County of Wake ss.

Be it remembered, that on this 3rd day of June, A.D. 1947,
before me, the subscriber, a Notary Public in and for said state and county
personally appeared I. T. Weeks, Secretary of the
Flue-Cured Tobacco Cooperative Stabilization Corporation
the corporation mentioned in and which executed the foregoing certificate, who, being by me duly
sworn, on his oath says that he is such Secretary, and that the seal affixed to said certificate is the
corporate seal of said corporation, the same being well known to him; that

Carl T. Hicks is President of said corporation, and signed said
certificate and affixed said seal thereto, and delivered said certificate by authority of the Board of
Directors and with the assent of at least a majority ^{of a quorum} ~~in~~ ^{Common} of the stockholders of
said corporation having voting powers as and for his voluntary act and deed, and the voluntary act
and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto
as witness.

~~And he further says that the assent hereto appeared to sign and deliver the same in the
presence of each class of the stockholders of said corporation having voting powers as and for his voluntary
act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.~~

H. Ladys Black
Notary Public

My commission expires: December 3, 1948

DIRECTORS' ASSENT TO CHANGE
all of the directors

We, the subscribers, being ~~at least a majority in interest of each class of stockholders~~ of the

Flue-Cured Tobacco Cooperative Stabilization Corporation

having voting powers, having at a meeting regularly called for the purpose, voted in favor of
amending the certificate of incorporation as above set out do now, pursuant to the statute, hereby
give our written assent to said change.

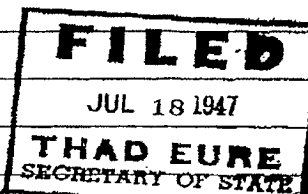
Witness our hands, this 3rd day of June, A.D. 1947

Stockholders DIRECTORS	Stockholders	Stockholders ADDRESS	Stockholders
<u>W. W. Engles</u>		<u>Macedonfield N.C.</u>	
<u>H. Black</u>		<u>Beaverly N.</u>	
<u>Carl T. Hicks</u>		<u>Watsonburg N.C.</u>	
<u>V. W. Allen</u>		<u>Cryedman N.C.</u>	
<u>Ben H. H. H.</u>		<u>Whiteville N.C.</u>	
<u>Joe Blount</u>		<u>Loris S.C.</u>	
<u>Ed. H. H.</u>		<u>Adel Ga.</u>	
<u>Wm. H. H.</u>		<u>Greenville N.C.</u>	
<u>Gay Floyd</u>		<u>Raleigh N.C.</u>	
<u>Geo. H. H.</u>		<u>Colin College N.C.</u>	

Written by Hook

Read by Watkinson

Copy held by Cherry



67551

CERTIFICATE OF AMENDMENT TO THE CHARTER
OF
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The location of the principal office in this State is in the City of Raleigh, County of Wake.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is Lloyd T. Weeks.

RESOLUTION OF BOARD OF DIRECTORS

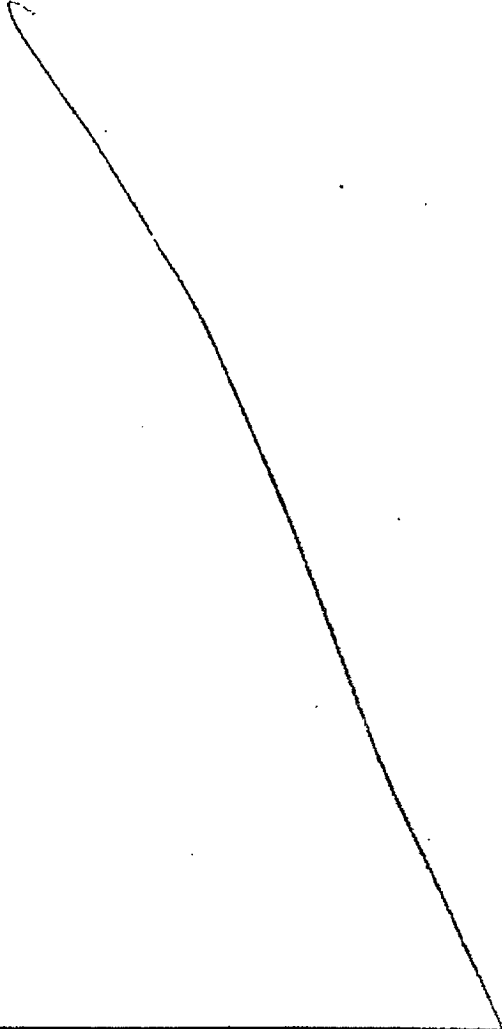
The Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation, a stock cooperative marketing organization, organized and created under the provisions of Sub-chapter V of Chapter 54 of the General Statutes of North Carolina, on this 14th day of March, 1952, does hereby resolve and declare that it is advisable that the Certificate of Incorporation of Flue-Cured Tobacco Cooperative Stabilization Corporation be amended as follows:

In Article VI, "Capital Stock", strike out the first paragraph of said Article and substitute in lieu thereof the following:

"The total authorized capital stock of this corporation is Six Million Five Hundred Thousand Dollars (\$ 6,500,000.00), divided into Eight Hundred Thousand (800,000) shares of common stock of the par value of Five Dollars (\$5.00) each, and Twenty-Five Thousand shares (25,000) of preferred stock at the par value of One Hundred Dollars (\$100.00) each."

-2-

More than two-thirds of the Directors having approved and voted affirmatively for the foregoing resolution of amendment, the Board does hereby refer said proposed amendment for consideration and adoption by the members of this corporation at the regular annual meeting of the members to be held on Friday, June 27, 1952, in accordance with the provisions of G. S. 54-135; and the Board does hereby direct the General Manager of this corporation to cause to be included in the required notice to members of annual meeting a special provision giving notice of the above proposed amendment to the Articles of Incorporation.



CERTIFICATE OF CHANGE

Flue-Cured Tobacco Cooperative Stabilization Corporation, a stock cooperative marketing association organized under the provisions of Sub-chapter V of Chapter 54 of the General Statutes of North Carolina, does hereby certify that the foregoing resolution was duly and properly adopted by the Board of Directors of this corporation at a regular meeting properly held in Raleigh on the 14th day of March, 1952 and that more than two-thirds of the Directors voted for and approved said resolution; that the Directors took such further action with respect to referring the matters to the members as is shown by the foregoing excerpt from the minutes of this corporation; that thereafter proper notice was given to all of the members of this corporation as required by the by-laws setting forth the time and place of the annual meeting and giving notice that there would be presented to the annual meeting the proposed amendment to the Articles of Incorporation set forth in the foregoing attachment; that thereafter the regular meeting of the members of this corporation was properly held pursuant to such notice and pursuant to the charter and by-laws of this corporation at Raleigh, N. C. on June 27, 1952; that at such regular annual meeting there was in attendance a quorum of the members as specified and required by the by-laws of this corporation and that a majority of such quorum of the members attending such regular annual meeting adopted by proper vote and resolution the proposed amendment to the Articles of Incorporation set forth in the foregoing attachment. The following is a copy of a portion of the minutes of said

meeting of the members disclosing the action taken.

"BE IT RESOLVED that due and proper notice having been given of this annual meeting of the members of Flue-Cured Tobacco Cooperative Stabilization Corporation held at Raleigh on June 27, 1952; and there having been included in said notice of said meeting a notice of a proposal to amend the Articles of Incorporation of this corporation as is set forth in this resolution, and a quorum of the members being in attendance at this meeting,

NOW, THEREFORE, be it resolved that the Articles of Incorporation of this corporation be amended as follows:

✓ "In Article VI, "Capital Stock", strike out the first paragraph of said Article and substitute in lieu thereof the following:

"The total authorized capital stock of this corporation is Six Million Five Hundred Thousand Dollars (\$6,500,000), divided into Eight Hundred Thousand (800,000) shares of common stock of the par value of Five Dollars (\$5.00) each, and Twenty-Five Thousand shares (25,000) of preferred stock at the par value of One Hundred Dollars (\$100.00) each."

There is attached hereto the written assent of all of the members of the Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by its President and by its Secretary and has caused its corporate seal to be hereto

affixed, this the 27th day of June, 1952

Samuel H. Hirsch
President

ATTEST:

R. J. Webb
Secretary

STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

Be it remembered, that on this 27th day of June, 1952 before me, the undersigned Notary Public in and for the State of North Carolina, personally appeared L. I. Weeks, Secretary of the Flue-Cured Tobacco Cooperative Stabilization Corporation, the corporation mentioned in and which executed the foregoing certificate, who, being by me duly sworn, on this oath says that he is such Secretary, and that the seal affixed to said certificate is the corporate seal of said corporation, the same being well known to him; that ~~Carl T. Hicks~~ Carl T. Hicks is President of said corporation, and signed said certificate and affixed said seal thereto, and delivered said certificate by authority of the Board of Directors and with the assent of at least two-thirds of the members of said Board of Directors, and for their voluntary act and deed and the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

And he further says that the assent hereto appended is signed by at least two-thirds of the members of the Board of Directors of said corporation.

Eva Langston
Notary Public

~~My Commission Expires~~
MY COMMISSION EXPIRES OCT. 7, 1953.

ASSENT TO CHANGE

We, the undersigned, being all of the members of the Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation, do hereby give our written assent to the foregoing change in the Articles of Incorporation of this corporation.

Witness our hands this 27th day of June, 1952.

E. Y. Floyd

Raleigh, N.C.

Geo. L. Pate

Rockland, N.C.

J. W. Allen

Creedmore, N.C.

Geo. Lockwood

Elon College, N.C.

A. F. Benton

Odell, Ga

R. E. Blacklock

Baskerville, Va Baskerville

Joe Blount

Loris, S.C. Loris

J. E. Winslow

Greenville, N.C.

Lawrence H. Hight

Watsburg, N.C.

W. W. Eagles

Macclesfield, N.C.

FILED

JUL 7 1952

THAD EURE
SECRETARY OF STATE

FILED

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THAT FLUE-CURED
SECRETARY OF STATE
NORTH CAROLINA

ARTICLES OF AMENDMENT

TO THE CHARTER OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 54-135 and Section 54-136 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At a regularly convened annual meeting of the member-stockholders of the corporation held on the 30th day of June, A.D., 1972, the following amendment to the Articles of Incorporation of the corporation was adopted by vote of the member-stockholders:

RESOLVED that the Articles of Incorporation of Flue-Cured Tobacco Cooperative Stabilization Corporation be amended by adding to Article X thereof the following sentence:

Any by-law or by-laws of the corporation may be amended or repealed or any new by-law may be enacted by the Board of Directors of the corporation; subject, however, to any statutory limitation.

Article X, as amended, reads as follows:

The by-laws of the corporation may be altered or amended by a majority vote of a quorum of the common stockholders attending an annual or special meeting of the common stockholders of the corporation: Provided, that notice of any proposed amendment to the by-laws shall be included in the notice calling such annual or special meeting. Any by-law or

by-laws of the corporation may be amended or repealed or any new by-law may be enacted by the Board of Directors of the corporation; subject, however, to any statutory limitation.

3. On the 14th day of April, A.D., 1972, the Board of Directors, at its regular April monthly meeting, approved such Amendment and directed that it be presented to the annual meeting of the member-stockholders to be held on June 30, A.D., 1972. At such meeting of the Directors all of the 11 Directors of the corporation were present and such Amendment was approved by a favorable vote by each of the 11 Directors.

4. The regular annual meeting of the member-stockholders of the corporation was held at Raleigh, North Carolina, on June 30, A.D., 1972. There was proper published notice of such meeting and there was included in such publication, notice of the proposed Amendment. A quorum of the member-stockholders was present at such meeting. Such Amendment received at least a majority of the votes entitled to be cast by the member-stockholders present or represented by proxy at such meeting.

IN TESTIMONY WHEREOF, THIS statement is signed by the President and Secretary this the 3rd day of July, A.D., 1972.

James D. Hicks
President
Fred G. Bond
Secretary

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This is to certify that on this the 3rd day of July, A.D., 1972, personally appeared before me Carl T. Hicks and Fred G. Bond, each of whom, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" in the capacity indicated, that he was authorized so to sign, and that the

statements therein contained are true.

Eva Langston
Notary Public

My Commission Expires:

My Commission Expires October 7, 1974

255085
 JAMES L. LUND
 SECRETARY OF STATE
 NORTH CAROLINA

ARTICLES OF AMENDMENT
 TO THE CHARTER OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 and §54-136 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At the regularly convened annual meeting of the member-stockholders of the corporation held on the 25 day of May, 1979, by unanimous vote of the member-stockholders the Articles of Incorporation were amended by adding thereto a new Article XI, as follows:

ARTICLE XI

"The corporation shall have the right to establish and maintain a capital reserve for the future conduct of its business. All amounts contributed by members to the association's capital (or capital reserve), including all amounts properly withheld from amounts derived from the patronage of members, shall be evidenced by the issuance of a non-transferable certificate of interest which shall carry no rights of dividend, interest or other income or appreciation. Certificates of interest shall be redeemable (in whole or in part) out of the capital reserve only upon such terms and at such times as may be determined from time to time by the Board of Directors. The death, withdrawal or expulsion of a member shall not give rise to any right to receive any payment from the capital reserve or to receive any payment on account of other equity credits except capital stock of the corporation. Whenever

- 2 -

partial or full redemption of certificates of interest, or the payment of other equity credits, is authorized by the Board of Directors such payments shall be made as follows: 1) to the registered owner if living; or 2) to the registered owner's estate if such owner be deceased and his estate then be in the process of administration; or 3) to those entitled by law thereto as determined by the laws of such owner's last domicile if such owner be deceased and his estate not then be in the process of administration."

3. On the 11 day of May, 1979, the Board of Directors, at its regular monthly meeting, approved an amendment to the Articles of Incorporation substantially verbatim to that set forth in paragraph 2 above and directed that it be presented to the annual meeting of the member-stockholders to be held on May 25, 1979. At a special meeting of the Board of Directors which was held at 8:00 A.M. on the 25 day of May, 1979, technical amendments not materially affecting the substance of the originally proposed amendment were approved by said Board and said Board directed that the originally proposed amendment, as so amended, and as set forth in paragraph 2 above, be submitted to a vote of the member-stockholders at said annual meeting. At both meetings of the Directors all of the 11 Directors of the corporation were present and in each case the action taken was approved by a favorable vote by each of the 11 Directors.

4. The regular annual meeting of the member-stockholders of the corporation was held at Raleigh, North Carolina, on May 25, 1979, at 9:45 A.M. There was proper published notice of such meeting and there was included in such publication a summary of the changes to be effected

- 3 -

by the amendment set forth in paragraph 2 above. A quorum of the member-stockholders was present at such meeting. Such Amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 19 day of June, 1979.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

By: Billy W. Hill
President

By: Fred G. Bond
Secretary

STATE OF FLORIDA

COUNTY OF Hamilton

This is to certify that on the 11 day of June, 1979, before me personally appeared BILLY W. HILL, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

Laverne McCall
Notary Public
My Commission expires:

Notary Public, State of Florida at Large
My commission expires Aug. 29, 1982
Bonded with Florida Farm Bureau Ins. Co.

NORTH CAROLINA
WAKE COUNTY

This is to certify that on the 19th day of June, 1979, before me personally appeared FRED G. BOND, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public
My Commission expires:

My Commission Expires October 7, 1979

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THAD EURE ARTICLES OF AMENDMENT
 SECRETARY OF STATE TO THE CHARTER OF
 NORTH CAROLINA
 FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 and §54-136 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At the annual meeting of the member-stockholders of the corporation held on the 28 day of May, 1982, the following two amendments to the Articles of Incorporation were unanimously adopted.

a. Amend Article III - Place, to read as follows:

The place where its business will be transacted in this State is in Raleigh (or its immediate environs), in the County of Wake, State of North Carolina, but the corporation may have one or more branch offices and places of business out of the State of North Carolina as well as in that State.

b. Amend Article VII - Powers, by adding subparagraph (h) as follows:

(h) To retain and apply the net gains of any crop pool to offset the net losses of any other crop pool if and to the extent that such may be required by any creditor of the corporation.

3. On the 9 day of April, 1982, the Board of Directors, at its regular monthly meeting, approved amendments to the Articles of Incorporation verbatim to those set forth in paragraph 2 above and directed that they be presented to the annual meeting of the member-stockholders to be held on May 28, 1982. A quorum of the directors was present at such meeting and such approvals received a vote of at least two thirds of all of the members of the Board.

-2-

4. The annual meeting of the member-stockholders of the corporation was held on May 28, 1982, at 10:00 A.M. There was included in the notice of said meeting a summary of the changes to be effected by the amendments set forth in paragraph 2 above. A quorum of the member-stockholders was present at such meeting. Each Amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 28 day of May, 1982.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

By: Billy W. Hill
President

By: Fred G. Bond
Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This is to certify that on the 28 day of May, 1982, before me personally appeared BILLY W. HILL, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public
My Commission expires:
My Commission Expires October 7, 1984.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This is to certify that on the 28 day of May, 1982, before me personally appeared FRED G. BOND, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public
My Commission expires:
My Commission Expires October 7, 1984.

FILED

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ARTICLES OF AMENDMENT

TO THE CHARTER OF

THAD EUGENE
 SECRETARY OF STATE
 NORTH CAROLINA

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 and §54-136 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At a special meeting of the member-stockholders of the corporation held on the 10 day of September, 1982, the following two amendments to the Articles of Incorporation were unanimously adopted.

- A. Amend Article VI by deleting therefrom all of the first and third paragraphs and by substituting in their place the following paragraphs:

(First paragraph)

The total authorized capital stock of this corporation is One Hundred Five Million (\$105,000,000) Dollars, divided into 1,000,000 shares of common stock of a par value of \$5 and 100,000,000 shares of preferred stock of a par value of \$1 each.

(Third paragraph)

The preferred stock of this corporation may be acquired by any producer who markets quota tobacco and, effective with the 1983 and subsequent crops, by each owner and operator of any farm who leases all or any part of an acreage allotment or marketing quota for flue-cured tobacco. Fractional shares may be issued. The preferred stock shall carry no voting rights and no dividends shall be payable thereon. Preferred stock may be redeemed at no more than par value at such times and upon such terms as may be set forth in the By-Laws of the corporation. The transfer of preferred stock may be restricted in such manner as may be set forth in the By-Laws of the corporation. Upon dissolution and liquidation the holders of preferred stock shall be entitled to receive par value of their stock before any distribution is made on the common stock.

- B. Amend Article XI by changing the term "capital stock" appearing in the fourth sentence to the term "common stock".

3. On the 13 day of August, 1982, the Board of Directors, at its regular monthly meeting, approved amendments to the Articles of Incorporation verbatim to those set forth in paragraph 2 above and directed that they be presented to a special meeting of the member-stockholders to be held on September 10, 1982. A quorum of the directors was present at such meeting and such approvals received a vote of at least two thirds of all of the members of the Board.

4. The special meeting of the member-stockholders of the corporation was held on September 10, 1982, at 1:00 p.m. There was included in the notice of said meeting a summary of the changes to be effected by the amendments set forth in paragraph 2 above. A quorum of the member-stockholders was present at such meeting. Each Amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 10 day of September, 1982.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

By: Billy W. Hill

President

By: Fred G. Bond

Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This is to certify that on the 10 day of September, 1982, before me personally appeared BILLY W. HILL, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public

My Commission expires:

My Commission Expires October 7, 1984

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This is to certify that on the 10 day of September, 1982, before me personally appeared FRED G. BOND, who, being by me first duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

Eva Langston
Notary Public

My Commission expires:

My Commission Expires October 7, 1984

My Commission Expires October 7, 1984

328805

ARTICLES OF AMENDMENT
 TO THE CHARTER OF

FLUE-CURED TOBACCO CO-OPERATIVE STABILIZATION CORPORATION

THAD EURE
 SECRETARY OF STATE
 NORTH CAROLINA

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At a special meeting of the member-stockholders of the corporation held on the 16 day of December, 1983, the following amendment to the Articles of Incorporation was unanimously adopted:

Delete the last sentence of Article VI - Capital Stock - which now reads, "Upon dissolution and liquidation the holders of preferred stock shall be entitled to receive par value of their stock before any distribution is made on the common stock", and insert in lieu thereof the following sentence:

"Additional limitations on and rights of the holders of preferred stock, including rights in the event of dissolution and liquidation, shall be as specified in the by-laws of the association."

3. On the 14 day of October, 1983, the Board of Directors, at its regular monthly meeting, approved an amendment to the Articles of Incorporation verbatim to that set forth in paragraph 2 above and the Board of Directors, at its meeting on November 15, 1983, directed that it be presented to a special meeting of the member-stockholders to be held on December 16, 1983. A quorum of the directors was present at each meeting and the action so taken at each meeting received a vote of not less than two-thirds of all of the members of the Board.

- 2 -

4. The special meeting of the member-stockholders of the corporation was held on December 16, 1983, and the amendment set forth in paragraph 2 above was set forth in the printed notice of said meeting. A quorum of the member-stockholders was present at such meeting and said amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 16 day of December, 1983.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

BY: Billy W. Hill
President

BY: Thos. E. Bond
Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, Billy W. Hill, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

This 16 day of December, 1983.

Billy W. Hill
BILLY W. HILL

Sworn and subscribed to before
me this 16th day of December, 1983.

Eva Langston
Notary Public
My Commission expires:
My Commission Expires October 7, 1984

- 3 -


STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, Fred G. Bond, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

This 16 day of December, 1983.


FRED G. BOND

Sworn and subscribed to before me
this 16th day of December, 1983.


Notary Public

My Commission expires:

My Commission Expires October 7, 1984

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THAD EURE
SECRETARY OF STATE
NORTH CAROLINA

ARTICLES OF AMENDMENT

TO THE CHARTER OF

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of §54-135 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At the annual meeting of the member-stockholders of the corporation held on the 25 day of May, 1984, the following amendment to the Articles of Incorporation (Charter) was unanimously adopted.

To amend the first sentence of Article VI of the Articles of Incorporation (Charter) to provide that "The total authorized capital stock of this corporation is \$505,000,000 divided into one million shares of common stock of a par value of \$5.00 and 500,000,000 shares of preferred stock of a par value of \$1.00 each."

3. On the 13 day of April, 1984, the Board of Directors, at its regular monthly meeting, approved the amendment to the Articles of Incorporation verbatim to that set forth in paragraph 2 above and directed that same be presented to the annual meeting of the member-stockholders to be held on May 25, 1984. A quorum of the directors was present at such meeting and such approval received a vote of at least two-thirds of all of the members of the Board.

4. The annual meeting of the member-stockholders of the corporation was held on May 25, 1984 at 10:00 a.m. The amendment set forth in paragraph 2 above was set forth in the printed notice of said meeting. A quorum of the member-stockholders was present at such meeting and said amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

- 2 -

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 25 day of May, 1984.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

BY: Billy W. Hill
President

BY: Fred G. Bond
Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, BILLY W. HILL, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

This 25th day of May, 1984.

Billy W. Hill
BILLY W. HILL

Sworn to and subscribed to before
me this 25th day of May, 1984.

Eva Langston
Notary Public

My Commission expires:

My Commission Expires October 7, 1984

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, FRED G. BOND, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

This 25th day of May, 1984.

Fred G. Bond
FRED G. BOND

Sworn to and subscribed to before
me this 25th day of May, 1984.

Eva Langston
Notary Public

My Commission expires:

My Commission Expires October 7, 1984

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ARTICLES OF AMENDMENT
TO THE CHARTER OF

EFFECTIVE
RUFUS L. EDMISTEN
SECRETARY OF STATE
NORTH CAROLINA

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

The undersigned corporation, for the purpose of amending its Certificate of Incorporation and pursuant to the provisions of §54-135 of the General Statutes of North Carolina, hereby executes the following Articles of Amendment.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation.

2. At the annual meeting of the member-stockholders of the Corporation held on the 26th day of May, 1995, the following amendment to the Certificate of Incorporation (Charter) was unanimously adopted.

That Article IV of the Corporation's Certificate of Incorporation be amended to read as follows:

"The term for which the Corporation is to exist is one hundred (100) years."

3. On the 14th day of April, 1995, the Board of Directors, at its regular monthly meeting, approved the amendment to the Certificate of Incorporation verbatim to that set forth in paragraph 2 above and directed that same be presented to the annual meeting of the member-stockholders to be held on May 26, 1995. A quorum of the directors was present at such meeting and such approval received a vote of at least two-thirds of all of the members of the Board.

4. The annual meeting of the member-stockholders of the Corporation was held on May 26, 1995 at 10:00 a.m. The amendment set forth in paragraph 2 above was summarized in the printed notice of said meeting. A quorum of the member-stockholders was present at such meeting and said amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 15th day of June, 1995.

FLUE-CURED TOBACCO COOPERATIVE

4. The annual meeting of the member-stockholders of the Corporation was held on May 26, 1995 at 10:00 a.m. The amendment set forth in paragraph 2 above was summarized in the printed notice of said meeting. A quorum of the member-stockholders was present at such meeting and said amendment received at least a majority of the votes entitled to be cast by the member-stockholders present at such meeting.

IN TESTIMONY WHEREOF, this statement is signed by the President and Secretary, this 15th day of June, 1995.

**FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION**

By: Barrie L. Flye
President

By: James B. Bond
Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, Bruce L. Flye, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as President, that he was authorized so to sign, and that the statements therein contained are true.

This 15th day of June, 1995.

Bruce L. Flye
BRUCE L. FLYE

Sworn to and subscribed to before
me this 15 day of June, 1995.

Peggy A. Crowe
Notary Public

My Commission Expires:

9-8-99

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, Fred G. Bond, first being duly sworn, deposes and says that he signed the foregoing "Articles of Amendment" as Secretary, that he was authorized so to sign, and that the statements therein contained are true.

This 15th day of June, 1995.

Fred G. Bond

FRED G. BOND

Sworn to and subscribed to before
me this 15 day of June, 1995.

Peggy A. Crause
Notary Public

My Commission Expires:

9-8-99

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- 4 -

SOSID: 0054530

Date Filed: 11/17/2008 2:52:00 PM

Elaine F. Marshall

North Carolina Secretary of State

C200831900388

ARTICLES OF AMENDMENT
OF
FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

Pursuant to § 54-135 of the General Statutes of North Carolina, the undersigned corporation, organized under the Cooperative Marketing Act of the State of North Carolina, hereby submits these Articles of Amendment for the purpose of amending its Articles of Incorporation.

1. The name of the corporation is Flue-Cured Tobacco Cooperative Stabilization Corporation (which name is being changed as indicated below).

2. The following amendments to the Articles of Incorporation of the corporation were adopted in the manner prescribed by § 54-135 of the General Statutes of North Carolina:

The name of the corporation is changed to "U.S. Tobacco Cooperative Inc."

Article I is amended to read as follows:

The name of this corporation is U.S. TOBACCO COOPERATIVE
INC.

Article II is amended to read as follows:

The purposes for which this corporation is formed are as follows:

To engage in any activity involving or relating to the business of receiving, grading, processing, drying, packing, storing, financing, marketing, selling, and/or distribution, on a cooperative basis, of tobacco or products or by-products derived therefrom of its members, or conducive thereto, and to engage in the handling of such tobacco cooperatively either on an agency or a purchase and sale basis.

Article III is amended to read as follows:

The place where its business will be transacted in this State is in Raleigh (or its immediately environs), in the County of Wake, State of North Carolina, or such other location as may be determined by the board of directors, but the corporation may have one or more branch offices and places of business out of the State of North Carolina as well as in that State.

Article VI is amended to read as follows:

The total authorized capital stock of this corporation is one million shares of common stock of a par value of \$5.00 and 500,000,000 shares of preferred stock with no par value.

The common stock of this corporation may be purchased, owned or held only by producers who shall patronize the corporation in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the corporation. In the event the board of directors of the corporation shall find that any of the common stock of this corporation has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the corporation (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the corporation shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the corporation and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the corporation may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the corporation may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this corporation may be transferred only with the consent of the board of directors of the corporation and on the books of the corporation and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the corporation. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This corporation shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the corporation. No dividends shall be paid upon the common stock. The foregoing conditions with respect to common stock shall be printed on the face of each certificate for common stock issued by the corporation.

The preferred stock shall carry no voting rights. Preferred stock may be redeemed at such times and upon such terms as may be set forth in the by-laws of the corporation. The transfer of preferred stock may be restricted in such manner as may be set

forth in the by-laws of the corporation. Additional limitations on and rights of the holders of preferred stock, including rights in the event of dissolution and liquidation, shall be as specified in the by-laws of the association.

Subsections (a), (c) and (f) of Article VII are amended to read as follows:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, manufacturing, packing, storing, handling, or utilization of the tobacco produced or delivered to it by its members, or received by it from other sources, or the manufacture or marketing of products or by-products derived therefrom, or in the financing of any such activity, all of which activities shall be conducted on a cooperative basis.

(c) To act as agent or representative of any member or members in any of the activities mentioned in Article II hereof.

(f) To make rules and regulations governing the handling, standardizing, grading, marking, packing, and preparation for market of tobacco handled or to be handled by this corporation.

3. Such amendments were approved by the corporation's Board of Directors at a meeting held on August 7-8, 2008, a quorum was present at such meeting, and such approval received the affirmative vote of not less than two-thirds of all the members of the Board.

4. Such amendments were adopted by the members of the corporation at a meeting of members held on November 14, 2008, a quorum was present at such meeting, and such amendments received at least a majority of the votes entitled to be cast by members present at such meeting.

This the 14th day of November, 2008.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

By: _____

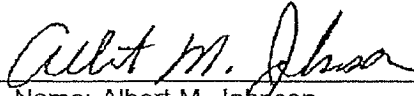

Name: Albert M. Johnson
Title: President

EXHIBIT B

BY-LAWS *Amended 6/24/48*
of
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

* * * * *

ARTICLE I

Purposes

The purposes for which this association is formed are set forth in the articles of incorporation of the association.

ARTICLE II

Board of Directors

Section 1. The business of the association shall be controlled by a board of directors consisting of not less than five nor more than nine persons, each of whom shall be a common stockholder, hereinafter referred to as member, of this association. No person shall be eligible for the office of director if he is in competition with it or is affiliated with any enterprise that is in competition with the association; and if a majority of the Board of Directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. The directors named in the articles of incorporation shall hold office for the first term or until the election and qualification of their successors. In addition to the Directors herein provided for or hereafter appointed by the common stockholders or members of the corporation, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such Director so appointed need not be a member or stockholder of the corporation but shall have the same powers and rights as other Directors, in accordance with the provisions of the General Statutes of North Carolina, section 54-146.

Election of Directors

Section 2. (a). The directors shall be elected annually at the annual meeting of the association by its members from the membership until the Board of Directors divides the territory in which the Association operates into districts. All directors shall hold office until their successors shall have been elected and shall have qualified. The term of office of the directors so elected shall, from and after the adoption of this resolution, be as follows:- At the Annual Meeting in 1948, three directors shall be elected for a term of one year, three directors shall be elected for a term of two years, and three directors shall be elected for a term of three years. At the Annual Meeting in 1949, three directors shall be elected for a term of three years and thereafter, three directors shall be elected at each Annual Meeting for a term of three years.

At any time that the Board of Directors of the association deems it advisable the board shall divide the territory in which the association is operating or expecting to operate into districts for the election of directors. So far as practicable the territory in which the association shall operate shall be divided into such districts that the association will receive substantially the same quantity of tobacco from each district, but in forming districts counties shall not be divided.

(b) Following the formation of such districts the members in each district shall elect a director from that district, from among members actually residing and growing tobacco therein.

Annually after the formation of such districts at least twenty days prior to the district meetings, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

Vacancies

Section 3. Prior to the formation of districts, vacancies in the board of directors shall be filled by remaining members; but after the formation of districts vacancies shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of Directors as may be determined by the board of directors, but not more than ten days after said annual election, the newly elected directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in section 4, shall be mailed to each director at his last known address at least three days prior to the time of such meeting.

QUORUM

Section 7. A majority of the board of directors shall constitute a quorum of the board at all meetings.

Compensation

Section 8. (a) The directors shall receive no compensation for their services other than reimbursement for any necessary transportation and hotel expenses incurred by them in attending the meetings of the board of directors and a per diem allowance of \$5.00 for the time actually covered by attendance at meetings.

of tobacco from each district, but in forming districts counties shall not be divided.

(b) Following the formation of such districts the members in each district shall elect a director from that district, from among members actually residing and growing tobacco therein.

Annually after the formation of such districts at least twenty days prior to the district meetings, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

Vacancies

Section 3. Prior to the formation of districts, vacancies in the board of directors shall be filled by the remaining members; but after the formation of districts vacancies shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of Directors as may be determined by the board of directors, but not more than ten days after said annual election, the newly elected directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in section 4, shall be mailed to each director at his last known address at least three days prior to the time of such meeting.

Quorum

Section 7. A majority of the board of directors shall constitute a quorum of the board at all meetings.

Compensation

Section 8. (a) The directors shall receive no compensation for their services other than reimbursement for any necessary transportation and hotel expenses incurred by them in attending the meetings of the board of directors and a per diem allowance of \$5.00 for the time actually covered by attendance at meetings.

(b) No director, during the term of his office shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting.

ARTICLE III.

Power of Directors

Section 1. The directors shall have power --

(a) To conduct, manage and control the affairs and business of the association; and to make rules and regulations for the guidance of the officers and the management of its affairs.

(b) To appoint and remove, at pleasure, all officers, agents, and employees of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary; and they must call a meeting at any time upon the written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will.

ARTICLE IV

Duties of Directors

Section 1. It shall be the duty of the board of directors --

(a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.

(b) To supervise all officers, agents and employees and see that their duties are properly performed.

(c) To cause to be issued appropriate certificates of stock.

(d) To install such a system of bookkeeping and auditing that each member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.

(e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.

(f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V.

Officers

The officers of the association shall be a president, one or more vice presidents, a secretary and a treasurer, and a General Counsel, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes.

The board may appoint assistant secretaries, in its discretion, and may delegate to them any or all of the duties of the secretary, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors.

Only the president and vice presidents are required to be members of the board of directors.

ARTICLE VI.

President

If at any time the president shall be unable to act, the vice presidents, in the order of their election, shall take his place and perform his duties; and if no vice president is able to act, the board of directors shall appoint a director to do so. The president, such vice president or director shall:

(a) Preside over all meetings of members and directors.

(b) Subject to the advice of the directors, direct the affairs of the association.

(c) Call the directors together whenever necessary.

(d) Sign, as president, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors.

(e) Report at each annual meeting of the members, the salaries of officers and department heads, and the average salary of minor employees in each department.

(f) Discharge such other duties as may be required of him by these by-laws or by the board of directors.

ARTICLE VII.

Secretary and Treasurer.

Section 1. It shall be the duty of the secretary:

- (a) To keep a record of the proceedings of the meetings of the board of directors and of members.
- (b) To keep the corporate seal.
- (c) To keep a proper stock book.
- (d) To execute and sign contracts, notes, papers and documents as authorized by the board of directors.
- (e) To act as secretary of the executive committee.
- (f) To discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 2. It shall be the duty of the treasurer:

- (a) To perform such duties with respect to the finances of the association as may be prescribed by the board of directors.
- (b) To furnish bond in such form and in such amount as the board of directors may, from time to time, require.
- (c) The secretary may be the same person as the treasurer. The treasurer need not be a natural person, but may be a corporation, preferably a banking corporation.

ARTICLE VIII.

Executive Committee.

The board of directors may appoint an executive committee of four members from among its members; determine its tenure of office and prescribe its powers and duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee, in addition to the four members herein provided for.

Copies of the minutes of the meetings of the executive committee and any reports thereof, must be mailed weekly to all directors.

ARTICLE IX.

Auditing Committee.

Section 1. The board of directors may appoint an auditing committee from among its members, determine the number thereof, its tenure of office, and the manner and form in which the committee shall function; in lieu of such action by the board, the auditing committee may prescribe rules and regulations with reference to its procedure.

Section 2. The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting.

Section 3. The audits of the association, as provided in Section 2 of this Article, shall be reported to the members at the annual meeting.

ARTICLE X.

Stock Certificates.

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find following a hearing that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing ^{any} such stock, the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

"The preferred stock evidenced hereby shall carry no voting rights and may be transferred only on the books of the association;

and may be redeemed in whole or in part on a prorata basis at par, plus any dividends declared thereon and unpaid at any time on thirty (30) days' notice by the association, provided said stock is redeemed in the same order as originally issued by years, and on the failure to deliver the certificate or certificates evidencing any such stock the association may cancel the same on its books. Stock which has been redeemed may, in the discretion of the board of directors, be reissued or retired. All such preferred stock so redeemed shall be paid for in cash at the par value thereof, plus any dividends declared thereon and unpaid; and such stock shall not bear dividends after it has been called for redemption. Noncumulative dividends of not to exceed six (6) percent per annum may be paid thereon when, if and as declared by the board of directors. This association shall have a lien on all of its issued preferred stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. At the discretion of the board of directors, all dividends or distributions of the association or any part thereof may be paid in certificates of preferred stock or credits on preferred stock, or ad interim certificates representing fractional parts thereof, subject to conversion into full shares. Upon dissolution or distribution of the assets of the association, the holders of all preferred stock shall be entitled to receive the par value of their stock, plus any dividends declared thereon and unpaid before any distribution is made on the common stock."

ARTICLE XI.

Books and Papers.

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative, duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally, and any member shall be entitled at any time to know the salary of any employee.

ARTICLE XII.

MEETINGS OF MEMBERS

Regular Meetings.

Section 1. Regular meetings of the members shall be held at the office of the association at Raleigh, North Carolina, on the last Friday in June of each year for the purpose of hearing the report from the president and for transacting such other business as may come before the meeting.

Special Meetings.

Section 2. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meet-

ing. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

Notice of Regular Meetings.

Section 3. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy thereof shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publications in newspapers circulating in the territory in which the association has members, such notices to appear in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

QUORUM

Section 4. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 persons present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws.

Election of Directors.

Section 5. Following the formation of districts the members of each district shall meet annually for the election of a director or directors to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director or directors therefrom. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

ARTICLE XIII

Members.

Section 1. Any person, firm, partnership, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of flue-cured tobacco in the territory in which the association is engaged in business may become a member of the association by acquiring a share of the common stock, signing the marketing agreement, and meeting such other conditions as may be prescribed by the board of directors.

Voting Power of Members.

Section 2. The voting power of the members of this association shall be equal and each and every member hereof shall have one vote.

Proxies.

Section 3. Any member shall be permitted to vote at any meeting in person or he may vote by mail on a ballot to be prepared by order of the board of directors, but voting by proxy is prohibited.

Board to Establish Standards and Grades

Section 4. The board of directors shall have the power to establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

ARTICLE XIV.

General Manager.

The board of directors may, in its discretion, appoint a general manager, who shall hold office at the pleasure of and on terms and conditions set by the board of directors. No director may be elected to serve as general manager.

ARTICLE XV.

Borrowing Money.

The association shall have the power by affirmative vote of a majority vote of the directors, to borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

ARTICLE XVI.

Capital Reserves.

The books and records of the association shall be kept in such a manner, by years, that the amount carried to capital reserves, which have the status of capital, accruing from patronage of each patron of the association may be ascertained at any time. Whenever in a given year the operation of the association results in a net loss, such loss, to the extent that capital reserves are available, shall be charged against the same and they shall thereby be reduced accordingly. The board of directors shall prescribe the basis on which the capital reserve contributions of patrons by years shall be reduced on account of any such loss, so that it will be borne by the patrons on as equitable a basis as the board of directors find practicable. Whenever in the discretion of the board of directors the capital reserves are found to be in excess of the amount deemed reasonably necessary for the sound financial operations of the association, such excess shall be applied to paying off ratably, by years, the oldest unexhausted capital reserve contributions of patrons. Upon the dissolution or winding up of the association in any manner, after the payment of all debts and the retirement at par of all outstanding capital stock, any balance remaining over shall be distributed ratably to the patrons on an equitable basis.

ARTICLE XVII.

These by-laws may be altered or amended by a majority vote of a quorum of the common stockholders attending a meeting of which notice of the proposed by-law or by-laws shall have been given.

ARTICLE XVIII.

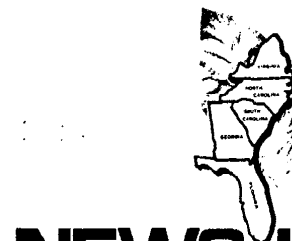
In the event any producer of tobacco who is a non member of the corporation shall make delivery of any quantity of tobacco to the Flue-Cured Tobacco Cooperative Stabilization Corporation at any warehouse and shall thereby obtain the benefit of a loan thereon, there shall be deducted by the warehouse in making settlement with such producer for the tobacco so delivered the amount of five dollars (\$5.00) to cover the par value of one share of common stock of the corporation, and the amount so deducted shall be remitted by the warehouse to the corporation and there shall thereupon be issued to such producer one share of common stock in the corporation. In the event such deduction should not be made by the warehouse in settling with such non member, then such non member would not be entitled to any participation in the profits arising from such transaction until there has been deducted from the participating share of such non member in the profits the amount of five dollars (\$5.00) covering the par value of one share of common stock in the corporation.

6/3/47

EXHIBIT C

SERVING THE GROWERS IN THE BRIGHT LEAF AREA

TOBACCO INDUSTRY
FOR THE
"IDENTIFY
AND
TESTIFY"



NEWS LETTER

Published by

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

1304 ANNAPOLIS DRIVE

RALEIGH, NORTH CAROLINA 27605

Fred G. Bond, General Manager

December 1975

CAPITAL RESERVE FUND ESTABLISHED:

In his annual report to the membership on May 30, 1975, Carl T. Hicks, Stabilization's President, announced that the Board of Directors was giving consideration to the establishment of a new and substantial Capital Reserve. He stated to the membership: "We must maintain the viability of Stabilization during periods of limited receipts and operations. We must look to the future and prepare for the rainy days of either small receipts or large receipts. If we encounter difficulty in borrowing money on reasonable terms for overhead expenses, we should be ready to carry on with our own funds."

"Your Board of Directors is studying this problem and for the first time in many years we have an opportunity to begin our self-help accomplishment. The net gains to be realized from the 1967 and

1968 crops offer this opportunity. This may be our first opportunity to prepare to stand on our feet if that should become necessary. It may not be only a privilege but also the duty of the Board to act on this opportunity and it is my belief that a great majority of members would welcome this action enthusiastically."

During the ensuing period from May 30 until the present time, the Board has given considerable study to the matter, including conferences with appropriate U. S. Department of Agriculture officials.

Following is a summary of background facts considered in the matter of establishing the Capital Reserve out of a portion of the net gains of the 1967 and 1968 crops:

1. The remaining inventories of the 1967 and 1968 crops will be

(cont'd)

U.S. POSTAGE
PAID
RALEIGH, N.C.
PERMIT NO. 356

FLUE CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION
P. O. Box 12300
RALEIGH, NORTH CAROLINA 27605

N. C. - Telephone (919) 552-2231
-- Dibrell Brothers, Inc., (State Highway 729), Danville, Va. - Telephone (804) 792-7511 Ext. 301.

Schedule the delivery by telephoning Stabilization's representative at any of the designated points, beginning Monday, December 1, between the hours of 9:00 a.m. and 4:00 p.m.

SALES AND STOCKS ON HAND:
(FARM WEIGHT)

Since the November News Letter, Stabilization has sold 4,098,688 pounds of tobacco. Sales for the calendar year to date have reached 7,262,285 pounds. Following is an analysis of sales for the month

and stocks on hand:

CROP	LBS. SOLD DURING NOV.	LBS. ON HAND
1967	56,698	-0-
1968	-0-	-0-
1969	699,424	20,386,189
1970	-0-	26,474,985
1971	3,342,566	12,457,813
1972	-0-	3,038,937
1973	-0-	7,535,858
1974	-0-	23,067,352
TOTAL	4,098,688	92,961,134

Following is an analysis of 1975 receipts by state and type for the season:

STATE	TYPE	GROSS SALES (Mil. Pounds)	STABILIZATION RECEIPTS (Pounds)	PERCENT
Fla.	14	28.2	5,110,203	18.11
Ga.	14	162.2	24,149,951	14.89
TOTAL	14	190.4	29,260,154	15.37
S.C.	13	185.4	31,874,771	17.19
N.C.	13	153.5	25,573,908	16.65
TOTAL	13	338.9	57,448,679	16.95
N.C.	12	523.2	90,873,305	17.37
TOTAL	12	523.2	90,873,305	17.37
N.C.	11B	151.5	37,877,165	25.00
TOTAL	11B	151.5	37,877,165	25.00
N.C.	11A	133.9	24,901,280	18.59
Va.	11A	132.1	23,664,995	17.92
TOTAL	11A	266.0	48,566,275	18.26
TOTAL - ALL TYPES		1,470.0	264,025,578	17.96

During the 1974 season, gross sales amounted to 1,290.2 million pounds, with Stabilization's receipts totaling 22,988,305 pounds, representing 1.78% of gross sales.

sold and all obligations (including payment of principal and interest to Commodity Credit Corporation) will be satisfied in full. Both crop pools will be closed in early 1976.

2. Net gains from the 1967 crop will approximate 7% of initial advances or an average of \$86.50 per participating member. Total net gains from the 1967 crop will approximate \$12.1 million.

Net gains from the 1968 crop

will approximate 7% of initial advances or an average of \$48.68 per participating member. Total net gains from the 1968 crop will approximate \$5.7 million.

3. Agriculture, and especially tobacco, has always faced, is now facing, and will continue to face vital problems of production, supply and demand, marketing and financing which are essential to the welfare of our communities and of our nation. Because of such

foreseeable general problems facing Stabilization (including the problem of maintaining the viability of Stabilization's organization during periods of either limited receipts in operation or periods of glutted and disorganized markets) it is not only highly desirable, but also the duty of the Board, to establish an additional reasonable Capital Reserve. Such reserves are now contemplated as being needed to provide for current overhead expenses, operating losses, and such other emergencies as may arise.

Upon consideration of the background facts, the Board reached the following basic conclusions:

1. The Board has the authority under the laws of the State of North Carolina to withhold a reasonable portion of net gains for Capital Reserve.

2. The Board has written authorization from its members for such reasonable withholding, found in its By-Laws and in its Membership Agreement.

3. The relationship existing between Stabilization and the U. S. Department of Agriculture and Commodity Credit Corporation dictates that Stabilization should seek approval of establishing such reserve.

4. The amount of withholding should be kept reasonably flexible in order to meet problems as they may arise in the immediate future.

5. The amount to be withheld from each member's share of the net gains from the 1967 and 1968

crops should be 40% of the amount of net gains available for distribution to growers who made deliveries of tobacco to Stabilization from 1967 and/or 1968 crops.

6. The accounts of such withholding shall be kept in strict accordance with the provisions of the By-Laws.

Final action was taken by the Board of Directors on November 14, 1975, to establish a Capital Reserve Fund as outlined above, with a tentative target date of early February, 1976 as the date for the distribution of the 60% portion of net gains from the 1967 and 1968 crops to the participating members who delivered to Stabilization in these two years. The 60% distribution will approximate 4% of initial advances to members, or a total of approximately \$10.7 million from both of these crops.

DELIVERY POINTS DESIGNATED FOR CARRYOVER TOBACCO:

Delivery points have been designated by Stabilization Corporation to handle growers' carryover tobacco in the N. C. Eastern Belt, N. C. Middle Belt, and the Old Belt of N. C. and Virginia. Carryover tobacco is tobacco in excess of 110% of 1975 quota. The following delivery points will be open for scheduling and receiving tobacco from December 1 through December 4 -- Austin-Carolina Company, Kinston, N. C. - Telephone (919) 523-8086 -- Tobacco Growers Services, Inc., Fuquay-Varina,

(cont'd)

EXHIBIT D

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

P. O. Box 12300

Raleigh, North Carolina 27605

Telephone: (919) 821-4560



February 17, 1976

TO MEMBERS WHO DELIVERED TOBACCO TO STABILIZATION
FROM THE 1967 AND/OR 1968 CROPS:

Dear Member:

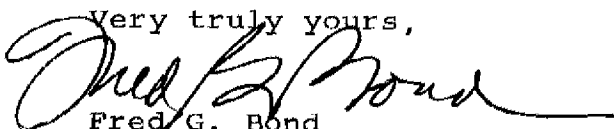
All tobacco received from the 1967 and 1968 crops has been sold. Net gains, amounting to over 7% of the value of deliveries by members from each of those crops, were realized. The portion of net gains allocated to you is being distributed in the form of the enclosed check(s) and certificate(s) of interest in capital reserve. The basis of that allocation is explained in the enclosed certificate(s) of interest. If you had deliveries to Stabilization from both crops, there are enclosed two checks and two certificates of interest. The enclosed check(s) represent(s) 60% of amount(s) allocated to you and the enclosed certificate(s) of interest represent(s) the remaining 40% allocated to you which has been retained in a capital reserve established by your Board of Directors. The establishment of such a capital reserve is in accordance with applicable law, the governing instruments of Stabilization, and the terms of your Membership Agreement. The certificate(s) should be kept with your valuable papers.

The uncertainty in connection with the future of the tobacco program points up the wisdom and practical necessity of Stabilization maintaining a capital reserve to be used if needed to continue operations and to meet other unforeseen emergencies. It is a crucial time for tobacco and it is essential that Stabilization be financially strong in order to cope with problems which may be greater in the years ahead than those experienced in the past. Your contribution to the capital reserve will help insure that Stabilization will be able to continue to provide price support operations to growers in the event that difficult times arise.

Please be sure to cash your check(s) promptly and include your Social Security number in the space provided for it on the back of the check(s), along with your endorsement. We are required by the Internal Revenue Service to report the dividend(s) and to include your Social Security number. Federal and state laws require that you report the total amount of both the check(s) and the amount appearing in Block 6 of the certificate(s) of interest, as income for the taxable year in which you receive and cash the enclosed check(s).

We also enclose financial statements on the 1967 and 1968 crops, along with an informational pamphlet on Stabilization.

Very truly yours,


Fred G. Bond,
General Manager

Enclosures . . .

SERVING THE GROWERS IN THE BRIGHT LEAF AREA

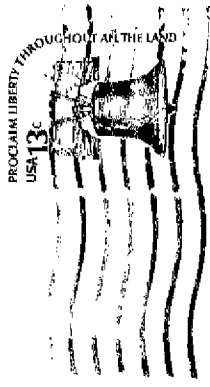
62 sent 4-13-76

MAY 14 ANS'D

I am his daughter
He is deceased
Mother & am supposed to do
let me know

152163

62195#DF



*Flue-cured Tobacco Cooperative
Stabilization Corporation
P.O. Box 12308
Raleigh, North Carolina
27605*

Josephine L. Brown
2527 Maynard Rd.
Winchester, Kentucky 40391
20103

EXHIBIT E

**U.S. TOBACCO COOPERATIVE INC.
AND SUBSIDIARIES
Raleigh, North Carolina**

**CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016**

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CliftonLarsonAllen LLP
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INDEPENDENT AUDITORS' REPORT

Board of Directors
U.S. Tobacco Cooperative Inc.
and Subsidiaries
Raleigh, North Carolina

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries, which comprise the consolidated balance sheets as of April 30, 2017 and 2016, and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for the years then ended, and the related notes to consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

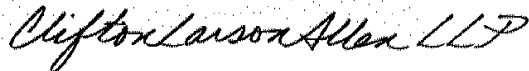
We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



Board of Directors
U.S. Tobacco Cooperative Inc.
and Subsidiaries

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of U.S. Tobacco Cooperative Inc. and Subsidiaries as of April 30, 2017 and 2016, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.



CliftonLarsonAllen LLP

Stevens Point, Wisconsin
July 11, 2017

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
April 30, 2017 and 2016

	<u>2017</u>	<u>2016</u>
ASSETS		
Current assets		
Cash and cash equivalents	\$ 11,473,765	\$ 12,710,115
Investment in interest-bearing obligations	25,152,224	21,095,615
Accounts receivable, net	51,974,423	60,333,034
Inventories, net	129,577,773	149,192,091
Prepaid expenses and other assets	1,826,422	1,414,833
Income taxes receivable	289,008	363,772
Total current assets	<u>220,293,615</u>	<u>245,109,460</u>
Investment in interest-bearing obligations	104,346,849	106,633,925
Property, plant, and equipment, net	40,636,136	29,364,765
Intangible assets, net	156,464,020	132,860,749
Other assets	689,846	621,344
TOTAL ASSETS	<u>\$ 522,430,466</u>	<u>\$ 514,590,243</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	\$ 3,277,443	\$ 1,942,476
Accrued expenses	18,374,143	10,534,998
Current portion of long-term debt	8,980,688	8,008,524
Revolving line of credit	-	2,500,000
Patronage dividends payable in cash	-	4,486,543
Stock redemption payable	4,024,075	4,062,668
Customer deposits	744,166	1,948,701
Total current liabilities	<u>35,400,515</u>	<u>33,483,910</u>
Deferred income taxes	1,820,458	3,732,727
Pension benefits	5,841,759	7,577,240
Other	54,225	59,734
Revolving line of credit	89,888,023	95,000,000
Long-term debt, less current portion	40,489,531	11,146,116
Total liabilities	<u>173,494,511</u>	<u>150,999,727</u>
Stockholders' equity		
Common stock	3,640	3,695
Additional paid-in capital	110,753,161	110,753,161
Accumulated other comprehensive loss	(4,951,274)	(5,396,558)
Contributed capital	81,520,000	81,520,000
Capital equity credits:		
Qualified	32,199,308	34,895,751
Nonqualified	3,813,562	8,852,886
Retained earnings	125,597,558	132,961,581
Total stockholders' equity	<u>348,935,955</u>	<u>363,590,516</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$ 522,430,466</u>	<u>\$ 514,590,243</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
Years Ended April 30, 2017 and 2016

	<u>2017</u>	<u>2016</u>
REVENUE	\$ 266,955,457	\$ 247,363,257
COST OF SALES	<u>245,900,735</u>	<u>212,232,898</u>
Gross margin	21,054,722	35,130,359
SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES	<u>35,819,593</u>	<u>28,913,399</u>
Operating margin (loss)	<u>(14,764,871)</u>	<u>6,216,960</u>
OTHER INCOME (EXPENSE)		
Interest income	2,017,022	1,840,176
Interest expense	(2,506,630)	(2,197,331)
Other revenue, net	473,981	1,652,368
Gain (loss) on disposal of assets	<u>77,341</u>	<u>(80,020)</u>
Total other income (expense)	<u>61,714</u>	<u>1,215,193</u>
Margin (loss) before income taxes	(14,703,157)	7,432,153
PROVISION (CREDIT) FOR INCOME TAXES	<u>(2,299,810)</u>	<u>(2,089,006)</u>
NET MARGIN (LOSS)	<u>\$ (12,403,347)</u>	<u>\$ 9,521,159</u>
Distribution of net margin (loss):		
Patronage dividends payable in cash	\$ -	\$ 4,486,543
Issuance of nonqualified equity credits	<u>-</u>	<u>3,813,562</u>
Total allocated net margin for members	<u>-</u>	<u>8,300,105</u>
Unallocated margin (loss) and income taxes retained	<u>(12,403,347)</u>	<u>1,221,054</u>
	<u>\$ (12,403,347)</u>	<u>\$ 9,521,159</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
Years Ended April 30, 2017 and 2016

	<u>2017</u>	<u>2016</u>
NET MARGIN (LOSS)	<u>\$ (12,403,347)</u>	<u>\$ 9,521,159</u>
OTHER COMPREHENSIVE INCOME (LOSS), NET OF TAXES		
Available-for-sale investments		
Unrealized holding gains (losses) arising during the year	(504,701)	143,471
Add reclassification adjustment for losses included in net margin	78,952	4,440
	<u>(425,749)</u>	<u>147,911</u>
Defined benefit pension plan		
Net gain (loss) arising during the year	559,638	(1,652,766)
Add reclassification adjustment for amortization of net gain on pension included in net margin	311,395	226,939
	<u>871,033</u>	<u>(1,425,827)</u>
Other comprehensive gain (loss), net of taxes	<u>445,284</u>	<u>(1,277,916)</u>
COMPREHENSIVE INCOME (LOSS)	<u><u>\$ (11,958,063)</u></u>	<u><u>\$ 8,243,243</u></u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
Years Ended April 30, 2017 and 2016

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Contributed Capital	Capital Equity Credits		Retained Earnings	Total
	Shares	Amount				Qualified	Nonqualified		
BALANCE, APRIL 30, 2015	849	\$ 4,245	\$ 110,753,161	\$ (4,118,642)	\$ 81,520,000	\$ 35,508,215	\$ 5,865,085	\$ 131,740,527	\$ 361,272,591
Net margin	-	-	-	-	-	-	-	9,521,159	9,521,159
Net loss on pension plan	-	-	-	(1,425,827)	-	-	-	-	(1,425,827)
Unrealized gain on investments	-	-	-	147,911	-	-	-	-	147,911
Patronage declared on 2016 net margin:									
Issuance of capital equity credits	-	-	-	-	-	-	3,813,562	(3,813,562)	-
Payable in cash	-	-	-	-	-	-	-	(4,486,543)	(4,486,543)
Capital equity credits called for redemption						(1,438,225)			(1,438,225)
Transfers	-	-	-	-	-	825,761	(825,761)	-	-
Membership stock issued and cancelled, net	(110)	(550)	-	-	-	-	-	-	(550)
BALANCE, APRIL 30, 2016	739	3,695	110,753,161	(5,396,558)	81,520,000	34,895,751	8,852,886	132,961,581	363,590,516
Net loss	-	-	-	-	-	-	-	(12,403,347)	(12,403,347)
Net gain on pension plan	-	-	-	871,033	-	-	-	-	871,033
Unrealized loss on investments	-	-	-	(425,749)	-	-	-	-	(425,749)
Capital equity credits called for redemption:									
1967 - 1973 qualified equity credits paid	-	-	-	-	-	(549,871)	-	-	(549,871)
2010 qualified equity credits paid	-	-	-	-	-	(2,146,572)	-	-	(2,146,572)
2014 nonqualified equity credits cancelled	-	-	-	-	-	-	(5,039,324)	5,039,324	-
Membership stock issued and cancelled, net	(11)	(55)	-	-	-	-	-	-	(55)
BALANCE, APRIL 30, 2017	<u>728</u>	<u>\$ 3,640</u>	<u>\$ 110,753,161</u>	<u>\$ (4,951,274)</u>	<u>\$ 81,520,000</u>	<u>\$ 32,199,308</u>	<u>\$ 3,813,562</u>	<u>\$ 125,597,558</u>	<u>\$ 348,935,955</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
Years Ended April 30, 2017 and 2016

	<u>2017</u>	<u>2016</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Net margin (loss)	\$ (12,403,347)	\$ 9,521,159
Adjustments to reconcile net margin (loss) to net cash provided by operating activities:		
Depreciation and amortization	4,512,779	4,231,345
Amortization of premiums on investments	909,430	1,385,239
Provision for obsolete inventory	273,324	3,515,760
Inventory valuation adjustment	11,235,823	-
Provision (credit) for doubtful accounts	(19,455)	699,165
Realized (gain) loss on sale of investments	(16,067)	89,690
Gain on disposal of assets	(61,274)	(9,670)
Net periodic benefit costs (benefit)	343,819	(52,455)
Employer contribution to the pension plan	(384,255)	(632,719)
Deferred income taxes	(2,464,081)	(2,174,480)
Cash provided by (used in) changes in:		
Receivables	9,665,174	5,768,247
Income taxes receivable	74,764	(167,813)
Inventories	10,094,747	(11,883,649)
Prepaid expenses and other assets	(318,172)	(1,052,568)
Accounts payable	483,238	(77,900)
Accrued expenses and other liabilities	4,801,201	2,459,290
Customer deposits	(1,204,535)	(473,076)
Net cash provided by operating activities	<u>25,523,113</u>	<u>11,145,565</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of property, plant, and equipment	(13,646,737)	(6,994,672)
Proceeds on disposal of assets	75,723	18,069
Cash from business acquisition	1,329,870	-
Purchase of interest-bearing obligations	(55,776,521)	(51,999,686)
Maturities and calls of interest-bearing obligations	52,421,035	48,793,114
Net cash used in investing activities	<u>(15,596,630)</u>	<u>(10,183,175)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Net borrowings on revolving line of credit	(7,611,977)	18,500,000
Payments on note payable	(8,573,345)	(8,016,686)
Payment of loan origination costs	(171,568)	(778,265)
Proceeds from long term debt	12,415,691	-
Net payments on common stock	(55)	(550)
Redemption of stockholders' equity credits	(2,735,036)	(2,513,518)
Patronage distribution	(4,486,543)	(5,669,240)
Net cash provided by (used in) financing activities	<u>(11,162,833)</u>	<u>1,521,741</u>
INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(1,236,350)	2,484,131
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	<u>12,710,115</u>	<u>10,225,984</u>
CASH AND CASH EQUIVALENTS, END OF YEAR	<u>\$ 11,473,765</u>	<u>\$ 12,710,115</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES

Organization Data

U.S. Tobacco Cooperative Inc. (USTC) was incorporated on June 1, 1946, under the provisions of the Cooperative Marketing Act of the State of North Carolina as a cooperative operating on a cooperative basis, with capital stock. USTC and its subsidiaries (collectively the Cooperative) have four primary business activities; 1) as a global leaf supplier, 2) as a manufacturer and distributor of 10 brands of tobacco consumer products within the United States of America, 3) as a contract manufacturer of consumer products, principally internationally, and 4) as a producer of cut rag and pipe tobacco. The Cooperative purchases the majority of its leaf tobacco from member growers. The leaf tobacco is processed, stored, and shipped internationally, domestically, and for use in the Cooperative's own brands of consumer products.

The authorized capital stock of USTC consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who patronize USTC. At all meetings of the members, each member is entitled to only one vote. No dividends are payable on the common stock. USTC has adopted a bylaw consent form in which each member agrees to take into taxable gross income patronage refunds allocated to them.

USTC is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members. The capital equity credits are used to accumulate capital as considered necessary by the board of directors. Capital equity credits bear no interest, have no due date, and may only be redeemed or retired at the discretion of the board of directors in order of issuance by years.

A summary of the Cooperative's significant accounting policies follows:

Consolidation Policy

The accompanying consolidated financial statements include the accounts of USTC and its wholly-owned subsidiaries, U.S. Flue-Cured Tobacco Growers, Inc. (USFC), Premier Manufacturing, Inc. (Premier), Franchise Wholesale Co., L.L.C. (Franchise), Big South Distribution, LLC (Big South), and King Maker Marketing, Inc. (KMM). KMM was acquired effective November 15, 2016. All material intercompany balances and transactions have been eliminated.

Revenue Recognition

Revenues are generated primarily from sales of leaf tobacco and tobacco consumer products. Sales are recognized upon shipment of goods to the customer at which time there is transfer of the title and risk of loss to the customer.

The Cooperative's accounting policy is to include federal and state excise taxes in revenues and cost of sales. Such revenues and cost of sales totaled \$69,542,106 and \$54,149,701 for the years ended April 30, 2017 and 2016, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES (CONTINUED)

Shipping and Handling Costs

Shipping and handling costs are included in cost of sales.

Cash and Cash Equivalents

For purposes of the statements of cash flows, the Cooperative considers money market funds and all other short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents. The Cooperative places its cash and cash equivalents with high credit-quality institutions.

The Cooperative maintains cash balances that from time to time may exceed the federally insured limits. The Cooperative has not experienced any losses on such accounts and management believes the Cooperative is not exposed to any significant credit risk on these accounts.

Interest-Bearing Obligations

The Cooperative's interest-bearing obligations consist of debt securities, which are classified as available for sale. Investments in debt securities are stated at fair values as adjusted for amortization of premium or discount, if applicable, and unrealized holding gains and losses are reported as accumulated other comprehensive income. Amortized discounts and premiums are included in net interest income. Interest on investments in debt securities is credited to income as it accrues on the principal amount outstanding adjusted for amortization of premiums and discounts computed by the effective interest method. Realized gains and losses on disposition of investments are included in net interest income in the accompanying consolidated statements of operations. The cost of investments sold is determined on the specific identification method.

Fair Value Measurements

The estimated fair value of the Cooperative's short-term financial instruments, including cash and cash equivalents, accounts receivable, income taxes receivable, accounts payable, accrued expenses, stock redemption and patronage payable, and customer deposits approximates their individual carrying amounts due to the relatively short period of time between their origination and expected realization. The fair value of the line of credit is estimated based on current rates offered to the Cooperative for similar debt of the same remaining maturities. The carrying value of the fixed rate long-term debt approximates fair value due to its proximity to current market rates for similar debt issues.

Accounts Receivable

Accounts receivable are recorded at net realizable value. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history, and current economic conditions. The allowance is reviewed periodically and adjusted for accounts deemed uncollectible by management. After all attempts to collect have failed, the receivable is written off against the allowance. The allowance for doubtful accounts totaled \$843,432 and \$868,165 as of April 30, 2017 and 2016, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES (CONTINUED)

Inventories

Inventories are priced at the lower of average cost (which approximates the first-in, first-out method) or market.

The Cooperative evaluates its inventory value at the end of each year to ensure that it is carried at the lower of cost or market. This evaluation includes a review of potential obsolete and slow-moving stock, based on historical product sales and forecasted sales, and an overall consolidated analysis of potential excess inventories. Events which could affect the amount of reserves for obsolete or slow moving inventories include a decrease in demand for the products due to economic conditions, price decreases by competitors on specific products or systems, or the discontinuance by a vendor. To the extent historical physical inventory results are not indicative of future results and if future events impact, either favorably or unfavorably, the salability of the Cooperative's products or its relationship with certain key vendors, the Cooperative's inventory reserves could differ significantly, resulting in either higher or lower future inventory provisions.

Property, Plant, and Equipment

Property, plant, and equipment are stated at cost and depreciated over their estimated useful lives using the straight-line method. Routine maintenance and repairs are charged to expense when incurred. When an asset is disposed of, the asset and related accumulated depreciation are written off and any gain or loss on the disposal is recognized. Major replacements and improvements are capitalized and depreciated over their estimated useful lives.

Accounting for Impairment of Long-Lived Assets

Long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate that an asset may not be recoverable and are grouped with other assets to the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. If the sum of the projected undiscounted cash flows is less than the carrying value of the assets, the assets are written down to the estimated fair value. Assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell.

No impairment of long-lived assets was recognized during the years ended April 30, 2017 and 2016.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES (CONTINUED)

Business Combinations – Valuation of Acquired Assets and Liabilities Assumed

The Cooperative allocates the purchase price for each business combination, or acquired business, based upon (i) the fair value of the consideration paid and (ii) the fair value of net assets acquired. The determination of the fair value of net assets acquired requires estimates and judgments of future cash flow expectations for the acquired business and the allocation of those cash flows to identifiable tangible and intangible assets. Fair values are calculated by incorporating expected cash flows into industry standard valuation techniques. For current assets and current liabilities, the book value is generally assumed to equal the fair value. Goodwill is the amount by which the purchase price consideration exceeds the fair value of tangible and intangible assets, less assumed liabilities. To the extent possible, the purchase price should be allocated to separate identifiable intangible assets, such as customer relationships and brands, which are amortized to expense over their estimated useful lives. Indefinite-lived intangible assets are not amortized, but are tested for impairment annually, and if impaired, their value is reduced to fair value. Acquisition costs are expensed as incurred.

Due to the time required to gather and analyze the necessary data for each acquisition, U.S. GAAP provides a "measurement period" of up to one year in which to finalize such calculations. Most calculations are considered preliminary until the end of the measurement period. All subsequent adjustments to initial valuations and estimates during the measurement period that reflect newly discovered information that existed as of the acquisition date are recorded as an adjustment to the acquired balance sheet; otherwise, those adjustments are reflected as income or expense, as appropriate. The consolidated balance sheet for the period of acquisition is modified for subsequent measurement period adjustments when that period is presented in future consolidated financial statements.

Income Taxes

Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and net operating loss carryforwards. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The Cooperative recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Cooperative's policy is to recognize interest and penalties related to income taxes in its income tax provision. The Cooperative has not accrued or paid interest or penalties which were material to its results of operations for the years ended April 30, 2017 and 2016. As of April 30, 2017 and 2016, the Cooperative had no material unrecognized tax benefits. The Cooperative files in the U.S. and various state jurisdictions.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 1 – ORGANIZATION DATA AND SIGNIFICANT POLICIES (CONTINUED)

Pension Plan

The Cooperative has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan was frozen effective July 31, 2010. The plan provides benefits through mutual funds invested in common stocks and bonds. The Cooperative is required to recognize in its consolidated balance sheet the funded status of a benefit plan measured as the difference between the fair value of plan assets and benefit obligations, net of tax.

Self-Insurance

The Company maintains a self-insured employee benefit plan which covers health care costs. Benefit costs are accrued based on the aggregate of the liability for reported claims and an estimated liability for claims incurred but not reported. The accompanying consolidated statements of operations include expenses relating to self-insured plans.

Advertising Costs

Advertising costs are expensed as incurred. Advertising expenses of \$583,316 and \$291,138 for the years ended April 30, 2017 and 2016, respectively, are included in selling, general, and administrative expenses in the accompanying consolidated statements of operations.

Use of Estimates

The preparation of financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates include the valuation of accounts receivable, inventories, trademarks, customer relationships, and the master settlement agreement grandfather exemption. Estimates also include the useful lives of property, plant, and equipment and are used in determining the master settlement agreement obligation, pension benefit obligations, accrued and deferred income taxes, and litigation contingencies.

Reclassifications

Certain amounts in these 2016 financial statements have been reclassified to conform to the 2017 presentation. These reclassifications had no effect on previously reported net margin.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 2 – BUSINESS COMBINATION

On October 8, 2016, Premier entered into a stock purchase agreement to acquire 100% of the outstanding securities of KMM for a purchase price of approximately \$23,895,000 financed by borrowings from a note payable. The acquisition was made to expand the number of consumer product offerings of the Cooperative and is considered a business combination. All activity since the effective date of acquisition on November 15, 2016, is included in the consolidated statement of operations for the year ended April 30, 2017.

The following table summarizes the approximate estimated fair values of the assets acquired and liabilities assumed at the date of acquisition:

	Amount
Cash	\$ 1,330,000
Accounts Receivable	598,000
Inventories	1,990,000
Prepaid Expenses	162,000
Intangible Assets	23,700,000
Total Assets Acquired	<u>27,780,000</u>
Accounts Payable	852,000
MSA Settlement Payable	2,667,000
Accrued Expenses	102,000
FDA Assessment Payable	264,000
Total Liabilities Assumed	<u>3,885,000</u>
Net Assets Acquired	<u>\$ 23,895,000</u>

Costs related to the acquisition, which included legal, accounting, and transaction fees in the amount of approximately \$1,290,000 were charged directly to operations and are included in other expenses on the consolidated statement of operations for the year ended April 30, 2017.

NOTE 3 – FAIR VALUE MEASUREMENTS

Under the accounting standards authoritative guidance on fair value measurements, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value, the Cooperative uses various methods including market, income, and cost approaches. Based on these approaches, the Cooperative often uses certain assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and/or the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated, or generally unobservable inputs. The Cooperative uses valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 3 – FAIR VALUE MEASUREMENTS (CONTINUED)

Based on the observability of the inputs used in the valuation techniques the Cooperative is required to provide the following information according to the fair value hierarchy. The fair value hierarchy ranks the quality and reliability of the information used to determine fair values. Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

- Level 1 – Quoted prices for identical assets and liabilities traded in active exchange markets, such as the New York Stock Exchange.
- Level 2 – Observable inputs other than Level 1 including quoted prices for similar assets or liabilities, quoted prices in less active markets, or other observable inputs that can be corroborated by observable market data. Level 2 also includes derivative contracts whose value is determined using a pricing model with observable market inputs or can be derived principally from or corroborated by observable market data.
- Level 3 – Unobservable inputs supported by little or no market activity for financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation, also includes observable inputs for nonbinding single dealer quotes not corroborated by observable market data.

The following tables summarize fair value measurements by level as of April 30, 2017 and 2016, for assets measured at fair value on a recurring basis:

April 30, 2017				
	Total	Level 1	Level 2	Level 3
Available for sale securities				
Money market funds	\$ 78,207	\$ 78,207	\$ -	\$ -
Mutual funds	485,664	485,664	-	-
Debt securities:				
Government agency (state taxable)	31,363,785	-	31,363,785	-
Agency mortgage-backed securities	28,521,778	-	28,521,778	-
Corporate bonds	69,049,639	-	69,049,639	-
Total available for sale securities	\$ 129,499,073	\$ 563,871	\$ 128,935,202	\$ -
April 30, 2016				
	Total	Level 1	Level 2	Level 3
Available for sale securities				
Money market funds	\$ 401,569	\$ 401,569	\$ -	\$ -
Debt securities:				
Government agency (state taxable)	16,974,256	-	16,974,256	-
Agency mortgage-backed securities	38,829,748	-	38,829,748	-
Corporate bonds	71,523,967	-	71,523,967	-
Total available for sale securities	\$ 127,729,540	\$ 401,569	\$ 127,327,971	\$ -

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 4 – INVESTMENT IN INTEREST-BEARING OBLIGATIONS

Investments in interest-bearing obligations at April 30, 2017 and 2016 were as follows:

		2017			
		Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term		\$ 25,120,985	\$ 35,677	\$ (4,438)	\$ 25,152,224
Long-term		104,603,386	137,110	(393,647)	104,346,849
		<u>\$ 129,724,371</u>	<u>\$ 172,787</u>	<u>\$ (398,085)</u>	<u>\$ 129,499,073</u>

		2016			
		Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term		\$ 20,949,910	\$ 145,945	\$ (240)	\$ 21,095,615
Long-term		105,774,274	950,310	(90,659)	106,633,925
		<u>\$ 126,724,184</u>	<u>\$ 1,096,255</u>	<u>\$ (90,899)</u>	<u>\$ 127,729,540</u>

The unrealized gains (losses) on the Cooperative's investment in interest-bearing obligations were primarily due to changes in interest rates and not credit quality. There were 72 and 39 debt securities in loss positions as of April 30, 2017 and 2016, respectively. It is unlikely that the Cooperative will be required to sell its investments before recovery of the amortized cost basis, which may be maturity. Accordingly, the Cooperative's investment in interest-bearing obligations are not considered to be other-than-temporarily impaired at April 30, 2017.

Contractual maturities of interest-bearing obligations as of April 30, 2017, are summarized below.

	Amortized Cost	Estimated Fair Value
Due in one year or less	\$ 25,120,985	\$ 25,152,224
Due after one year through five years	99,989,388	99,763,242
Due after five years through ten years	2,504,344	2,471,407
Due after ten years	2,109,654	2,112,200
	<u>\$ 129,724,371</u>	<u>\$ 129,499,073</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 5 – INVENTORIES

Inventories consisted of the following at April 30, 2017 and 2016:

	<u>2017</u>	<u>2016</u>
Processed tobacco	\$ 111,756,534	\$ 133,469,619
Materials and work in process	5,696,223	5,152,423
Tobacco products	<u>13,374,347</u>	<u>11,909,432</u>
	130,827,104	150,531,474
Reserve for obsolete and slow moving inventory	<u>(1,249,331)</u>	<u>(1,339,383)</u>
	<u>\$ 129,577,773</u>	<u>\$ 149,192,091</u>

During the years ended April 30, 2017 and 2016, the Cooperative determined that the market value of various tobacco products had permanently declined in value. In response, the Cooperative recorded an inventory write-down of \$11,509,147 and \$4,096,413 for the years ended April 30, 2017 and 2016, respectively, to present the impacted tobacco products at their net realizable value.

NOTE 6 – PROPERTY, PLANT, AND EQUIPMENT

Property, plant, and equipment, their estimated useful lives, and related accumulated depreciation at April 30, 2017 and 2016, are summarized as follows:

	<u>Estimated Useful Lives In Years</u>	<u>2017</u>	<u>2016</u>
Land	-	\$ 1,748,677	\$ 1,265,977
Buildings	5-20	17,196,370	14,408,143
Machinery and equipment	3-15	50,996,248	48,683,116
Furniture and fixtures	3-10	2,888,673	2,284,217
Automobiles and trucks	3-5	389,413	643,433
Construction in progress	-	<u>11,971,011</u>	<u>2,691,055</u>
		85,190,392	69,975,941
Less accumulated depreciation		<u>(44,554,256)</u>	<u>(40,611,176)</u>
		<u>\$ 40,636,136</u>	<u>\$ 29,364,765</u>

For the years ended April 30, 2017 and 2016, depreciation expense amounted to \$4,209,075 and \$3,919,780, respectively, of which \$2,791,234 and \$2,600,083 are included in cost of sales, and \$1,417,841 and \$1,319,697 are included in selling, general, and administrative expenses, respectively, in the accompanying consolidated statements of operations.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 6 – PROPERTY, PLANT, AND EQUIPMENT (CONTINUED)

The Company entered into various contracts during 2017 and 2016 for the acquisition of property, equipment, and facility upgrades. The acquisitions and upgrades are expected to be completed at various dates through January 2018. Costs totaling \$11,971,011 have been incurred and are included above as construction in progress at April 30, 2017. No interest has been capitalized in association with these contracts, and the total additional cost upon completion is estimated to be approximately \$3,270,000.

NOTE 7 – INTANGIBLE ASSETS

Intangible assets consisted of the following at April 30, 2017 and 2016:

	Estimated Lives	2017	2016
Master Settlement Agreement (MSA) - grandfather exemption	Indefinite	\$ 149,930,020	\$ 127,785,379
Trademarks	10 Year - Indefinite	5,864,000	5,064,000
Customer list and noncompete	5-10 Years	930,000	180,000
		156,724,020	133,029,379
Less accumulated amortization		(260,000)	(168,630)
		<u>\$ 156,464,020</u>	<u>\$ 132,860,749</u>

U.S. GAAP require that the unamortized value of indefinite lived intangible assets be evaluated annually to determine whether the amount reflected above has been impaired. During 2017 and 2016, no amounts were determined to be impaired.

A previously acquired customer list and noncompete agreement totaling \$180,000 was amortized over five years on a straight-line basis, with final amortization of \$11,370 recorded in 2017. As part of the acquisition of KMM, Premier acquired a customer list as well as a noncompete agreement totaling \$750,000. The customer list is being amortized over 10 years with \$35,000 recognized in 2017. The noncompete agreement is being amortized over five years with \$5,000 recognized in 2017.

Premier carries \$5,064,000 related to the Wildhorse, First Class, Ultra Buy, and Shield trademarks which is considered to be an indefinite lived intangible asset. These trademarks were available commercially prior to February 15, 2007, the effective date of the FDA's Substantial Equivalence requirements. Premier also owns the 1839 and Traffic brands, which have no costs associated with them. Premier also acquired the Ace, Gold Crest, Checkers, and Hi-Val trademarks valued at \$800,000 as part of the acquisition of KMM which are being amortized over 10 years with \$40,000 recognized in 2017.

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NOTE 7 – INTANGIBLE ASSETS (CONTINUED)

Future amortization of the intangible assets is as follows:

<u>Year Ending</u> <u>April 30.</u>	<u>Amount</u>
2018	\$ 160,000
2019	160,000
2020	160,000
2021	160,000
2022	155,000
Later years	675,000

In 1998, the major United States cigarette manufacturers entered into the MSA with attorneys general representing 46 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas. The MSA became effective on November 23, 1998, when final approval was achieved in 80% of the settling jurisdictions. The MSA settled all health care cost recovery actions brought by settling jurisdictions and contains releases of various additional present and future claims. To entice other cigarette manufacturers into joining the MSA, the agreement provided that if a subsequent participating manufacturer (SPM) joined within 90 days following the MSA's "Execution Date," that SPM would be exempt from making annual payments to the settling states unless their share of the national cigarette market exceeded its 1998 market share or 125% of its 1997 market share.

Premier became a signatory to the MSA in 1999, and was granted an exemption in perpetuity from payment obligations under the MSA except to the extent that its market share exceeds approximately 0.25% of the total cigarettes sold in the United States. KMM became a signatory to the MSA in 1999, and was granted an exemption in perpetuity from payment obligations under the MSA except to the extent that its market share exceeds approximately 0.08% of the total cigarettes sold in the United States.

NOTE 8 – MASTER SETTLEMENT AGREEMENT OBLIGATION

As a party to the MSA, Premier, USFC, and KMM are required to make certain payments to the extent cigarettes sold exceed a specified level. The payment amounts are based generally on Premier's, USFC's, and KMM's relative market share and are subject to several adjustments, including inflation, United States cigarette volume, and certain other factors. At April 30, 2017 and 2016, the Cooperative's management estimated the liability to be \$3,858,240 and \$1,553,150, respectively. The balances accrued at April 30, 2017, are expected to be paid in April 2018, along with the accumulated obligation from April 30, 2017, through the end of the 2017 calendar year. The balance accrued at April 30, 2016, was paid in April 2017, along with the accumulated obligation from April 30, 2016, through the end of the 2016 calendar year.

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NOTE 9 – ACCRUED EXPENSES

The components of accrued expenses at April 30, 2017 and 2016 are summarized as follows:

	<u>2017</u>	<u>2016</u>
Accrued tobacco product related taxes	\$ 3,563,240	\$ 3,291,647
Other accrued expenses	8,571,266	4,908,848
Accrued master settlement agreement obligation	3,652,826	1,343,830
Accrued insurance	199,607	167,356
Accrued salaries and related benefits	2,327,204	763,317
Accrued interest	60,000	60,000
	<u>\$ 18,374,143</u>	<u>\$ 10,534,998</u>

NOTE 10 – REVOLVING LINES OF CREDIT

On November 15, 2016, the Cooperative entered into a second amended and restated syndicated loan (Loan Agreement) with six financial institutions which consists of a term loan (Term Loan) and a revolving credit facility (Revolving Credit Facility). The Loan Agreement is collateralized by all assets of the Cooperative. The Cooperative is required to maintain a minimum tangible net worth and fixed charge coverage ratio under the conditions of the Loan Agreement. The Cooperative failed to attain the required fixed charge coverage ratio for the quarter ended April 30, 2017, however the lender has subsequently waived the failure as of April 30, 2017, as well as modified the covenant requirements for the first three quarters of fiscal year ending April 30, 2018.

The Revolving Credit Facility provides for up to \$195,000,000 in funding through the use of two separate tranches (Tranche A and Tranche B) and a swing line (Swing Line), all of which mature on March 24, 2021. Tranche A provides up to \$95,000,000 in funding, subject to a borrowing base limitation as defined in the Loan Agreement. Interest-only payments are due monthly at the one-month London Interbank Offered Rate (LIBOR) rate plus 1.00% (1.9828% at April 30, 2017). Tranche B provides up to \$100,000,000 in funding, subject to a borrowing base limitation as defined in the Agreement, and requires a zero balance for 60 consecutive days within each fiscal year. Interest-only payments are due monthly at the one-month LIBOR rate plus 1.50% (2.4828% at April 30, 2017). The Swing Line provides up to \$10,000,000 in funding. Interest-only payments are due monthly at the prime rate plus 1.00% (5.00% at April 30, 2017). At April 30, 2017 and 2016, Tranche A had an outstanding balance of \$89,888,023 and \$95,000,000, respectively. Tranche B had an outstanding balance of \$-0- and \$2,500,000 as of April 30, 2017 and 2016, respectively. There was no balance outstanding on the Swing Line at April 30, 2017 or 2016.

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NOTE 11 – LONG-TERM DEBT

Long-term debt consisted of the following as of April 30, 2017 and 2016:

	<u>2017</u>	<u>2016</u>
Note payable to financial institutions, payable in monthly interest payments and quarterly principal payments of \$2,000,000 at a variable interest rate equal to the one-month LIBOR rate plus 1.00%, refinanced on November 15, 2016.	\$ -	\$ 20,000,000
Note payable to financial institutions, payable in monthly interest payments and quarterly principal payments of \$2,208,333 at a variable interest rate equal to the one-month LIBOR rate plus 1.10% (2.0828% at April 30, 2017), maturing March 24, 2021.	48,583,333	-
Warehouse financing contract payable in monthly payments of \$13,438, including imputed interest at 2.00% through May 24, 2021.	1,709,017	-
Equipment financing contracts payable in various monthly payments including interest, through 2021.	66,388	83,925
Loan origination fees and costs	(888,519)	(929,285)
	49,470,219	19,154,640
Less current portion of long-term debt	(8,980,688)	(8,008,524)
Long-term debt, less current portion	<u>\$ 40,489,531</u>	<u>\$ 11,146,116</u>

Remaining maturities of long-term debt subsequent to April 30, 2017 are as follows:

<u>Year Ending</u> <u>April 30,</u>	<u>Amount</u>
2018	\$ 8,980,688
2019	8,983,043
2020	8,981,560
2021	8,991,268
2022	10,014,524
Thereafter	4,407,655
	<u>\$ 50,358,738</u>

Loan origination fees and costs were \$1,132,897 and \$961,329 at April 30, 2017 and 2016, respectively, and accumulated amortization was \$244,378 and \$32,044 at April 30, 2017 and 2016, respectively. The costs and fees are amortized over the lives of the applicable debt securities. Total amortization expense for the years ended April 30, 2017 and 2016, was \$212,334 and \$293,565, respectively, and is included as part of interest expense.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 11 – LONG-TERM DEBT (CONTINUED)

The Cooperative entered into an interest rate swap agreement effective November 30, 2016, to effectively fix the interest rate on the \$48,583,333 term note above from a variable interest rate note to a fixed rate of 2.67%. The interest rate swap agreement matures March 24, 2021. The Cooperative's purpose in entering into the swap agreement was to hedge against the risk of interest rate increases on the related variable rate debt. The derivative financial instrument is reflected on the consolidated balance sheet at its fair value which was insignificant as of April 30, 2017. During 2017, the Cooperative closed out previous interest rate swap agreements due to a refinancing of debt during the year. The Cooperative has not adopted hedge accounting for any of these financial instruments. The cash flow effects of the swap agreements are included in interest expense on the consolidated statement of operations. The effect for the years ended April 30, 2017 and 2016, was to increase interest expense by \$140,178 and \$186,010, respectively.

NOTE 12 – OPERATING LEASES

During the fiscal years ended April 30, 2017 and 2016, the Cooperative entered into year-to-year operating leases for purposes of operating tobacco marketing centers and office space for the 2016 and 2015 crop years. Total lease expense for the centers amounted to \$915,437 and \$990,000 for the years ended April 30, 2017 and 2016, respectively.

The Cooperative has noncancelable operating leases, primarily for certain equipment and vehicles, that provide for renewal options for varying periods.

Total lease and rental expenses for operating leases amounted to \$1,118,108 and \$1,348,783 for the years ended April 30, 2017 and 2016, respectively, and are included as a component of selling, general, and other administrative expenses in the accompanying consolidated statements of operations.

Commitments for minimum future lease payments, by year and in aggregate, to be paid under noncancelable operating leases with initial or remaining terms in excess of one year as of April 30, 2017, are as follows:

Year Ending	Amount
April 30,	
2018	\$ 1,437,201
2019	748,626
2020	406,378
2021	216,911
2022	4,777
	<u>\$ 2,813,893</u>

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NOTE 13 – STOCK REDEMPTION PAYABLE

Cooperative membership requires participation in the crop year, which runs May 1 through April 30. Beginning in May 2004, the board of directors approved a plan to terminate stock ownership of members who did not enter into marketing agreements with the Cooperative for the subsequent year.

During the year ended April 30, 2017, the Cooperative offered an open call for redemption of the 1967 to 1973, capital equity credits, from December 1, 2016 through February 28, 2017.

The amounts of capital equity credits offered for redemption and called for redemption are as follows:

<u>Crop year</u>	<u>Offered for Redemption</u>	<u>Called for Redemption</u>
1967	\$ 4,168,283	\$ 85,638
1968	1,924,076	38,515
1969	2,645,548	68,430
1970	7,744,198	201,880
1971	3,063,424	90,529
1972	1,543,179	41,244
1973	753,610	23,635
	<u>\$ 21,842,318</u>	<u>\$ 549,871</u>

The balance of stock redemption payable comprises the following at April 30, 2017 and 2016:

	<u>2017</u>	<u>2016</u>
Terminated stock balances payable	\$ 4,024,075	\$ 4,024,090
Balance due on 1967 to 1973 capital credits called for redemption	-	38,578
	<u>\$ 4,024,075</u>	<u>\$ 4,062,668</u>

NOTE 14 – CASH FLOW DISCLOSURES

Cash paid for interest and income taxes for the years ended April 30, 2017 and 2016 were as follows:

	<u>2017</u>	<u>2016</u>
Interest	\$ 2,069,735	\$ 1,744,450
Income taxes	137,691	421,446

Noncash investing and financing activities consisted of acquisition of property, plant, and equipment by notes payable of \$1,848,158 and \$100,611 at April 30, 2017 and 2016, respectively. In addition, the Cooperative acquired KMM using new long-term borrowings of \$24,584,309.

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NOTE 15 – INCOME TAXES

The provision (credit) for income taxes consisted of the following for the years ended April 30, 2017 and 2016:

		2017		
		Current	Deferred	Total
Federal		\$ -	\$ (2,051,916)	\$ (2,051,916)
State		164,271	(412,165)	(247,894)
		<u>\$ 164,271</u>	<u>\$ (2,464,081)</u>	<u>\$ (2,299,810)</u>

		2016		
		Current	Deferred	Total
Federal		\$ (19,413)	\$ (1,805,347)	\$ (1,824,760)
State		104,887	(369,133)	(264,246)
		<u>\$ 85,474</u>	<u>\$ (2,174,480)</u>	<u>\$ (2,089,006)</u>

The actual provision (credit) for income taxes for 2017 and 2016 differs from the "expected" taxes (computed by applying the U.S. federal corporate income tax rate of 34%) to the margin before income taxes as follows:

	2017	2016
Computed "expected" tax expense	\$ (5,000,000)	\$ 2,526,900
Change in income tax expense (benefit) resulting from:		
State income taxes, net of federal income tax benefit	154,400	318,840
Patronage dividends	-	(3,178,100)
Cancellation of 2014 nonqualified equity credits	1,929,557	-
Nondeductible expenses	94,500	103,000
Valuation allowance	212,183	38,159
Other, net	309,550	(1,897,805)
	<u>\$ (2,299,810)</u>	<u>\$ (2,089,006)</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 15 – INCOME TAXES (CONTINUED)

The tax effects of temporary differences that give rise to the net deferred tax liabilities at April 30, 2017 and 2016 are presented below:

	<u>2017</u>	<u>2016</u>
Deferred tax assets		
Recognition of certain retirement costs	\$ 2,977,878	\$ 2,901,326
Net operating losses and credits	10,077,919	3,904,407
Master settlement agreement	1,477,228	593,495
Allowances and reserves	322,950	332,421
Inventories	2,996,899	2,643,040
Accrued expenses	1,826,899	1,411,678
Capital loss	77,288	83,411
Nonqualified equity credits	1,452,069	3,705,954
Less valuation allowance	<u>(1,064,986)</u>	<u>(852,803)</u>
	<u>20,144,144</u>	<u>14,722,929</u>
Deferred tax liabilities		
Property, plant, and equipment	2,710,056	3,185,980
Intangibles	<u>19,254,546</u>	<u>15,269,676</u>
	<u>21,964,602</u>	<u>18,455,656</u>
	<u>\$ (1,820,458)</u>	<u>\$ (3,732,727)</u>

As of April 30, 2017 and 2016, the Cooperative has \$22,203,918 and \$4,716,746, respectively, of federal net operating loss carry forwards, which expire in 2035 through 2037.

As of April 30, 2017 and 2016, the Cooperative had state net operating loss carryovers of \$33,181,927 and \$26,501,024, respectively, which expire in 2018 through 2037. A valuation allowance is required to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all the evidence, both positive and negative, management has determined that \$1,064,986 and \$852,803 valuation allowance at April 30, 2017 and 2016, respectively, is necessary to reduce the deferred tax asset related to the state net operating losses that will not be realized. The change in the valuation allowance for 2017 and 2016 was \$212,183 and \$38,159, respectively. After taking into account the valuation allowance, the Cooperative has a net deferred tax asset relating to state net operating losses for the years ending April 30, 2017 and 2016 of \$358,518 and \$284,091, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 16 – RETIREMENT PLANS

Defined Benefit Pension Plan: The Cooperative sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Cooperative were eligible to participate after one year of service, which is the completion of 1,000 or more hours of service within a period in which the employee is employed for 12 consecutive months. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service. On May 31, 2010, the Cooperative's board of directors approved a Certificate of Resolution to freeze benefits after July 31, 2010.

The Cooperative's funding policy requires a contribution in the amount necessary to satisfy the minimum required contributions under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), subject to the Cooperative's long-term funding strategy. The Cooperative's funding policy is to contribute funds to the trust for the plan as necessary to provide for current service and for any unfunded projected benefit obligation over a reasonable period. To the extent that these requirements are fully covered by assets in the trust, the Cooperative may elect not to make a contribution in a particular year. The Cooperative made contributions of \$384,255 and \$632,719 to the plan for the years ended April 30, 2017 and 2016, respectively. The Cooperative anticipates making contributions of \$381,000 to the plan for the year ending April 30, 2018.

The following table sets forth the plan's funded status and amounts recognized in the Cooperative's consolidated balance sheets at April 30, 2017 and 2016, as follows:

	Pension Benefits	
	2017	2016
Change in projected benefit obligation:		
Projected benefit obligation - beginning of year	\$ 24,195,266	\$ 23,251,553
Interest cost	942,983	905,666
Actuarial loss	(581,600)	1,452,512
Benefit payment	(1,622,875)	(1,414,465)
Projected benefit obligation - end of year	<u>22,933,774</u>	<u>24,195,266</u>
Change in plan assets:		
Fair value of plan assets - beginning of year	16,618,026	17,478,442
Actual return on plan assets	1,712,609	(78,670)
Employer contributions	384,255	632,719
Benefit payments	(1,622,875)	(1,414,465)
Fair value of plan assets - end of year	<u>17,092,015</u>	<u>16,618,026</u>
Funded status - end of year, and noncurrent liability recognized in the consolidated balance sheets	<u>\$ (5,841,759)</u>	<u>\$ (7,577,240)</u>

The accumulated benefit obligation as of April 30, 2017 and 2016 was \$22,933,774 and \$24,195,266, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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April 30, 2017 and 2016

NOTE 16 – RETIREMENT PLANS (CONTINUED)

Amounts recognized in accumulated other comprehensive loss as of April 30, 2017 and 2016, not yet reflected in net periodic benefit cost, consist of:

	Pension Benefits	
	2017	2016
Net loss	\$ 7,774,754	\$ 9,469,799
Less deferred tax benefit	(2,977,879)	(3,801,891)
	<u>\$ 4,796,875</u>	<u>\$ 5,667,908</u>

The net periodic cost (credit) of the plan was \$343,819 and (\$52,455) for 2017 and 2016, respectively. These amounts included the following reclassification adjustments of other comprehensive income:

	2017	2016
Amortization of net gain	<u>\$ 605,980</u>	<u>\$ 396,206</u>

The estimated gain that will be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2018 is \$461,000.

The following table provides the weighted average actuarial assumptions at April 30, 2017 and 2016:

	Pension Benefits	
	2017	2016
Weighted-average assumptions used to determine benefit obligations as of April 30:		
Discount rate	4.3%	4.0%
Weighted-average assumptions used to determine Net periodic benefit cost for years ended April 30:		
Discount rate	4.0%	4.0%
Expected long-term return on plan assets	7.5%	8.0%

During 2016, the Cooperative changed from the RP-2000 Mortality Table to the RP-2014 Mortality Table, to better reflect current and expected future mortality improvements.

Management determines the expected return on plan assets based on historical performance of the plan's investments. Management compares their expected rate of return with other companies to ensure that it is in line with broad market expectations.

The plan holds investments in various equities and mutual funds covering a wide range of investment opportunities. The various mutual funds are valued at fair value based on quoted market prices.

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NOTE 16 – RETIREMENT PLANS (CONTINUED)

The fair values of the Cooperative's pension plan assets at April 30, 2017 and 2016, respectively, are as follows:

April 30, 2017				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$ 4,876,876	\$ 4,876,876	\$ -	\$ -
International equities	2,591,324	2,591,324	-	-
Real estate	263,731	263,731	-	-
Fixed income	7,781,875	7,781,875	-	-
Commodities	273,008	273,008	-	-
Hedge funds	933,485	933,485	-	-
Money market account	371,716	371,716	-	-
Total	\$ 17,092,015	\$ 17,092,015	\$ -	\$ -

April 30, 2016				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$ 5,262,687	\$ 5,262,687	\$ -	\$ -
International equities	2,712,910	2,712,910	-	-
Real estate	343,233	343,233	-	-
Fixed income	6,568,244	6,568,244	-	-
Commodities	348,779	348,779	-	-
Hedge funds	917,770	917,770	-	-
Money market account	464,403	464,403	-	-
Total	\$ 16,618,026	\$ 16,618,026	\$ -	\$ -

The investment policy guidelines outline risk tolerance, goals, permissible and prohibited investments, and target investment allocations.

Risk tolerance as defined by the policy guidelines identify that historical capital market returns allow for the assumption of short run investment risks in favor of greater returns provided by capital markets over the longer term.

Permissible investments as defined by the policy guidelines are individual securities, separate accounts, mutual funds, trusts, private placements, partnerships, commingled funds, pooled funds, contracts and other legally constituted means of buying and selling investments including domestic equities, fixed income investments, cash equivalents, international equities, and real estate.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 16 – RETIREMENT PLANS (CONTINUED)

Prohibited investments as defined by the policy guidelines are short sales, margin purchases, securities lending, borrowings of plan assets, purchase of letter stock (restricted stock), options, futures, loans, investments requiring pledging of plan assets as collateral and any other investment not outlined as a permissible investment under the policy guidelines unless authorized in writing by the committee.

The current investment policy target mix is as follows:

Cash	2.50%
Fixed income	45.12%
U.S. equities	28.62%
International equities	15.12%
Real estate	1.62%
Commodities	1.62%
Hedge funds	5.40%

Benefits expected to be paid in each of the next five fiscal years, and in the aggregate for the five fiscal years thereafter, are as follows:

Year Ending	Amount
April 30,	
2018	\$ 1,604,078
2019	1,550,838
2020	1,496,923
2021	1,517,490
2022	1,472,636
2023-2027	7,491,959

Defined Contribution Plans: The Cooperative maintains a 401(k) plan for all of its eligible employees. The plan year is January 1 to December 31, and allows eligible employees to defer a portion of their compensation up to the maximum allowed by law (\$18,000 in 2017 and 2016 with catch-up contributions of \$6,000 in 2017 and 2016 for age 50 and older). The plan allows for a 100% match of the first 3% of an employee's elective contribution and a 50% match of an additional 2% of an employee's elective contribution. The Cooperative may make discretionary matching and profit sharing contributions to the plan. The board of directors did not elect to make either of these additional contributions for the years ended April 30, 2017 and 2016.

The Cooperative also provides a deferred compensation plan for certain executive positions, with defined terms and amounts.

For the years ended April 30, 2017 and 2016, total employer contributions made to these defined contribution plans were \$705,104 and \$337,598, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 17 – COMMITMENTS AND CONTINGENCIES

The Cooperative is currently engaged in several lawsuits.

In 2005, two class-action lawsuits (*Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corp.* & *Fisher v. Flue-Cured Tobacco Cooperative Stabilization Corp.*) were filed against the Cooperative in North Carolina Superior Court in Wake County, North Carolina seeking to dissolve the Cooperative and distribute its assets based on allegations that the Cooperative has no valid business purpose following termination of the Federal Tobacco Loan Program. These lawsuits have since been consolidated into a single action. The claim for dissolution has been dropped. Plaintiffs are nonetheless still advancing claims seeking to force the Cooperative to distribute a substantial portion of its reserves. In February 2014, the North Carolina Superior Court (state trial court) issued an order certifying named plaintiffs as representatives for a class consisting of all former and present members of the Cooperative from 1946 through 2004, plus heirs and assigns, resulting in members of this certified class well in excess of 800,000. The North Carolina Superior Court's order was affirmed on appeal by the North Carolina Supreme Court in December 2016. The case is now proceeding before the trial court. The trial court has set trial for September 2018, and the parties are now in the early stages of discovery. The Cooperative intends to continue vigorously defending itself in this case. That said, as described below, the Cooperative has conducted a two-day mediation in the parallel class action brought by an overlapping set of plaintiffs in federal court. The Cooperative has reached a provisional settlement to resolve the parallel class action litigation in federal court, which, if approved, may aid in defending against this state court action.

In October 2012, a civil, class-action lawsuit (*Speaks v. United States Tobacco Cooperative Inc.*) was filed against the Cooperative in the United States District Court for the Eastern District of North Carolina. Those plaintiffs seek to dissolve the Cooperative and distribute its assets to the Cooperative's members based on allegations that the Cooperative no longer serves a valid business purpose following the termination of the Federal Tobacco Loan Program. In May 2017, the Cooperative participated in a two-day mediation with the *Speaks* plaintiffs, which led to a provisional agreement to settle the *Speaks* action. The Cooperative is in the process of memorializing the terms of the settlement for presentation to the Federal Court for preliminary and, eventually final approval. If the tentative settlement does not gain acceptance, the Cooperative will continue to vigorously defend itself in this case alongside the others.

In May 2007, certain individual plaintiffs (all former members of the Cooperative) represented by the same counsel filed a series of individual lawsuits against the Cooperative in the Superior Court of Georgia in Berrien County, Georgia. The presiding state court judge has stayed all cases while the lead case, *Rigby v. Flue-Cured Tobacco Cooperative Stabilization Corp.* (in which seven individual plaintiffs, all former members of the Cooperative, initially joined in filing suit), proceeded to final resolution. In an earlier round of the *Rigby* litigation, the trial judge sided with the Cooperative in dismissing all claims. On a prior appeal, the Georgia Court of Appeals reversed in part by reinstating two claims (one for breach of fiduciary duty and the other for potential recovery of attorney's fees in connection with that claim) for further merits proceedings, while otherwise affirming dismissal of all other claims by the plaintiffs.

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NOTE 17 – COMMITMENTS AND CONTINGENCIES (CONTINUED)

Following the partial reversal and remand back to the trial court, the trial afforded the Cooperative discovery into the two remaining claims as well as opportunity to seek summary judgment. The Cooperative then obtained that discovery, moved for summary judgment, and obtained summary judgment dismissing plaintiffs' two remaining claims. On appeal, the Georgia Court of Appeals affirmed the trial court's dismissal in November 2016. In June 2017, the Georgia Supreme Court denied the plaintiffs' petition for certiorari, thereby effectively ending the case. Now that the *Rigby* case has been finally resolved in favor of the Cooperative, the Cooperative will be pursuing similar dismissal of the parallel actions in Georgia that have been stayed.

In July 2013, the Cooperative filed a lawsuit (*US Tobacco Cooperative, et al v. Big South Wholesale Virginia, et. al.,*) in the United States District Court for the Eastern District of North Carolina. The Cooperative's lawsuit states claims for RICO violations breach of contract, unfair trade practices, fraud in the inducement, fraud and other legal violations. The defendants include the former Chairman of the Board, two former executives, a former consultant, and several entities that they owned or controlled and unnamed co-conspirators. Some of the defendants have filed counter-claims against the plaintiffs. Additionally, the Alcohol and Tobacco Tax and Trade Bureau (TTB) is considering levying a civil tax assessment against USFC for failing to pay excise taxes on certain cigarettes manufactured by USFC in 2011-2013 which directly corresponds to the circumstances in the Big South case. The TTB has not yet sought to levy an assessment and is aware of our Big South suit. The TTB and the Company are currently in negotiations as USFC is vigorously denying any liability. The judge presiding over the case, the Honorable James C. Fox, recently retired and was replaced by the Honorable Terrence W. Boyle. Judge Boyle held a status conference on May 17, 2017 where he indicated he would make decisions quickly on several pending motions, including summary judgment. In the last several months, the facts underlying this case and the government's role in the allegations have been the subject of a series of articles in *The New York Times* and are now being investigated by the Committee on Oversight and Government Reform of the U.S. House of Representatives and the U.S. Senate's Committee on the Judiciary. Judge Boyle has indicated he would partially grant the Cooperative's motion to lift the current seal in the proceedings in this case which will allow the press and Congress material access to the previously sealed pleadings and documents.

During July 2009, the State of California (California Board of Equalization – BOE) performed a Cigarette and Tobacco Products tax audit of Franchise. During the audit period (June 2006 through June 2009), Franchise routinely sold both stamped and unstamped product into California. At the conclusion of the audit, Franchise was notified that California statutes preclude Franchise from shipping unstamped product into California, which was in contradiction of guidance the State of California had previously provided Franchise. The Cooperative has recorded an accrued expense for \$1,380,000 related to this ongoing dispute. This dispute occurred prior to the Cooperative's acquisition of Franchise, but was known and accounted for as part of that transaction.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 17 – COMMITMENTS AND CONTINGENCIES (CONTINUED)

On November 10, 2016, USTC filed suit against three (3) growers from South Carolina (*US Tobacco Cooperative Inc. v. Phillip Owens, Chad Owens, and Charles Cuttino*) in Wake County, North Carolina Superior Court alleging these growers sold multiple bales of tobacco to USTC that were intentionally laced and/or nested with old, cigarette-beetle infested tobacco, in direct violation of their Marketing Agreements and as a result of which USTC incurred significant damages to mitigate the infestation. USTC seeks to collect \$371,289 in out-of-pocket damages from the three defendants. The defendants deny that they sold old or infested tobacco to USTC. USTC had the bales at issue inspected by a neutral 3rd party at the USDA who issued a report concluding that the “bales appeared to have been prepared or arranged to conceal leaves of inferior grades, distinctly different stalk positions, beetle infested, carry-over-crop year and condition (fermented), any of which could not have been readily detected upon inspection”. Written discovery has been exchanged and responded to by both sides, and the Court has issued a Case Management Order requiring the case be mediated by September 7, 2017 with the case to be set for trial on November 6, 2017 if not resolved.

On February 16, 2017, USTC and USFC filed suit against former USTC Chairman of the Board, Albert Johnson and others (*US Tobacco Cooperative Inc. and US Flue-Cured Tobacco Growers, Inc. v. Albert M. Johnson, et. al.*) in Wake County, North Carolina Superior Court alleging that Mr. Johnson had abused his position as Chairman of the USTC Board of Directors to arrange for unauthorized, illegal, and secretive kick-backs to Mr. Johnson from the other defendants in the case. USTC and USFC seek damages relating to at least \$424,322 in kick-backs received by Mr. Johnson and intend to investigate via written discovery request, depositions, and subpoenas whether additional kick-backs and/or unauthorized payments were made to Mr. Johnson or the other defendants as a result of business dealings orchestrated by Mr. Johnson during his tenure as Chairman of the Board for USTC. All defendants have filed motions to dismiss the lawsuit. USTC and USFC are in the process of responding to those motions to dismiss, and will subsequently send discovery requests and subpoenas to defendants seeking further information needed to investigate and/or support the claims asserted against the defendants in this lawsuit.

USFC and Premier were also recently named as defendants in a suit filed in Miami, Florida by VIBO Corporation (*VIBO Corporation, Inc. d/b/a General Tobacco v. U.S. Flue-Cured Tobacco Growers, Inc., Premier Manufacturing, Inc., Hobart Anderson and Unknown Unnamed Confidential Informant*). The plaintiff has asserted two common law claims against USFC and Premier for unjust enrichment and unfair competition. This suit and the claims asserted arise from substantially the same facts underpinning the claim against Big South Wholesale of Virginia, as described above. USFC and Premier removed the case to federal court and recently filed a motion to dismiss the claims against it.

The Cooperative is also party to legal actions arising in the ordinary course of its business. Management asserted that these cases are without merit and will be defended vigorously. While the results cannot be predicted with certainty, management believes it is not possible to form an assessment of potential outcome or an estimate of liability, if any, and that the final outcome of such legal actions will not have a material adverse effect on the Cooperative's financial position.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 18 – BUSINESS CONCENTRATIONS

Customer Concentrations

The Cooperative has one customer which accounts for over 10% of total sales and total accounts receivable. For the years ended April 30, 2017 and 2016, sales to this customer accounted for 17% and 27% of total sales, respectively. At April 30, 2017 and 2016, the customer's account balance accounted for 83% and 93% of total receivables, respectively.

NOTE 19 – ACCUMULATED OTHER COMPREHENSIVE LOSS

Accumulated other comprehensive loss consisted of the following at April 30, 2017 and 2016:

April 30, 2017			
	Total	Unrealized Gains (Losses) on Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$ (5,396,558)	\$ 271,350	\$ (5,667,908)
Other comprehensive income (loss)	54,937	(504,701)	559,638
Reclassification adjustments	390,347	78,952	311,395
Balance, end of year	\$ (4,951,274)	\$ (154,399)	\$ (4,796,875)

April 30, 2016			
	Total	Unrealized Gains Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$ (4,118,642)	\$ 123,439	\$ (4,242,081)
Other comprehensive income (loss)	(1,509,295)	143,471	(1,652,766)
Reclassification adjustments	231,379	4,440	226,939
Balance, end of year	\$ (5,396,558)	\$ 271,350	\$ (5,667,908)

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2017 and 2016

NOTE 19 – ACCUMULATED OTHER COMPREHENSIVE LOSS (CONTINUED)

The allocation on income tax benefit (expense) for each component of other comprehensive income (loss) was as follows for the years ended April 30, 2017 and 2016:

	April 30, 2017		
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding losses arising during the year	\$ (827,379)	\$ 322,678	\$ (504,701)
Add reclassification adjustment for losses included in net margin - other revenue, net	129,430	(50,478)	78,952
Defined benefit pension plan			
Net gain arising during the year	1,089,065	(529,427)	559,638
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	605,980	(294,585)	311,395
	<u>\$ 997,096</u>	<u>\$ (551,812)</u>	<u>\$ 445,284</u>
April 30, 2016			
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding gains arising during the year	\$ 250,482	\$ (107,011)	\$ 143,471
Add reclassification adjustment for losses included in net margin - other revenue, net	7,751	(3,311)	4,440
Defined benefit pension plan			
Net loss arising during the year	(2,885,509)	1,232,743	(1,652,766)
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	396,206	(169,267)	226,939
	<u>\$ (2,231,070)</u>	<u>\$ 953,154</u>	<u>\$ (1,277,916)</u>

NOTE 20 – SUBSEQUENT EVENTS

Management evaluated and noted no additional subsequent events requiring recognition or disclosure through July 11, 2017, which is the date the consolidated financial statements were available to be issued.

This information is an integral part of the accompanying consolidated financial statements.

EXHIBIT F



United States
Department of
Agriculture

Agricultural
Stabilization and
Conservation Service

P.O. Box 2415
Washington, D.C.
20013

CONFIDENTIAL

DEC 11 1985

Mr. Fred Bond
General Manager
Flue-Cured Tobacco Cooperative
Stabilization Corporation
P.O. Box 12300
Raleigh, NC 27605


Dear Mr. Bond:

This will confirm approval of your request to establish a No-Net-Cost Tobacco Account in lieu of the No-Net Cost Tobacco Fund.

We understand that approximately \$99 million may be needed to pay the \$.15 rebate for purchases of the 1985 crop under the current special offer to be closed December 23, 1985. Approximately \$204.9 million would remain in the Fund and would be transferred to the Account on December 31, 1985.

This action has been approved by the Executive Vice President, Commodity Credit Corporation.

Sincerely,


Acting Director,
Tobacco and Peanuts Division

SC 08879

EXHIBIT G

Release

Department of the Treasury
Internal Revenue Service
District Office

For Release: IMMEDIATE

Greensboro, NC 27401

Telephone: (919) 333-3266

January 17, 1986

SOME LEAF GROWERS
MAY GET TAX BREAK

Greensboro - Some tobacco growers may be able to get a tax break on their 1985 Federal income tax return under a new change in the Tobacco Stabilization Program, the Internal Revenue Service said.

In 1982, 1983, and 1984 growers of flue-cured leaf were assessed a poundage rate, with the money going into Stabilization, a grower's cooperative. Those funds have been transferred to an account within the Commodity Credit Corporation, the lending agency of the U.S. Department of Agriculture.

Fred C. Nielsen, IRS District Director in Greensboro, remarked, "Since the CCC is an agency of the U.S. Government, the assessments paid after 1985 will be deductible as a business expense to the farmer. Also, the cancellation of the preferred stock and per-unit retain certificates in Stabilization makes them worthless. Therefore, growers will have a business loss on the 1985 tax return equal to the value of preferred stock and certificates issued for the 1982 and 1983 crops and the value of certificates to be issued for the 1984 and 1985 crops."

Nielsen cautioned that if growers had reported only net warehouse receipts as income in either 1982, 1983, or 1984, they should not declare losses on per-unit certificates or preferred stock.

If the value of these certificates was reported as income in previous years, the loss would be reported as an ordinary loss on the 1985 tax return, Nielsen added, because the grower was forced to buy the stock in order to market the tobacco and no investment or profit motive was evident at the time of purchase.

Farmers needing additional information concerning this change may call the IRS toll-free at 1-800-424-1040 any weekday between 8:00 a.m. and 4:30 p.m.

Growers are also reminded that the 1984 crop per unit retain certificates must be included in income in 1985 in order to prevent taking a double deduction when claiming the loss on the certificates.

EXHIBIT H



United States
Department of
Agriculture

Agricultural
Stabilization and
Conservation Service

P.O. Box 2415
Washington, D.C.
20013

ASCS

Mr. Fred G. Bond
Chief Executive Officer
Flue-Cured Tobacco Cooperative
Stabilization Corporation
P.O. Box 12300
Raleigh, North Carolina 27605

8 JUN 1990

Dear Mr. Bond:

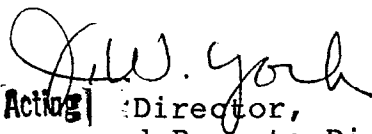
Your request of May 15, 1990, to redeem the 1982 flue-cured crop loan collateral inventory by using approximately \$164 million of the No-Net-Cost Assessment (NNCA) collections from the 1982-1984 crops has been approved. This approval will liquidate the outstanding loan balance owed Commodity Credit Corporation (CCC) by Flue-cured Tobacco Cooperative Stabilization Corporation (Stabilization) with respect to the 1982 crop loan inventory.

This action also relinquishes all CCC responsibilities on the 1982 flue-cured tobacco loan inventory and Stabilization will be solely responsible for the 1982 crop inventory of approximately 49 million pounds. With this approval, Stabilization may retain the sales proceeds resulting from the sale of the remainder of the 1982 crop inventory once the 1982 loan account with CCC is closed.

The Controller, CCC, will instruct your servicing agent bank of actions needed to be taken in order to liquidate Stabilization's outstanding loan balance with CCC on the 1982 crop, effective May 31, 1990. Stabilization's records must be well documented on the differentiation of sales proceeds between the 1982 crop and all other crop year sales proceeds.

Please contact our office if you have any questions concerning this matter.

Sincerely,


Acting Director,
Tobacco and Peanuts Division

SC 08740

EXHIBIT I

1990 MARKET OPENING DATES SET

The USDA Flue-Cured Tobacco Advisory Committee met on June 26 to make recommendations on market opening dates and sub-marketing areas ("sandtraps") for the 1990 season. The committee also recommended that the weight limit for a pile of tobacco remain at 275 pounds. The 39-member advisory committee, which is composed of grower, warehouse and buying company representatives, submits recommendations concerning the marketing of flue-cured tobacco to the Secretary of Agriculture for approval.

SCHEDULE OF OPENING DATES FOR THE 1990 SEASON

Area A: Florida-Georgia	July 17
Area B: South Carolina- NC Border	July 24
Area C: Eastern NC-Sandhills	July 25
Area D: NC Middle Belt	July 31
Area E: Old Belt of NC and Virginia	July 31

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

Post Office Box 12300
Raleigh, North Carolina 27605

"IDENTIFY
AND
TESTIFY"
For The
Tobacco Industry

SALES AND STOCKS ON HAND (FARM WEIGHT)

During the month of June, Stabilization sold 549,053 pounds of tobacco from its inventory. A total of 34,570,812 pounds from loan stocks have been sold during the calendar year. Following is an analysis of sales and stocks on hand. *[The stocks report each month will continue to show the amount of tobacco on hand, even though the pre-1985 stocks are committed to be purchased by manufacturers over an eight-year period.]*

CROP	POUNDS SOLD DURING JUNE	POUNDS ON HAND
1976	-0-	855,602
1977	-0-	7,196,355
1978	-0-	2,168,605
1979	-0-	2,211,696
1980	-0-	9,174,596
1981	-0-	12,749,551
1982	3,312	28,418,626
1983	1,120	21,635,231
1984	-0-	19,446,157
Sub-Total	4,432	103,856,419
1985	-0-	15,592,549
1986	128,556	27,174,476
1987	228,228	6,415,286
1988	164,922	7,574,315
1989	22,915	22,875,275
Sub-Total	544,621	79,631,901
Total	549,053	183,488,320

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Newsletter

PUBLISHED BY
FLUE-CURED TOBACCO
COOPERATIVE STABILIZATION CORPORATION

1304 ANNAPOLIS DRIVE
RALEIGH, NORTH CAROLINA 27605

July 1990

BOARD ACTION SECURES 1990 LOAN RATES

Stabilization's Board of Directors recently approved a measure that would offset a 2-cents per pound reduction in loan rates and prevent the possible loss of millions of dollars in grower income. The Board authorized the use of funds from Stabilization's general reserves to offset a 1.4% reduction in loan rates mandated by Gramm-Rudman-Hollings legislation.

Flue-cured tobacco support prices were cut by 1.4 percent or 2-cents per pound below the previously announced levels when USDA had to reduce budget outlays across the board by 1.4 percent. The cuts mean that USDA's Commodity Credit Corporation, which loans money to Stabilization to operate the

difference so farmers whose tobacco goes under loan will receive the full loan rate.

If Stabilization were to receive 50 million pounds of tobacco under loan this year, the cost of offsetting the price support reduction would be \$1 million. In comparison, if the market average price on a 900 million pound crop of tobacco was reduced by 2-cents per pound, the resulting loss to tobacco growers would be \$18 million.

Producers should be aware that not only will those placing tobacco under loan benefit from this move, supplementing the loan rate in this manner will prevent a related drop in market average and benefit every producer on the auction floor this year.

REDEMPTION OF 1982 CROP DEBT

On May 11, Stabilization's Board of Directors approved a plan to transfer sufficient funds from the No Net Cost Account from crop years 1982-84 for redemption of the debt owed by Stabilization to the Commodity Credit Corporation (CCC) for the crop year 1982. USDA approved the plan and, on May 31, the transfer of \$164 million dollars from the 1982-84 crops No Net Cost Account to CCC liquidated Stabilization's outstanding balance on the 1982 crop.

No assessment funds contributed by purchasers were used to pay the remaining debt on the 1982 crop. As a result of the Tobacco Reform Act of 1985, growers and purchasers have shared equally in paying any assessment since 1986.

The transfer of these funds to eliminate the 1982 crop debt has several important advantages. The short term benefit of this action is that mounting interest charges owed to CCC on this crop are elimi-

The board was concerned that this reduction in grade loan rates could lower the market average by 2-cents per pound.

price support program, can loan only 98.6 percent of the previously published loan rates to Stabilization. This would effectively reduce the average support price by 2-cents per pound.

The board was concerned that this reduction in grade loan rates could lower the market average by 2-cents per pound. If the effective loan rate was reduced by two cents, the board feared that tobacco buyers would also reduce their offering price thereby reducing the market average. For this reason, the board decided to use reserve funds to make up the

nated. The base selling price on the tobacco in the 1982 loan stocks was less than the amount owed to CCC on these stocks; therefore, the debt owed to CCC was increasing at a rapid pace. The Board of Directors deemed the elimination of this debt to be a wise and prudent use of funds.

Most importantly, this action insures that these funds are immediately used for the benefit of tobacco growers instead of continuing to be held in an account where they are no longer needed to protect CCC.

A major long term benefit of this use of these funds is to provide security for the operation of a market stabilization program in the event that tobacco is excluded from participation in USDA commodity programs. Even though the tobacco price support program operates on a no-net-cost basis to American taxpayers, the no-net-cost legislation is subject to repeal by Congress. For example, a bill was introduced in Congress in June that would eliminate the price support and marketing quota legislation beginning with the 1991 crop. In the event such legislation is adopted by Congress, the Board of Directors would be in position with surplus No Net Cost funds and reserves to operate a program to protect and stabilize the market for flue-cured tobacco growers.

Flue-Cured Tobacco Cooperative Stabilization Corporation is the grower owned and supported cooperative that administers the price support program for flue-cured tobacco growers in Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida.

President
Billy W. Hill

Vice Presidents

Roy B. Davis, Jr. B. Frank Strickland
Albert M. Johnson Richard J. Jenks

Chief Executive Officer and Secretary-Treasurer

Fred G. Bond

DIRECTORS

(District 1) Billy W. Hill Jasper, Florida
(District 2) B. Frank Strickland Lakeland, Georgia
(District 3) Albert M. Johnson Galivants Ferry, South Carolina
(District 4) W. Graham Smith St. Pauls, North Carolina
(District 5) F.H. Shackelford, Jr. Hookerton, North Carolina
(District 6) Atlas W. Wooten Greenville, North Carolina
(District 7) Bruce L. Fye Battleboro, North Carolina
(District 8) Richard J. Jenks Apex, North Carolina
(District 9) Richard N. Apple Browns Summit, North Carolina
(District 10) Roy B. Davis, Jr. South Boston, Virginia
(Public Director) John J. Collett, Jr. Thomasville, North Carolina

44th ANNUAL MEETING HIGHLIGHTS

(Continued from last month's Newsletter)

The 44th Annual Membership Meeting, held Friday, May 25 in Raleigh, was highlighted by addresses from Keith Bjerke, Administrator of USDA's Agricultural Stabilization and Conservation Service (ASCS), and Congressman Martin Lancaster (D-NC) whose district is the largest tobacco producing congressional district in the U.S. In addition, the audience of just over five hundred was addressed by Farrell Delman, President of the Tobacco Merchants Association of the U.S.; Gene B. Lanier, President of Tobacco Growers' Information Committee; and James A. Graham, North Carolina Commissioner of Agriculture. The Annual Reports of the President, Billy W. Hill, and Chief Executive Officer, Fred G. Bond, were also presented.

Last month's Newsletter contained excerpts of remarks made at Stabilization's 44th Annual Membership meeting by Mr. Graham, Mr. Bjerke, Mr. Lanier, and Congressman Lancaster. Excerpts of remarks by the other program participants follow.

Excerpts of Speaker's Remarks

BILLY HILL, PRESIDENT

In his Annual Report, Billy Hill, President of Flue-Cured Stabilization, recapped the 1989 season and reported on the outlook for the 1990 flue-cured tobacco season. He said, "the outlook for the 1990 season is for one of continued advancement and stability in the tobacco program operations. At this point, all indicators point to a very promising outlook for the 1990 crop."

Hill also reported that the inventory buyout contracts are continuing well ahead of schedule. "After almost four years of the eight-year contract period, the buyout contracts covering the 1976 through 1984 crops are 82% complete. We are pleased with this rate of take-down of committed stocks and are confident that the buyout will be completed in less than the allotted time."

Echoing the sentiments of the other speakers, Hill said, "when I addressed you at our Annual Meeting in 1987, I said, and I quote, 'there is a storm rising...that is potentially more damaging than anything we have seen. Smoking and health issues are at the forefront of an agenda to eliminate tobacco use by the year 2000.' Friends that storm is here and gaining strength every day! The anti-tobacco forces will surely destroy us lest we act. As far as I'm concerned, our only choice is to fight."

FARRELL DELMAN, PRESIDENT OF TMA

Farrell Delman, President of the Tobacco Merchants Association of the U.S. (TMA), reviewed recent activities in Washington that strike out at tobacco and the tobacco industry. He stated that in the last two weeks we have seen hearings on the "Kennedy Bill" blasting tobacco exports, a vote by the Labor and Human Resources Committee to report the bill on to the Senate, proposed restrictions on cigarette sales from vending machines, and a proposal to dismantle the entire tobacco program.

Questioning the motives of some of tobacco's detractors, Delman said that the publicity generated in the media about tobacco issues creates "a great opportunity for people to make the news. People get into the newspapers; they make headlines. Tobacco is clearly the whipping boy of all commodities in the United States."

Referencing the growing intolerance toward tobacco and the apparent willingness of some to regulate the behavior of others, Delman said, "what's ironic about what's going on in Eastern Europe is that, as freedom rings loudly around the world, our own 'Liberty Bell' is curiously silent."

At a recent hearing on tobacco exports held by Congressman Henry Waxman (a staunch opponent of tobacco), Delman said, "for the first time, I saw an anti-tobacco initiative (that) went too far." He said that other Congressmen on the committee, who are opposed to tobacco as well, recognized that Congressman Waxman's attempts to attack tobacco exports as a 'health' issue were unfounded and agreed that the real issue was fair trade and access to foreign markets for U.S. tobacco.

Delman said that he can see a change taking place in the attitude of the tobacco community toward the

anti-tobacco campaign. "You are not the only ones fed up. The feeling is shared across all sectors of the industry on how we are being treated. I can hear a cry coming from every sector, from growers through to smokers, that says 'Enough is Enough!'"

FRED BOND, CHIEF EXECUTIVE OFFICER

Fred Bond, Chief Executive Officer of Flue-Cured Stabilization, presented an abbreviated Annual Report in which he reviewed the financial statement of Flue-Cured Tobacco Cooperative Stabilization Corporation and its' subsidiary, Tobacco Growers Services, Inc. He reported that Total Stockholders' Equity has increased \$2.8 million each of the last two years and now totals \$64.7 million.

Bond also reported that the results of last seasons pesticide residue testing program were satisfactory; however, MH (Maleic Hydrazide) residue levels were up slightly in some areas and decreased in other areas. He stressed the continued need for correct application and reduced residue levels for MH. Bond said, "our foreign and domestic customers have made it very clear that MH residues are a vital concern and we must work to insure that our product will continue to meet market standards."

In regard to the 1990 loan rates, Bond reported that in 1990, by law, the Commodity Credit Corporation of USDA is only allowed to loan the co-op 98.6% of the published price support of each grade of tobacco. This would mean that the 1990 loan rates must be reduced by 2-cents per pound. However, Bond reported that Stabilization's Board of Directors has taken measures to offset the 2-cent per pound reduction in loan rates so that growers will receive the full loan rate at the auction warehouse.

In closing, Bond said, "we are going into a season which appears to be promising in spite of what we've heard and seen in recent weeks about those who would put us out of business. Let's make sure we go into this crop using every available recommendation for the planting, for the cultivation and, in particular, for those pesticides or chemicals that you are using on your tobacco. This is a critical issue. If we do that and bring a good, solid, uniform crop of tobacco to market...there will certainly be a good season for all the growers from Florida through Virginia for the 1990 marketing season."

EXHIBIT J

The End of the Tobacco Transition Payment Program

Blake Brown, Professor and Extension Economist, NCSU

November 14, 2013

With the last Tobacco Transition Payment Program (TTPP), commonly referred to as the tobacco buyout, payment scheduled for January 2014 many in agriculture are speculating what the impact might be on rural economies and, in particular, tobacco production. With about \$9.6 billion in payments to tobacco quota owners and growers over 10 years, 2005-2014, the TTPP has large impacts on rural economies in tobacco growing states. As of 2012 \$1.74 billion had been paid out by USDA directly to tobacco growers and \$4.11 billion directly to former quota owners. In addition many quota owners and growers opted to sell their stream of payments to financial institutions offering a lump-sum in return (i.e. securitizing the payment stream). \$1.79 billion had been paid to the financial institutions that purchased streams of TTPP payments.

The TTPP ended the federal tobacco price support and quota program in 2004, deregulating U.S. tobacco production and providing compensation to quota owners and tobacco farmers over a 10 year period 2005-2014. Total U.S. tobacco production had been restricted under the federal program by poundage quotas and acreage allotments set annually by USDA and allocated based on historical production dating back to 1938. For each pound of quota owned quota owners received \$7 in 10 equal annual installments. Producers received \$7 for each pound of quota owned plus \$3 for each pound of quota grown during the last three years of the tobacco program, also in 10 equal annual installments. Most producers were also quota owners. (During the tobacco program many producers rented quota from non-growers, producing tobacco with both quota owned and quota rented.) Quota owners and producers were permitted to sell the stream of payments to a third party. The \$9.6 billion cost of the TTPP is paid by USDA who recoups all the cost through annual assessments on tobacco product manufacturers.

The TTPP payments have been a significant source of revenues flowing into state economies. Tables 1 and 2 give the 2005 TTPP payments by state for quota owners and producers. The first payments made in January of 2005 reflect the magnitude in terms of both value and number of people impacted since in January, 2005 financial institutions had not yet purchased any of the payments. Over 384 thousand payments were made to quota owners in 2005. Another 182,649 payments were sent to producers, but in most cases producers were also receiving a quota owner payment. Just prior to the buyout there were over 38,000 individual flue-cured tobacco quotas and over 240,000 individual burley tobacco quotas. (Many of these quotas were owned by more than one person which may be why the total number of payments in 2005 were so large.) Around 2/3 of the flue-cured quotas were owned by non-producers. In burley the portion owned by non-producers may have been even higher. In 2005 North Carolina, the largest tobacco producing state, tobacco producer and quota owner payments totaled \$392.4 million. For comparison the next largest payout was the Master Settlement Agreement (MSA) in which tobacco manufacturers paid the state of North Carolina \$148.7 million in 2005. In the second largest tobacco state, Kentucky, producer and quota owner payments were \$221.8 million in 2005. MSA payments to Kentucky in 2005 were \$112.3 million. Figure 1 shows the 2005-2012 TTPP payments and

their breakdown between quota owners, producers and financial institutions purchasing (securitizing) payment streams.

By 2012 about 1/3 of quota owner and producer payments had been securitized, referred to as “taking a lump sum for your payments.” To do this, financial institutions paid the quota owner or producer a lump sum in return for the remaining annual TTPP payments. The financial institutions paid a lump sum that was discounted considering current and future interest rates at the time. Most discount rates were very competitive since the stream of TTPP payments were considered very “safe” in terms of certainty of payment. In the early years of the payments, a lump sum equivalent to 83% of the sum of the remaining payments was not uncommon. This equates to roughly a 4% discount rate, which in 2005, was close to the rate on 10 year Treasury bills.

The largest portion of lump sums were completed in the fall of 2005, after the first TTPP payment had been received in early 2005 and before the second TTPP payment was received in January 2006. For example if a quota owner was scheduled to receive a TTPP payment of \$1,000 per year and this quota owner sold his remaining stream of payments in fall 2005 (\$9,000 in TTPP payments over 9 years, 2006-2014) then the quota owner would have received a lump sum of \$7,470 in late 2005 in addition to the \$1,000 TTPP payment received the previous January.

Receipts of lump sum payments from financial institutions in late 2005 by quota owners and producers in all tobacco states are estimated to have been about \$1.16 billion. TTPP payments in January 2005 to producers and quota owners were \$287 million and \$667 million, respectively. So over \$2.1 billion in lump sum and TTPP payments flowed into tobacco states in 2005 via producers and quota owners (Figure 2). Another large portion of payments were securitized in 2006 for the 2007-2014 payments. The portion securitized in subsequent years was much smaller (Figures 1 and 2).

Where did the payments come from? Quota owner and producer payments are a transfer from tobacco product manufacturers with much the same effect as a tax. Manufacturers may have absorbed some of the assessment from profits or reductions in costs. Most likely much of the assessment was passed to tobacco product consumers in the form of higher product prices. The 2005 TTPP payments equated to about \$0.05 per pack of cigarettes sold in 2005. Financial institutions from around the US provided lump sums to TTPP recipients much in the same form as loans in return for recipients’ remaining stream of payments.

What did quota owners and producers do with their lump sums and TTPP payments? Many quota owners that were not active producers were already retirees, often former tobacco farmers, who relied on the rent from quota for retirement income. Hopefully the prevalent use of the payments for this group was that the TTPP stream or a lump sum was put in savings and then drawn on as a continuing source for retirement income. Some quota owners were heirs of former tobacco farmers who still owned the family farm but did not grow tobacco. Some non-producers had purchased land with tobacco quota. For many in these latter groups the quota rent may not have been a critical component of their income, but the buyout offered an opportunity to get a guaranteed sum over 10 years or a lump

sum. How this group used the money for consumption, investment, or savings probably varies widely depending on how dependent they were on the quota rent during the tobacco program.

Among tobacco producers many were near retirement age. Most in this group used the TTPP payment stream or lump sum to retire immediately. The exodus of tobacco farmers after the buyout was large. The number of tobacco farmers declined from about 57 thousand in the 2002 Census of Agriculture to 16,234 in the 2007 census. Part of this decline can be attributed to the way tobacco producers were defined during the tobacco program. Non-producing quota owners were counted as tobacco farmers during the program years if they shared in the risk of growing the tobacco by sharing in the cost and revenue of growing the tobacco with a grower who used the non-producing quota owner's quota. The decline is also due in part to farmers who exited tobacco production to non-farm jobs. Some farmers were part-time farmers growing tobacco, particularly burley, who dropped tobacco from their farms. But a large share of exiting farmers is attributable to farmers retiring with the end of the program.

Producers that expected to remain active farmers used their TTPP payments or lump sums in a variety of ways. Many used the payments to reduce debt. Some used the funds to diversify or expand their operations in farm enterprises other than tobacco. Some used their funds to expand their tobacco operations. Were all these investments good ones? Undoubtedly mistakes were made. Alternative enterprises were sometimes not as lucrative as they appeared. Demand for U.S. tobacco declined more dramatically than most, including this economist, could imagine due to large increases in state and federal excise taxes and comprehensive smoking bans. Consequently consolidation in tobacco farming was greater than expected and the amount contracted for by buyers smaller than expected. There were tobacco farmers that tried to expand and produce in the unregulated era after the program who were either not competitive in terms of cost of production or who decided that the profits margins were not sufficient to keep them in tobacco production. Nine years after the buyout most of these producers have exited tobacco production.

How will the end of the TTPP payments affect tobacco production? Concerns have been raised that some farmers have been using the TTPP to subsidize tobacco production and that as soon as the payments end there will be a large exodus of tobacco producers. There are probably some farmers who have done this and will exit production after 2014. But since the TTPP was not tied to any requirement to produce tobacco the only reason tobacco farmers had for continuing production was if they thought it would be profitable. The decoupling of TTPP payments from tobacco production increased the probability that decisions to continue tobacco farming were based on expected profitability, not contingent on receipt of TTPP payments.

While there is little hard data to go on and this conclusion is based on anecdotal evidence and general behavior by businesses, the end of the TTPP is likely to have little effect on tobacco production. Other factors such as the emergence of e-cigarettes, increasing regulation of tobacco products, increases in excise taxes, competition from other tobacco producing countries, exchange rates, and whether or not robust demand from Asia for tobacco continues will be much more important in determining future U.S. tobacco production levels. There are many factors, some of them quite ominous, that will have potentially large impacts on U.S. tobacco production, but the end of the TTPP is not likely one of them.

Will the end of the TTPP be felt in rural communities in tobacco producing states? The answer is certainly yes. The TTPP brought unprecedented funds to a large number of citizens in rural tobacco producing communities. But even this situation should not be a crisis scenario. All involved in the tobacco buyout have known with certainty that the payments would end after 10 years. Again in every situation where funds are received there are some who spend irresponsibly and others who make honest mistakes in investment and consumption decisions. However most have likely consumed, invested, or saved the payments with the end in mind. All will bemoan the end of the payments, but the end should not be a surprise.

One final “fly in the ointment” has arisen as this article is written. The Office of Management and Budget decided that the final TTPP payment should be subject to sequestration and be reduced by up to 7.2%. This decision was completely unexpected by all involved since the TTPP payments are backed and completely funded from a trust fund of assessments on the tobacco industry (i.e. at no cost, not even administrative, to the government). All involved including the financial institutions buying payment streams viewed the TTPP payments with the certainty of Treasury Bills. While the end of the TTPP payments should not be disruptive because the end was expected, an unexpected reduction in the last TTPP payment is disruptive. A reduction of 7.2% would be over \$68 million dollars not flowing to quota owners, producers and financial institutions. Congressional offices involved in bringing resolution to this unexpected problem seemed confident that the reduction will be restored...stay tuned.

Table 1. 2005 TTPP Payments to Quota Owners by State

State	Number of Payments	Total for State of 2005 Payments	Total for State Implied Over 10 years	Average 2005 Payment	Total Average Payments Implied Over 10 Years
AL	71	\$ 347,306	\$ 3,473,064	\$ 4,892	\$ 48,916
FL	502	\$ 8,378,140	\$ 83,781,404	\$ 16,690	\$ 166,895
GA	5,876	\$ 42,854,888	\$ 428,548,883	\$ 7,293	\$ 72,932
IN	7,859	\$ 5,981,167	\$ 59,811,668	\$ 761	\$ 7,611
KA	26	\$ 24,144	\$ 241,437	\$ 929	\$ 9,286
KY	141,264	\$ 173,276,502	\$1,732,765,020	\$ 1,227	\$ 12,266
MN	28	\$ 26,755	\$ 267,554	\$ 956	\$ 9,556
MO	1,455	\$ 2,225,371	\$ 22,253,714	\$ 1,529	\$ 15,295
NC	94,678	\$ 274,253,512	\$2,742,535,117	\$ 2,897	\$ 28,967
OH	8,558	\$ 7,473,636	\$ 74,736,361	\$ 873	\$ 8,733
OK	1	\$ 713	\$ 7,133	\$ 713	\$ 7,133
SC	17,874	\$ 50,381,675	\$ 503,816,754	\$ 2,819	\$ 28,187
TN	74,355	\$ 50,472,183	\$ 504,721,826	\$ 679	\$ 6,788
VA	25,677	\$ 45,340,891	\$ 453,408,907	\$ 1,766	\$ 17,658
WV	2,944	\$ 1,385,493	\$ 13,854,925	\$ 471	\$ 4,706
WI	3,162	\$ 4,691,981	\$ 46,919,810	\$ 1,484	\$ 14,839
US	384,330	\$ 667,114,358	\$6,671,143,577	\$ 1,736	\$ 17,358

Source: USDA-Farm Service Agency

Table 2. 2005 TTPP Payments to Producers by State

State	Number of Payments	Total for State of 2005 Payments	Total for State Implied for 10 Payments	Average 2005 Payment per Recipient	Average Total per Recipient of 10 Payments
AL	24	\$ 148,956	\$ 1,489,561	\$ 6,207	\$ 62,065
FL	334	\$ 3,598,760	\$ 35,987,601	\$ 10,775	\$ 107,747
GA	3,688	\$ 18,291,371	\$ 182,913,706	\$ 4,960	\$ 49,597
IN	2,683	\$ 2,594,548	\$ 25,945,480	\$ 967	\$ 9,670
KA	19	\$ 10,548	\$ 105,481	\$ 555	\$ 5,552
KY	80,498	\$ 74,002,167	\$ 740,021,668	\$ 919	\$ 9,193
MO	901	\$ 952,103	\$ 9,521,033	\$ 1,057	\$ 10,567
NC	45,347	\$ 118,136,768	\$1,181,367,679	\$ 2,605	\$ 26,052
OH	4,365	\$ 3,068,833	\$ 30,688,331	\$ 703	\$ 7,031
OK	4	\$ 257	\$ 2,573	\$ 64	\$ 643
SC	7,368	\$ 21,653,935	\$ 216,539,352	\$ 2,939	\$ 29,389
TN	22,656	\$ 22,737,052	\$ 227,370,516	\$ 1,004	\$ 10,036
VA	12,496	\$ 19,819,039	\$ 198,190,386	\$ 1,586	\$ 15,860
WV	990	\$ 708,562	\$ 7,085,617	\$ 716	\$ 7,157
WI	1,276	\$ 1,282,308	\$ 12,823,081	\$ 1,005	\$ 10,049
US	182,649	\$ 287,005,206	\$2,870,052,064	\$ 1,571	\$ 15,713

Source: USDA-Farm Service Agency

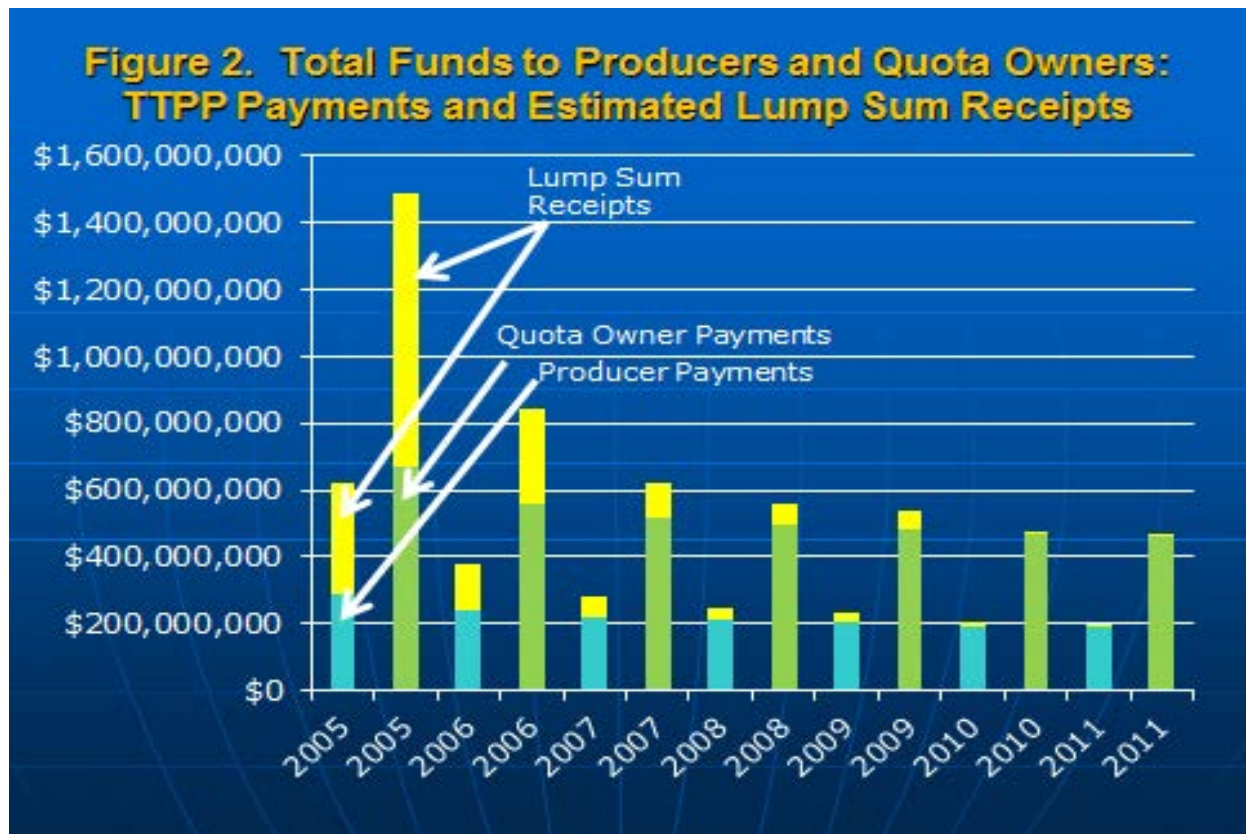
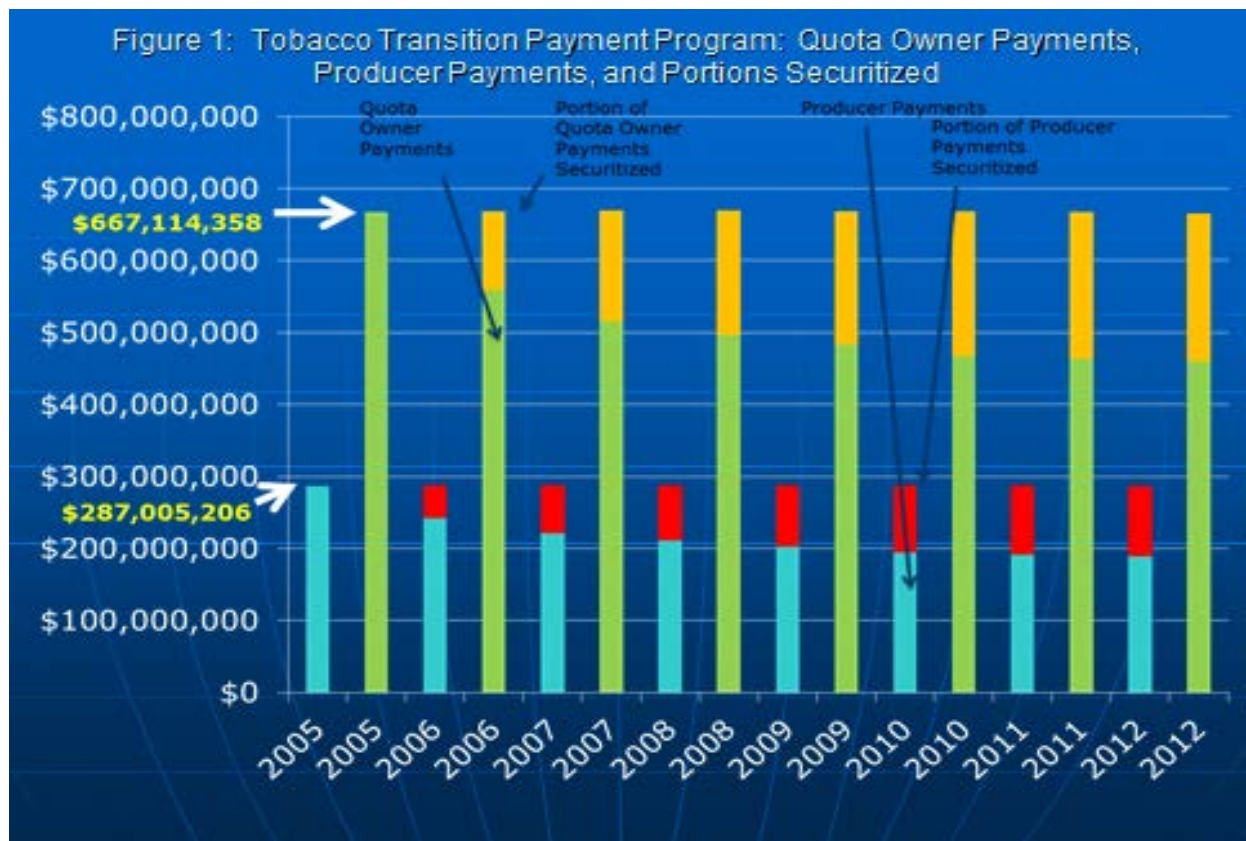


EXHIBIT K



United States
Department of
Agriculture

Commodity Credit
Corporation

1400 Independence
Avenue, SW
Stop 0514

Washington, DC
20250-0514

Mr. Lioniel Edwards
General Manager
Flue-Cured Tobacco Cooperative
Stabilization Corporation
P. O. Box 12300
Raleigh, NC 27605

Dear Mr. Edwards:

As you are well aware, Title VI of the America Jobs Creation Act of 2004 (the 2004 Act) terminates the tobacco marketing quota and price support loan programs effective with the 2005 marketing year. In order to provide for an orderly transition to an unregulated marketplace, section 641 of the 2004 Act sets forth the procedure for liquidation of existing Commodity Credit Corporation (CCC) tobacco price support loans. The purpose of this letter is to take the first step needed to implement this statutory provision. In accordance with section 7 of the 2002, 2003 and 2004 crop flue-cured tobacco loan agreements executed by Flue-Cured Tobacco Cooperative Stabilization Corporation (the Association) and CCC, CCC hereby notifies the Association that all such loans are due and payable no later than 12:00 a.m. on March 21, 2005, and effective at that time CCC will take title to all tobacco pledged as collateral for such loans.

As soon as possible, CCC will notify the Association of those lots of tobacco that are transferred to the Association. Section 641 of the 2004 Act provides that the division of these loan stocks between the Association and CCC will be accomplished by dividing the amount of funds held by the Association in its No Net Cost Tobacco Account by the average list price for flue-cured tobacco as determined by the Secretary of Agriculture. Once this tobacco has been transferred to the Association, the Association may utilize these lots of tobacco in any manner that it desires. Once CCC takes title to the tobacco that was not transferred, CCC will pay to the Association costs for the storage of the tobacco as provided in the Association Service Agreement executed on March 10, 2005, by the Association and CCC.



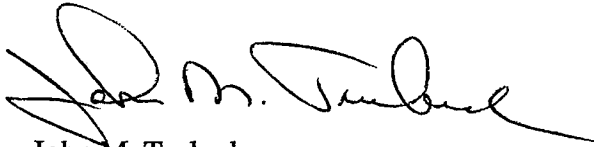
USDA is an Equal Opportunity Employer

SC 07578

Mr. Lioniel Edwards
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If you have any questions regarding these issues, please contact the Director, Tobacco Division, Farm Service Agency, John "Moot" Truluck, at 202 720-7413.

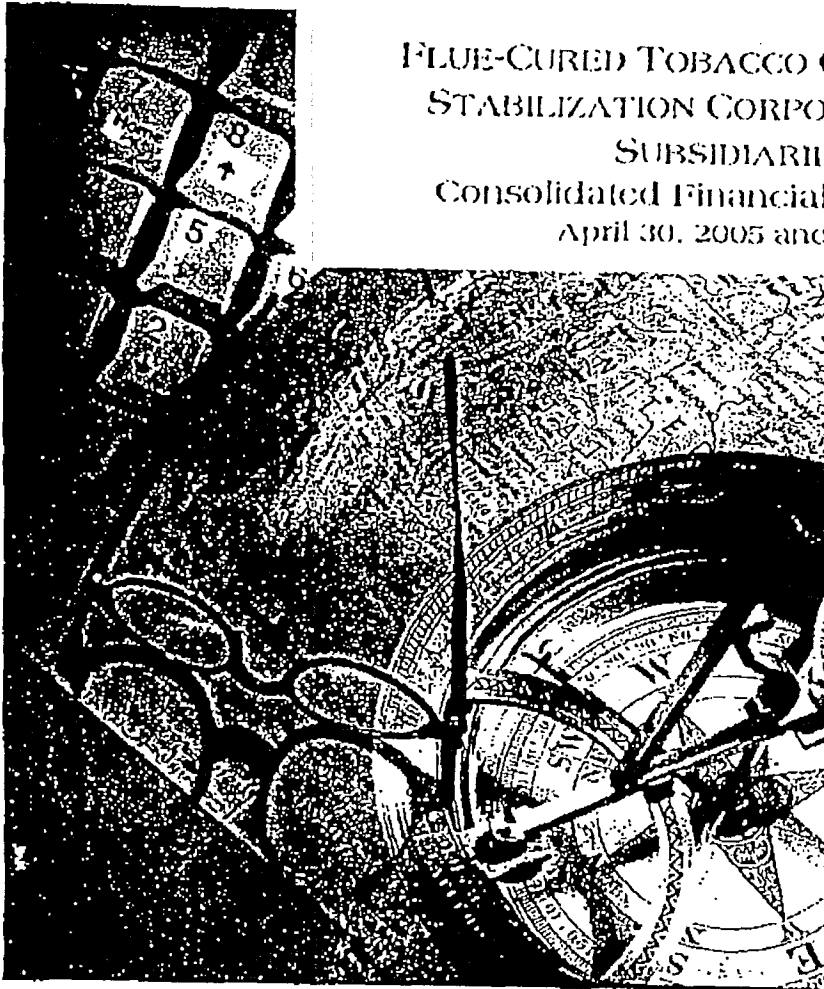
Sincerely,

A handwritten signature in black ink, appearing to read "John M. Truluck". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John M. Truluck
Contract Officer

SC 07579

EXHIBIT L



FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION AND
SUBSIDIARIES
Consolidated Financial Statements
April 30, 2005 and 2004

PLAINTIFF'S
EXHIBIT

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Bopp 10-6-06

FLUE CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

Adding value
Building trust
Securing your future

TEDDER, JAMES, WORDEN & ASSOCIATES, P.A.
CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

AN INDEPENDENTLY OWNED MEMBER OF THE RSM MCGLADREY NETWORK

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**FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES**

Consolidated Financial Statements

April 30, 2005 and 2004

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TEDDER, JAMES, WORDEN & ASSOCIATES, P.A.
CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

AN INDEPENDENTLY OWNED MEMBER OF THE RSM MCGILADREY NETWORK

Independent Auditor's Report

To the Board of Directors of
Flue-Cured Tobacco Cooperative
Stabilization Corporation:

We have audited the accompanying consolidated balance sheets of Flue-Cured Tobacco Cooperative Stabilization Corporation and Subsidiaries as of April 30, 2005 and 2004, and the related consolidated statements of operations, stockholders' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Corporation's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Flue-Cured Tobacco Cooperative Stabilization Corporation and Subsidiaries as of April 30, 2005 and 2004, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Tedder, James Worden & Associates, P.A.

Orlando, Florida
May 27, 2005, except as to Note 14(c),
which is as of June 29, 2005

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Consolidated Balance Sheets

April 30, 2005 and 2004

<u>Assets</u>	<u>2005</u>	<u>2004</u>
Cash and cash equivalents	\$ 1,504,945	5,472,777
Investment in interest-bearing obligations, at amortized cost	208,293,931	230,952,290
Accrued interest receivable	2,427,165	2,727,041
Accounts receivable	343,503	430,056
Refundable income taxes	442,907	-
Inventories	129,171,370	525,175
Prepaid expenses and other assets	207,024	520,948
Prepaid retirement cost	2,443,129	2,609,073
Property, plant and equipment, net	27,772,971	2,466,450
Total assets	<u>\$ 372,606,945</u>	<u>245,703,810</u>
 <u>Liabilities and Stockholders' Equity</u>		
Accounts payable and other accruals	\$ 799,906	196,781
Stock redemption payable	3,566,290	-
Deferred income taxes	51,235,090	1,292,000
Total liabilities	55,601,286	1,488,781
Stockholders' equity:		
Common stock, \$5 par value, 1,000,000 shares authorized:		
Issued	455,655	4,013,375
Paid but not issued	-	7,115
Total common stock	455,655	4,020,490
Additional paid-in capital	110,753,161	110,753,161
Contributed capital	76,292,995	-
Capital equity credits:		
Qualified	25,977,095	25,977,095
Non-qualified	825,759	825,759
Retained earnings	102,700,994	102,638,524
Total stockholders' equity	317,005,659	244,215,029
Total liabilities and stockholders' equity	<u>\$ 372,606,945</u>	<u>245,703,810</u>

See the accompanying notes to consolidated financial statements.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Consolidated Statements of Operations

For the years ended April 30, 2005 and 2004

	<u>2005</u>	<u>2004</u>
Revenue:		
Storage income	\$ 1,510,935	1,598,129
Interest income	7,734,240	9,403,112
Other revenue, net	<u>2,336,848</u>	<u>740,796</u>
Total revenue	11,582,023	11,742,037
Expenses:		
Operating expenses	4,747,955	795,125
General and administrative expenses (net of reimbursements of \$4,238,162 in 2005 and \$4,481,584 in 2004)	6,242,070	6,455,712
Loss on tobacco deposits	<u>666,528</u>	<u>-</u>
Total expenses, net	<u>11,656,553</u>	<u>7,250,837</u>
(Loss) income before income taxes	(74,530)	4,491,200
Income tax (benefit) expense	<u>(137,000)</u>	<u>1,266,000</u>
Net income	<u>\$ 62,470</u>	<u>3,225,200</u>

See the accompanying notes to consolidated financial statements.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Consolidated Statements of Stockholders' Equity

For the years ended April 30, 2005 and 2004

	Common stock		Paid but not issued		Additional paid-in capital	Contributed Capital	Capital equity credits		Retained earnings	Total
	Issued Shares	Amount	Shares	Amount			Qualified	Non-qualified		
Balances, April 30, 2003	802,490	\$ 4,012,450	1,422	7,110	110,753,161	-	25,977,095	825,759	99,413,324	240,988,899
Net income for the year ended April 30, 2004	-	-	-	-	-	-	-	-	3,225,200	3,225,200
Common stock transactions: New memberships issued	210	1,050	1	5	-	-	-	-	-	1,055
Memberships cancelled	(25)	(125)	-	-	-	-	-	-	-	(125)
Balances, April 30, 2004	802,675	4,013,375	1,423	7,115	110,753,161	-	25,977,095	825,759	102,638,524	244,215,029
Net income for the year ended April 30, 2005	-	-	-	-	-	-	-	-	62,470	62,470
Contributed capital from termination of tobacco loan program	-	-	-	-	-	76,292,995	-	-	-	76,292,995
Common stock transactions: New memberships issued	291	1,455	-	-	-	-	-	-	-	1,455
Memberships cancelled	(711,835)	(3,559,175)	(1,423)	(7,115)	-	-	-	-	-	(3,566,290)
Balances, April 30, 2005	91,131	\$ 455,655	-	-	110,753,161	76,292,995	25,977,095	825,759	102,700,994	317,005,659

See the accompanying notes to consolidated financial statements.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Consolidated Statements of Cash Flows

For the years ended April 30, 2005 and 2004

	2005	2004
Cash flows from operating activities:		
Net income	\$ 62,470	3,225,200
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	2,252,216	554,076
Amortization of premiums on interest-bearing obligations, net	753,303	997,382
Gain on sale of property, plant and equipment	-	(1,112)
Deferred income taxes	243,090	6,000
Cash provided by (used in) changes in:		
Accrued interest receivable	299,876	380,032
Accounts receivable	86,553	18,286
Refundable income taxes	(442,907)	-
Inventories	(2,653,200)	(525,175)
Prepaid expenses and other assets	313,924	(302,732)
Prepaid retirement cost	165,944	124,536
Accounts payable and other accruals	603,125	164,379
Net cash provided by operating activities	1,684,394	4,640,872
Cash flows from investing activities:		
Purchase of property, plant and equipment	(27,558,737)	(444,836)
Proceeds on disposal of property, plant and equipment	-	17,500
Purchases of interest-bearing obligations	(79,849,944)	(151,820,328)
Maturities of interest-bearing obligations	101,755,000	148,967,000
Net cash used in investing activities	(5,653,681)	(3,280,664)
Cash flows from financing activities:		
Proceeds from sale of common stock	1,455	1,055
Retirement of common stock	-	(125)
Net cash provided by financing activities	1,455	930
Net (decrease) increase in cash and cash equivalents	(3,967,832)	1,361,138
Cash and cash equivalents at beginning of year	5,472,777	4,111,639
Cash and cash equivalents at end of the year	\$ 1,504,945	5,472,777
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	\$ 58,000	1,235,000
Supplemental schedule of non-cash financing activities:		
Contributed capital:		
Fair value of inventory ceded by U.S.D.A. at termination of tobacco loan program	\$ 125,992,995	-
Less: deferred income tax liability related to transfer	(49,700,000)	-
Increase in contributed capital	\$ 76,292,995	-
Common stock:		
Retirement of common stock	\$ 3,566,290	-

See the accompanying notes to consolidated financial statements.

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FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

April 30, 2005 and 2004

(1) **Summary of Significant Accounting Policies**

A summary of the accounting policies followed by the Flue-Cured Tobacco Cooperative Stabilization Corporation (the "Corporation") in the preparation of the accompanying consolidated financial statements is set forth below:

(a) **Consolidation Policy**

The accompanying financial statements include the accounts of the Corporation and its wholly-owned Subsidiaries, Tobacco Growers Services, Inc. and U.S. Flue-Cured Tobacco Growers, Inc. All material intercompany balances and transactions have been eliminated.

(b) **Statement of Cash Flows**

For purposes of the statement of cash flows, the Corporation considers all short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents.

(c) **Interest-Bearing Obligations**

Interest-bearing obligations are stated at amortized cost.

The Corporation accounts for interest-bearing obligations under the provisions of Statement of Financial Accounting Standards No. 115 ("Statement 115"). Statement 115 requires segregation of the investment portfolio, with all securities classified as held to maturity, available for sale, or held for trading purposes. Debt securities intended to be held to maturity are stated at cost adjusted for amortization of premium and accretion of discount. Accreted discounts and amortized premiums are included in interest income.

As of April 30, 2005 and 2004, all of the Corporation's debt securities are classified as held to maturity under Statement 115 as the Corporation has the ability and the positive intent to hold its debt securities until maturity. No securities are either available for sale or held for trading purposes.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Summary of Significant Accounting Policies, Continued

(d) *Inventories*

Inventories are priced at the lower of cost or market, with cost determined on a first-in, first-out (FIFO) basis, and market based on the lower of replacement cost or estimated net realizable value. Tobacco received upon termination of the tobacco price support program was recorded at estimated net realizable value.

(e) *Property, Plant, and Equipment*

Property, plant, and equipment are stated at cost. Depreciation is provided over the estimated useful lives of the individual assets using the declining-balance or the straight-line method. The Company accounts for long-lived assets in accordance with the provisions of Statement of Financial Accounting Standards No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*. This Statement requires long-lived assets and certain identifiable intangibles be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an assets to future net cash flows expected to be generated by the asset. If such are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

(f) *Income Taxes*

The Corporation accounts for income taxes under the provisions of Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes*. Under Statement 109, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Under Statement 109, the effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Summary of Significant Accounting Policies, Continued

(g) *Pension Plan*

The Corporation has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan provides benefits through mutual funds invested in common stock and bonds. It is the Corporation's policy to fully fund all accumulated plan benefits.

(h) *Use of Estimates*

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates and assumptions are required in order to value tobacco inventories at estimated net realizable value. The net realizable value can vary significantly based on market conditions.

(i) *Financial Instruments Fair Value*

The carrying value of cash and cash equivalents, accounts receivable, and accounts payable and other accruals approximates fair value due to the short-term maturity of these financial instruments. The fair value of the investment in interest-bearing obligations exceeds the carrying value by approximately \$35,000 and \$4,503,000 at April 30, 2005 and 2004, respectively.

(j) *Concentration of Credit Risk*

The Corporation maintains cash and cash equivalents in accounts with federally insured financial institutions. At times, these balances may exceed the federally insured limits.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Summary of Significant Accounting Policies, Continued

(j) *Concentration of Credit Risk, Continued*

In order to further develop the international market for flue-cured tobacco, the Corporation has accepted purchase contracts from foreign customers (which up to the balance sheet date have been for relatively small tobacco purchases) without requiring those customers to pay the traditional twenty percent security purchase agreement deposits. Instead, the Association has used its own funds to secure those purchase agreements. In the event that any foreign customer defaults on their contract for tobacco, the Association bears the risk of a potential forfeit of its security deposit or the potential loss generated by the difference between the disposition price of the tobacco versus the contracted purchase value. At April 30, 2004, prepaid expenses and other assets included deposits of \$395,785 collateralizing the purchase of tobacco in the amount of \$1,978,924.

(k) *Reclassifications*

Certain amounts in the 2004 financial statements have been reclassified in order to conform with the 2005 presentation. These reclassifications had no impact on previously reported total assets, liabilities, stockholders' equity, net income, or cash flows.

(2) Organization Data

The Corporation was incorporated on June 1, 1946 under the provisions of the Cooperative Marketing Act of the State of North Carolina as a corporation operating on a cooperative basis, with capital stock.

The authorized capital stock of the Corporation consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who shall patronize the Corporation in accordance with uniform terms and conditions prescribed thereby. At all meetings of the stockholders, each stockholder is entitled to only one vote. No dividends are payable on the common stock. The Corporation has adopted a bylaw consent form in which each member agrees to take into gross income patronage refunds allocated to them.

The Corporation is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members and patrons. The capital equity credits are used to accumulate capital as considered necessary by the Board of Directors. Capital equity credits bear no interest, have no due date, and may be redeemed or retired at the discretion of the Board of Directors in order of issuance by years.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(2) Organization Data, Continued

The business activities of the Corporation have consisted primarily of marketing and storage services for its member growers under the provisions of a price support loan agreement with Commodity Credit Corporation ("CCC"), whereby CCC provided the funds necessary to pay member growers the support price of eligible tobacco delivered for sale, plus the costs of transporting, processing, handling, storing, and administering the tobacco price support program. Funds provided by CCC were evidenced by non-recourse notes, payable on demand, and were collateralized by the underlying tobacco inventory. Payments made on the loan from sales of tobacco were applied to both principal and interest on a first borrowed, first repaid basis within each crop year.

During year ended April 30, 2005, the U.S. Congress passed the American Jobs Creation Act of 2004, which terminated the tobacco price support program. As part of the termination, on March 21, 2005, the CCC of the United States Department of Agriculture called all outstanding non-recourse loans for tobacco effectively eliminating the federal tobacco program. As a result of this action, \$442,927,662 of notes and interest payable on tobacco was absorbed by CCC, no net cost tobacco funds held in an account to offset CCC losses in the amount of \$206,616,376 was shifted to CCC, and 83,558,640 million pounds of tobacco was ceded to the cooperative. The 83,558,640 million pounds of tobacco was subsequently valued by the Corporation at \$125,992,995 to reflect market conditions existing as a result of the end of the tobacco program.

(3) Inventories

Inventories consisted of the following at April 30, 2005 and 2004.

	2005	2004
Tobacco	\$128,181,416	525,175
Materials	547,437	-
Finished goods	442,517	-
	<u>\$129,171,370</u>	<u>525,175</u>

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(4) Investment in Interest-Bearing Obligations

The Corporation invests in various government-guaranteed, interest-bearing obligations during the year. Since the investments are held to maturity, the Corporation carries these investments at amortized cost. These investments are scheduled to mature at various times ranging from one week to five years from the balance sheet date. The policy of the management of the Corporation is to hold the investments until maturity, at which time the proceeds will be reinvested in similar securities.

The following classifies the investments by maturity, with short-term investments being those scheduled to mature within the next fiscal year and long-term investments being those with a scheduled maturity between one and five years. In some instances, actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without prepayment penalties.

Investments in held to maturity interest-bearing obligations at April 30, 2005 and 2004 were as follows:

2005				
	Cost	Gross unrealized gain	Gross unrealized loss	Market
Short-term	\$ 80,436,808	357,242	(343,171)	80,450,879
Long-term	127,857,123	668,013	(647,520)	127,877,616
	<u>\$ 208,293,931</u>	<u>1,025,255</u>	<u>(990,691)</u>	<u>208,328,495</u>
2004				
	Cost	Gross unrealized gain	Gross unrealized loss	Market
Short-term	\$ 81,975,922	929,420	(57,823)	82,847,519
Long-term	148,976,368	4,023,881	(392,847)	152,607,402
	<u>\$ 230,952,290</u>	<u>4,953,301</u>	<u>(450,067)</u>	<u>235,454,921</u>

Included in cash and cash equivalents are money market investment funds valued at \$1,170,425 and \$5,467,969 at April 30, 2005 and 2004, respectively. The Corporation invests in high quality short-term financial instruments including certificates of deposits, commercial paper, and U.S. Government securities. These money market investment funds are not insured nor guaranteed by the U.S. Government or any other entities.

**FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

(5) Property, Plant, and Equipment

Property, plant, and equipment consists of the following:

	2005	2004
Land	\$ 936,590	307,589
Buildings	11,943,371	4,594,371
Furniture and fixtures	1,356,626	964,533
Machinery and equipment	20,604,112	1,516,630
Automobiles and trucks	408,583	328,721
	35,249,282	7,711,844
Less accumulated depreciation	(7,476,311)	(5,245,394)
	<u>\$ 27,772,971</u>	<u>2,466,450</u>

(6) Stock Redemption Payable

On May 14, 2004, the Board of Directors approved a plan to eliminate stock ownership to members with no sale bills for crop years 1984 to 2000. Total memberships affected amounts to 713,258, which will eventually result in the refund of the \$5 Association membership fee. At April 30, 2005, the total anticipated liability to be refunded is \$3,566,290.

(7) Capital Equity Credits

Capital equity credits are comprised of \$25,977,095 for qualified certificates of interest in capital reserves issued to its patrons in connection with the 1967 - 1973 crop pool settlements. The amount issued was between 40% to 60% of the gain on the applicable crop pool with the members paying tax on the entire gain. The patrons will not be required to pay income tax on the eventual redemption of the qualified certificates of interest. Non-qualified credits represent un-cashed checks net of the applicable income taxes paid by the Corporation for crop pool settlements prior to the adoption of the by-law consent provisions in 1980. The un-cashed checks are reflected as non-qualified capital equity credits in capital reserve net of income taxes paid by the Corporation. The Corporation receives an income tax deduction for any check that is eventually cashed.

**FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

(8) Other Revenue, Net

Other revenue, net, consisted of the following for the years ended April 30, 2005 and 2004:

	2005	2004
Processing and redrying income, net	\$ 1,556,306	-
Marketing fees	593,800	688,600
Rental income	131,741	120,209
Other, net	55,001	(68,013)
	<u>\$ 2,336,848</u>	<u>740,796</u>

(9) Income Taxes

Income tax expense (benefit) consists of:

	Current	Deferred	Total
2005:			
Federal	\$ (432,090)	246,090	(186,000)
State	52,000	(3,000)	49,000
	<u>\$ (380,090)</u>	<u>243,090</u>	<u>(137,000)</u>
	Current	Deferred	Total
2004:			
Federal	\$ 1,219,000	(3,000)	1,216,000
State	53,000	(3,000)	50,000
	<u>\$ 1,272,000</u>	<u>(6,000)</u>	<u>1,266,000</u>

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(9) Income Taxes, Continued

The actual income tax expense (benefit) for 2005 and 2004 differs from the "expected" tax expense (benefit) (computed by applying the U.S. federal corporate income tax rate of 34%) to the income (loss) before income taxes as follows:

	2005	2004
Computed "expected" tax expense (benefit)	\$ (26,000)	1,527,000
Increase (reduction) in income tax expense (benefit) resulting from:		
State income taxes, net of federal income tax benefit	32,000	33,000
Non-taxable interest income	(198,000)	(351,000)
Non-deductible expenses	55,000	56,000
Other, net	-	1,000
	<u>\$ (137,000)</u>	<u>1,266,000</u>

The tax effects of temporary differences that give rise to the deferred tax liabilities at April 30, 2005 and 2004, are presented below:

	2005	2004
Deferred tax assets:		
State net operating loss	\$ 191,000	-
Loss: valuation allowance	(191,000)	-
	<u>\$ -</u>	<u>-</u>
Deferred tax liabilities:		
Recognition of certain retirement costs	\$ 914,000	970,000
Property, plant and equipment, primarily due to differences in depreciation	621,090	322,000
Inventories	49,700,000	-
	<u>\$ 51,235,090</u>	<u>1,292,000</u>

**FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

(10) Retirement Plan

The Corporation sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Corporation are eligible to participate after one year of service. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service. The Corporation's objective in funding its plan is to accumulate funds sufficient for all accrued benefits. The funded status of the plan is as follows:

	<u>2005</u>	<u>2004</u>
Benefit obligation at April 30	\$ 15,327,000	15,802,000
Fair value of plan assets at April 30	<u>15,921,000</u>	<u>13,678,000</u>
	<u>\$ 594,000</u>	<u>(2,124,000)</u>

The following summarizes pension benefits for the years ended April 30, 2005 and 2004:

	<u>2005</u>	<u>2004</u>
Benefit (credit)	\$ (166,000)	(124,000)
Employer contributions	346,763	-
Plan participants contributions	-	-
Benefits paid	1,042,000	1,056,000

The following summarizes the weighted average pension assumption at April 30, 2005 and 2004:

	<u>2005</u>	<u>2004</u>
Discount rate	6.50%	6.25%
Expected return on plan assets	8.0	8.0
Rate of compensation increase	4.0	4.0

(11) Market Centers

The Corporation for the fiscal years ended April 30, 2005 and 2004 provided fourteen tobacco auction market facilities in Virginia, North Carolina, South Carolina, and Georgia at a cost of \$4,129,688 and \$4,779,841, respectively, which is included in general and administrative expenses.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(12) Operating Leases

During the fiscal years ended April 30, 2005 and 2004, the Corporation entered into fourteen operating leases for purposes of operating tobacco marketing centers for the 2004 and 2003 Crop years. The year-to-year leases covered a period from July 1, to October 31, each year. Total lease expense for the fourteen centers amounted to approximately \$988,000 and \$740,000 for the years ended April 30, 2005 and 2004, respectively.

(13) Acquisition of Timberlake Facility

On June 4, 2004, the Corporation entered into a purchase agreement (the "Agreement") with VT Roxboro, LLC to purchase an inactive tobacco products manufacturing facility located in Timberlake, North Carolina. The acquisition was consummated on July 13, 2004 and the results of the operations have been included in the consolidated financial statements since that date.

During the year ended April 30, 2005, the facility was used to re-dry approximately 27 million pounds of green tobacco of the 2004 crop and near fiscal year end began making value added tobacco products including limited amounts of puffed stem, cut rag, contract cigars, and contract export cigarettes. As a result of the acquisition, the Corporation expects to broaden the Corporation's marketing efforts and to produce and sell value-added tobacco products.

The aggregate purchase price was \$25,800,000. The following table summarizes the fair values of the assets acquired at the date of acquisition.

<u>At July 13, 2004</u>	
Machinery and equipment	\$ 17,728,000
Buildings	7,349,000
Furniture and fixtures	94,000
Land	629,000
	<u>\$ 25,800,000</u>

The acquired assets are being depreciated using the declining-balance and straight-line methods over the estimated useful lives of the individual assets.

At closing, the Corporation and the Seller entered into an agreement pursuant to which the Seller was to provide advice and assistance to the Corporation for up to three months following the closing date for \$400,000. At April 30, 2005, this consulting fee is included in operating expenses in the consolidated statements of operations.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION
CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(14) Commitments and Contingencies

(a) *Commitments*

On May 13, 2005, the Board of Directors approved a plan to cancel the memberships of those members who chose not to sign contracts with the Corporation for the 2005 crop year. Total memberships affected amounted to approximately 87,600 members which would result in an anticipated liability of approximately, \$438,000.

(b) *Litigation*

The Corporation is currently engaged in two separate lawsuits, which were filed prior to year end and which are in the early stages of litigation. One case, *Lewis vs. Flue-Cured Tobacco*, alleges the fundamental purpose for which the Corporation was formed, marketing of members' tobacco under the federal tobacco loan program, is no longer valid since the U.S. Congress terminated the Tobacco Loan Program. The suit alleges that since the fundamental purpose is no longer being served, the Corporation should be judicially dissolved and the assets of the Corporation distributed to all members. As part of the suit, plaintiffs allege the Corporation improperly cancelled their stock in the Corporation.

The other case, *Fisher vs. Flue-Cured Tobacco*, seeks to have a court imposed "constructive trust" on the assets of the Corporation for the benefit of the owners. The suit alleges various improprieties by the Board of Directors in its handling of producer and purchaser assessments held by the Commodity Credit Corporation in conjunction with the Tobacco Loan Program, the disenfranchisement of members, and the reduction of the number of members in the Corporation illegally.

Due to the early stages of litigation for both cases, it is not possible to form an assessment of potential outcome or an estimate of liability, if any. Management has asserted that both cases are without merit and will be defended vigorously.

(c) *Subsequent Events*

On June 29, 2005, the Corporation obtained a loan commitment from Wachovia Bank, N.A. for a credit facility totaling \$80,000,000 to fund the purchase of tobacco for the 2005 crop year. The credit facility will bear interest at a rate equal to the LIBOR market index plus .9% and matures July 31, 2007.

CONFIDENTIAL**EXHIBITS**

- [14] Flue-Cured Tobacco Cooperative Stabilization
Corporation and Subsidiaries Consolidated
Financial Statements 4/30/2004 and 2003
- [15] Flue-Cured Tobacco Cooperative Stabilization
Corporation and Subsidiaries Consolidated
Financial Statements 4/30/2003 and 2002
- [16] Flue-Cured Tobacco Cooperative Stabilization
Corporation Final Statement of Operations for
1983 Crop
- [17] Flue-Cured Tobacco Cooperative Stabilization
Corporation Final Statement of Operations for
1984 Crop
- [18] Flue-Cured Tobacco Cooperative Stabilization
Corporation Statement of Operations for
1982 Crop
- [19] Flue-Cured Tobacco Cooperative Stabilization
Corporation Final Statement of Operations for
2004 Crop
- [20] Flue-Cured Tobacco Cooperative Stabilization
Corporation 2003 Annual Report
Stabilization Corporation

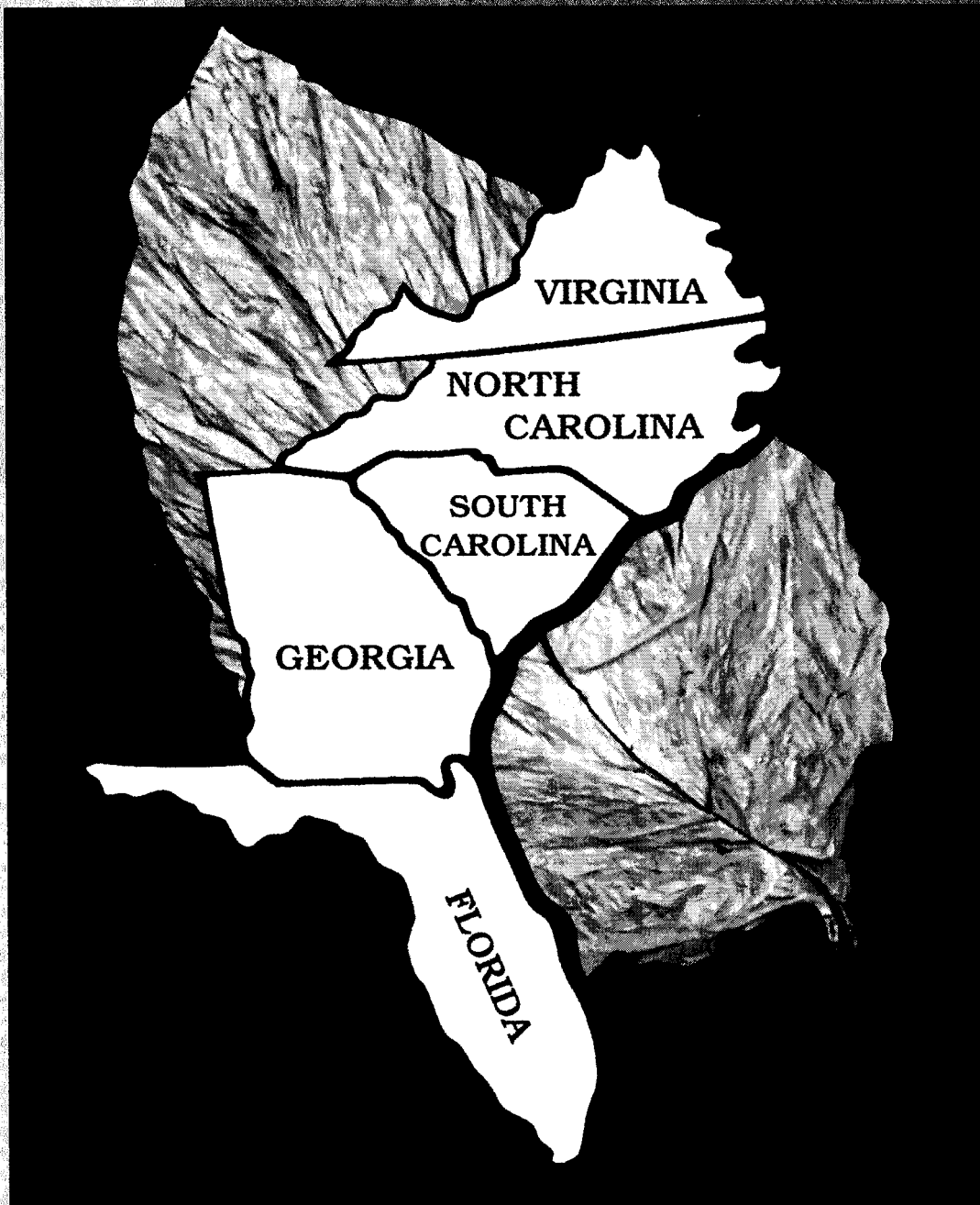
E X H I B I T S

- [21] Flue-Cured Accounts Receivable for 4/06
Accounts Receivable Crop for 4/06
U.S. Flue-Cured Tobacco Growers Balance Sheet
For 4/30/06
Tobacco Growers Services, Inc. Statement of
Operations for 4/30/06
Accounts Receivable Tobacco Growers 4/30/06
- [22] Flue-Cured Tobacco Cooperative Stabilization
Corporation and Subsidiary Consolidated
Financial Statements for 4/30/1992 and 1991
- [23] Flue-Cured Tobacco Cooperative Stabilization
Corporation and Subsidiary Consolidated
Financial Statements for 4/30/1993 and 1992
- [24] Flue-Cured Tobacco Cooperative Stabilization
Corporation and Subsidiary Consolidated
Financial Statements and Schedules for
4/30/1994 and 1993
- [25] Stabilization Five-year Plan Consolidated

EXHIBIT M

Flue-Cured Tobacco Cooperative

Stabilization Corporation



2004 Annual Report

SC 0098

***“Fifty-Eight Years of Service
to Flue-Cured Tobacco Farmers”
(1946 - 2004)***

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<i>Financial Statements</i>	<i>7</i>
<i>Stabilization Marketing Centers</i>	<i>9</i>

PRESIDENT & GENERAL MANAGER'S REPORT

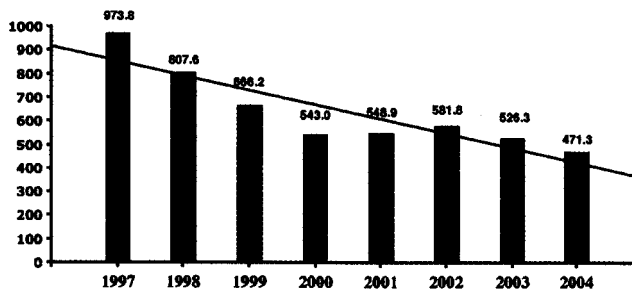
We come to another milestone in the history of our organization. This is the 58th Annual Report on the 2004 fiscal year's operations of Flue-Cured Tobacco Cooperative Stabilization Corporation. This cooperative has served its members well for more than half a century. Family farms and their communities in the flue-cured producing states of Virginia, North Carolina, South Carolina, Georgia, and Florida have benefited economically because of the stabilizing effects the tobacco program has had on tobacco prices and production since 1946. As it is with many aspects of life and business, situations change.

Thirty years ago, we were the only major producers of flavorful flue-cured tobacco in the world. All other sources of flue-cured tobacco were considered filler. Demand was high for U.S. flue-cured tobacco and customers worldwide were willing to pay high prices for our product. The tobacco program allowed farmers to earn a fair share of the profits by providing price support on tobacco. Lulls in demand that caused tobacco to go under loan were only temporary and Stabilization had very little problems selling inventory.

The competitive atmosphere of our business began to noticeably change about twenty years ago. Brazil began to produce a sizable amount of flavorful flue-cured tobacco. Brazilian tobacco was produced under contracts with leaf dealers. Technical assistance, seed, chemicals and fertilizer was provided by the leaf dealers. The Brazilian farmer provided the land and labor. The tobacco was produced at less than half the cost of U.S. tobacco. Zimbabwe also became a source of lower cost flavorful tobacco. Realizing the ability to reap much higher profit margins, leaf dealers made large investments in facilities in these countries and began to persuade our traditional domestic and export customers to buy more of this cheaper tobacco. U.S. tobacco quotas began to shrink. After the worldwide economic crisis in 1997, our traditional export customers found it necessary to replace even more of their U.S. leaf purchases with these cheaper sources.

These changes have lead to the situation we have today. U.S. flue-cured tobacco farmers have lost 502.5 million pounds of quota since 1997. We are at the lowest quota level now than ever before in the history of this cooperative and are facing another potentially large quota cut (20 – 30%) in 2005. It is estimated that 100 million pounds of 2004 crop tobacco could go under loan. If that happens, Stabilization's inventory would increase to 185 million pounds—125 million over the reserve level. It is a very dire outlook for the immediate future under the current tobacco program and changes are needed.

Basic Quota (millions of lbs.)

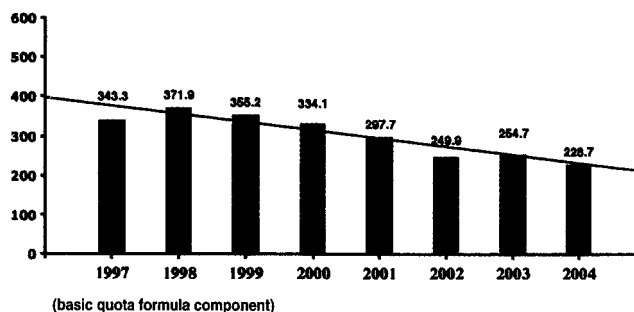


Stabilization has seen this scenario unfolding for some time now and that is why we have stressed the desperate need of a buyout this year to our political leaders in Washington. Our political leaders have told us from the beginning that passing tobacco buyout legislation would not be possible unless there was also a bill that would give FDA authority to regulate the tobacco products. On May 21, FDA regulatory bills were introduced in the U.S. House and Senate. Buyout legislation is expected to be married to the FDA bills. The right combination of bills have been introduced, it is up to our members of congress to advance the legislation.

We mentioned in the 2003 Annual Report that tobacco farmers were at a crossroads. It has been difficult deciding which way to turn, however, your board of directors has decided unanimously on a direction of action rather than just standing in the middle of the road waiting to be run over.

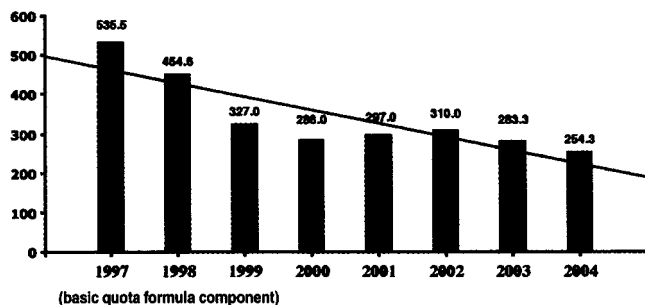
While we appreciate the efforts of U.S. leaf dealers to sell our tobacco, we can no longer depend on them solely to market our tobacco to the world markets because their priorities lie elsewhere.

3-year Export Average (millions of pounds)



(basic quota formula component)

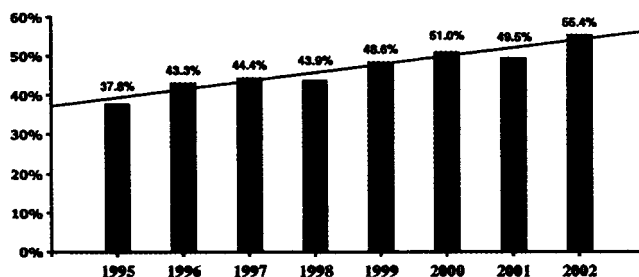
Domestic Purchase Intentions (millions of pounds)



It also appears that we can no longer rely solely on our established domestic manufacturers. Domestic manufacturers have decreased their purchase intentions 281.2 million pounds since 1997 and have increased the amount of imported tobacco in their domestic blends by an average of 37.8% in 1995 to 55.4% in 2002. We also cannot stand idly by and watch a new segment of small upstart cigarette manufacturers that use little or no U.S. flue-cured tobacco in their products continue to take U.S. cigarette market share. In less than 10 years, these small manufacturers have taken a 16% share. We must mention that there are a few of these small companies that do use a significant amount of U.S. flue-cured tobacco in their products and we appreciate them very much.

We have reached a point in our business where we must promote and sell our own products if we want to continue producing tobacco. It is time that Stabilization becomes a true marketing cooperative in order to gain back some of what we have lost. There are many examples of successful farmer owned marketing cooperatives with popular brands on the

Imported Tobacco % In U.S. Cigarette Production

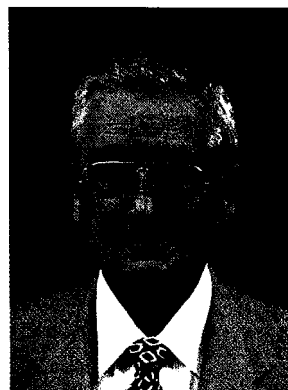


U.S. market. Some examples are Land O Lakes butter, SunKist orange juice, Blue Star almonds.

Stabilization began exploring the possibilities of becoming a full service marketing cooperative last year. This past winter, Stabilization started negotiations with Vector Tobacco, Inc. for the purchase of their processing and manufacturing facility located in Timberlake, NC, just south of Roxboro. The facility was formerly used to produce Quest and Omni cigarettes. Vector decided to move all production of these brands to its Mebane facility in 2003 and put the Timberlake facility up for sale. This new facility has the ability to produce tobacco strips, cut rag, puffed stems, and cigarettes under one roof. Stabilization plans to market all of these products to customers worldwide.

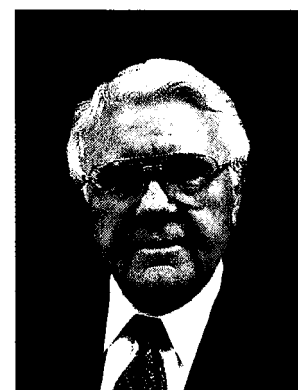
After receiving support and encouragement on our new venture from all of the tobacco farm leadership groups and from many individual farmers, Stabilization plans to move forward. We hope to close on the purchase of the Vector facility in June and begin processing tobacco there in September 2004.

Hopefully this news gives our members a glimmer of hope for the future of U.S. flue-cured tobacco production. We wish you all good luck and success in this 2004 tobacco season.



Bruce Flye

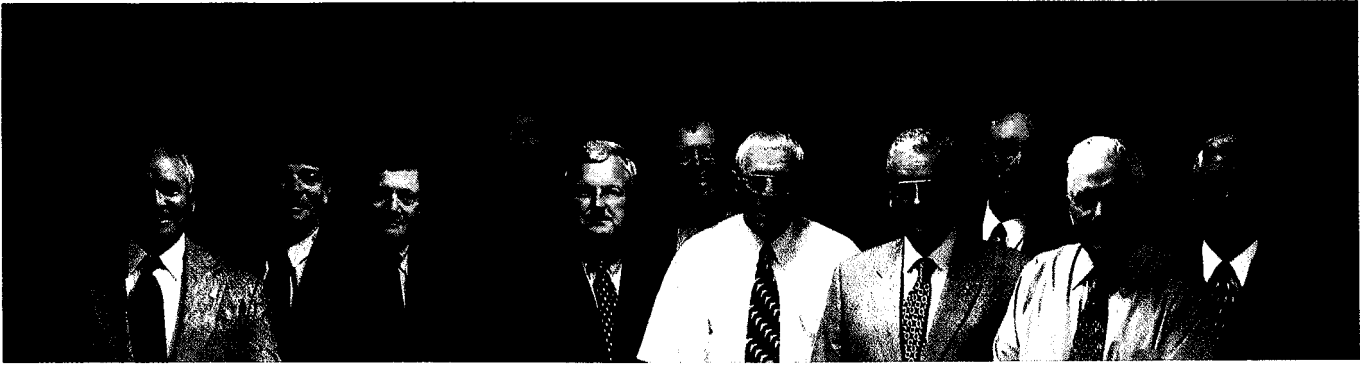
Bruce L. Flye
Chairman &
President



Lioniel S. Edwards

Lioniel S. Edwards
General Manager

DIRECTORS & OFFICERS



Directors from left to right: Kenneth Dasher (D1-FL), Albert Johnson (D3-SC), James Pate (D4-NC), Lamar DeLoach (D2-GA), Keith Beavers (D5-NC), Richard Jenks (D8-NC), Dan Wynne (D6-NC), Bruce Flye (D7-NC), Andy Shepherd (D10-VA), Claude French (D9-NC), Jimmy Hill (Public Director-NC)

Board of Directors

Kenneth Dasher	District One	Live Oak, Florida
D. Lamar DeLoach	District Two	Statesboro, Georgia
Albert M. Johnson	District Three	Galivants Ferry, South Carolina
James C. Pate	District Four	Rowland, North Carolina
Keith Beavers	District Five	Mt. Olive, North Carolina
McDaniel Wynne	District Six	Stokes, North Carolina
Bruce L. Flye	District Seven	Battleboro, North Carolina
Richard J. Jenks	District Eight	Apex, North Carolina
Claude B. French	District Nine	Reidsville, North Carolina
Andrew Q. Shepherd	District Ten	Blackstone, Virginia
James T. Hill, Jr.	Public Director	Kinston, North Carolina

Officers

Bruce L. Flye	President
Kenneth Dasher	Vice President
D. Lamar DeLoach	Vice President
Albert M. Johnson	Vice President
Andrew Q. Shepherd	Vice President
Lioniel S. Edwards	Secretary
L. Arnold Hamm	Assistant Secretary
Kenneth M. Bopp	Treasurer
R. Marks Arnold	General Counsel

Executive Committee

Kenneth Dasher
D. Lamar DeLoach
Albert M. Johnson
Andrew Q. Shepherd
Bruce L. Flye, Ex Officio

Our Mission Statement

Our mission is to always do our utmost to protect the interest and welfare of Flue-Cured Tobacco farmers by accomplishing the following goals and objectives: Be It Resolved, that the Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation on this fourteenth day of March in the year of our Lord nineteen hundred and ninety-seven hereby proclaim this official Mission Statement:

- I. Of utmost importance, Flue-Cured Tobacco Cooperative Stabilization Corporation will continue to stabilize market prices and encourage viable production quota increases.
- II. Flue-Cured Tobacco Cooperative Stabilization Corporation's stocks will be a benchmark of quality and integrity for U.S. flue-cured tobacco throughout the world.
- III. Study and prepare for the procedures necessary to maintain a system ensuring the continuation of a stable and beneficial tobacco program for U.S. farmers and a stable supply of tobacco for customers of U.S. tobacco.
- IV. Provide timely information to tobacco farmers that will or could affect their livelihood gained from the production of tobacco.
- V. Create opportunities for sales in new and traditional markets.
- VI. Implement aggressive export market promotion.
- VII. Establish warm hospitality and assistance for all foreign delegations interested in buying U.S. flue-cured tobacco.
- VIII. All business affairs of the corporation shall be carried out under the highest business standards of confidentiality and conduct.

The Tobacco Price Support Program is open to all eligible tobacco producers without regard to age, color, disability, marital status, national origin, race, religion or sex.

2003 Marketing Season

Demand for the 2003 crop was low; however, quality was good and price averages were higher than in 2002. Total producer pounds marketed amounted to 505.7 million pounds. On auction markets, producers sold 93.7 million pounds or 18.5% of total marketings at an average price of \$179.47 cwt.—up \$4.14 from the 2002 average of \$175.33 cwt. Stabilization Marketing Centers sold 60 million pounds or 64% of total auction marketings, averaging \$180.75 cwt.—up \$3.89 from the 2002 average of \$176.86 cwt. Independent auction warehouses sold 40 million pounds, averaging \$177.19 cwt. Direct contract sales amounted to 412 million pounds, averaging \$186.48 cwt.—up \$2.15 from the 2002 average of \$184.33. 2003 Stabilization receipts totaled 68 million pounds, which was 13.4% of total producer sales.

Stabilization Marketing Centers

Stabilization successfully operated 14 marketing centers in 2003. Marketing centers were established by Stabilization due to buying companies abandoning 80% of the auction market in 2001 in favor of direct contracting with farmers. The purpose was to assure that farmers would have an alternative to direct contracts. The centers are strategically located to give all farmer-members access in each flue-cured belt. The total cost of operating these facilities in 2003 was \$4,779,840. The expenditure, funded by interest earnings, permitted farmers to market their crop commission free in the Stabilization facilities. Stabilization will continue to offer commission free auctions to members this marketing season.

Processing

All tobacco going under loan moves from the auction floor to a contracted processing facility. Loan stock tobacco is processed, where whole leaves are threshed, removing lamina from stem. The most valuable product from this process is the tobacco lamina, better known as "strips." Stems and scrap are by-products of processing. All three of these tobacco components are redried to a uniform moisture content and packed in separate cardboard cases for storage. Stabilization personnel supervise processing from start to finish, insuring that all loan stocks are accounted for and processed to specifications. Quality assurance tests are performed continuously throughout processing.

During the 2003 marketing season, three processing facilities were utilized by Stabilization to process 68 million pounds of loan stock tobacco. This resulted in over 132,642 cases of various grades of product and by-products.

Storage

A total of 231,946 cases of uncommitted (unsold) loan stock tobacco is stored for Stabilization. The majority (62%) of this inventory, 143,642 cases, is stored in a Stabilization owned and operated facility, Tobacco Growers Services (TGS), located in Fuquay-Varina, NC. TGS has 24 storage buildings. The remainder of Stabilization's uncommitted inventory, 88,304 cases, is stored in contracted storage facilities.

Stabilization's Warehouse and Storage Division supervises the operations of all storage facilities. Strict inventory control measures are taken at each facility to assure accountability of all loan stocks. Inspections for cleanliness and security are performed quarterly at each storage location. Monitoring for cigarette beetle infestation is performed weekly. Temperature readings and insect counts are taken, and when either reaches a prescribed threshold in any storage building, it is fumigated immediately.

Sales & Marketing

Stabilization sold 56.1 million pounds of inventory in fiscal year 2004. Inventories, as of April 30, 2004, consists of 1 million pounds of 2001 crop, 16.3 million pounds of 2002 crop, and 66.7 million pounds of 2003 crop.

Stabilization's marketing strategy in fiscal year 2004 continued to focus on gaining access to growth oriented markets worldwide. Recapturing lost market share in traditional export markets was also a major goal of Stabilization's Sales & Marketing Division.

Financial Results

Retained earnings for the fiscal year increased by \$3.2 million. The No Net Cost account decreased to \$266 million, including \$49.3 million of importer collections which are currently unavailable for tobacco discounts. The remaining funds are encumbered by USDA for discounts negotiated on contracted tobacco sales and discount reserves corresponding to the equivalent of those negotiated discounts on remaining uncommitted inventory. The balance due on tobacco loan obligations to Commodity Credit Corporation increased by \$10 million to \$395 million during the year.

2004 Quota, Assessments & Price Support Level

USDA announced December 15, that 2004 flue-cured tobacco basic quota would be 471.3 million pounds—10.5% lower than 2003 basic quota. The no-net-cost assessment will increase in 2004 at 10¢ per pound—5¢ for producers and 5¢ for purchasers. The average price support level for the 2004 crop is \$1.69 per pound, up 2.7 cents per pound from 2003.

2003 Auction Market Report

Market	---Gross---		---Producer---		Resale Pounds	---Stabilization Receipts---			
	Pounds	Avg	Pounds	Avg		Support Avg	Pounds	% of Net Gross	
Moultrie	1,523,123	\$184.73	1,490,323	\$185.11	32,800	\$184.96	675,414	45.3	44.3
Nashville	871,430	\$182.99	842,468	\$183.21	28,962	\$181.24	372,068	44.2	42.7
Statesboro	1,283,620	\$183.75	1,274,525	\$183.68	9,095	\$179.13	457,341	35.9	35.6
Vidalia	897,621	\$178.95	838,380	\$177.46	59,241	\$174.84	401,325	47.9	44.7
Type 14	4,575,794	\$182.99	4,445,696	\$182.90	130,098	\$180.70	1,906,148	42.9	41.7
L City S C	15,409,289	\$176.81	14,905,749	\$177.31	503,540	\$180.82	11,691,041	78.4	75.9
Loris	1,294,074	\$176.91	1,267,425	\$176.88	26,649	\$177.53	908,275	71.7	70.2
Mullins	4,396,876	\$176.23	4,373,962	\$176.39	22,914	\$180.09	3,394,926	77.6	77.2
Clark-Chad	2,765,965	\$182.26	2,506,081	\$181.76	259,884	\$181.54	1,796,584	71.7	65.0
Fairmontbl	5,255,362	\$175.84	5,175,672	\$176.00	79,690	\$176.66	3,954,505	76.4	75.3
Tab-White	6,697,039	\$179.54	6,494,066	\$179.51	202,973	\$179.61	4,706,197	72.5	70.3
Type 13	35,818,605	\$177.53	34,722,955	\$177.71	1,095,650	\$179.83	26,451,528	76.2	73.9
Clinton	3,916,024	\$183.15	3,900,045	\$183.48	15,979	\$184.22	3,381,437	86.7	86.4
Kinston	3,686,107	\$182.53	3,537,327	\$182.42	148,780	\$180.87	2,457,754	69.5	66.7
Rocky Mt	1,218,814	\$178.36	1,138,030	\$177.44	80,784	\$181.77	640,841	56.3	52.6
Smithfield	3,297,744	\$180.76	3,289,860	\$180.88	7,884	\$181.45	2,499,636	76.0	75.8
Wallace	2,024,037	\$178.54	2,012,186	\$178.54	11,851	\$177.91	1,549,873	77.0	76.6
Roanoke	7,374,525	\$180.34	7,312,273	\$180.43	62,252	\$180.51	5,160,758	70.6	70.0
Wilson	12,506,109	\$182.71	12,340,407	\$182.76	165,702	\$182.57	9,035,107	73.2	72.3
Type 12	34,023,360	\$181.63	33,530,128	\$181.68	493,232	\$181.77	24,725,406	73.7	72.7
Oxford	5,904,746	\$179.40	5,850,189	\$179.57	54,557	\$179.55	4,032,566	68.9	68.3
Roxboro	395,363	\$181.35	395,363	\$181.35		\$180.54	202,622	51.3	51.3
Stone-Mad	1,662,105	\$165.86	1,584,808	\$165.59	77,297	\$169.42	1,301,866	82.2	78.3
Winstn Sal	3,947,809	\$178.38	3,938,507	\$178.66	9,302	\$179.76	2,819,657	71.6	71.4
Clrk-Chase	327,953	\$171.87	324,579	\$171.73	3,374	\$174.30	230,890	71.1	70.4
Danville	4,321,936	\$178.84	4,302,863	\$179.08	19,073	\$179.57	3,040,195	70.7	70.3
So Boston	1,186,353	\$173.31	1,149,397	\$175.42	36,956	\$177.37	988,012	86.0	83.3
South Hill	3,434,725	\$180.72	3,431,443	\$180.79	3,282	\$179.28	2,401,297	70.0	69.9
Type 11	21,180,990	\$177.83	20,977,149	\$178.13	203,841	\$178.46	15,017,105	71.6	70.9
All	95,598,749	\$179.32	93,675,928	\$179.47	1,922,821	\$180.26	68,100,187	72.7	71.2

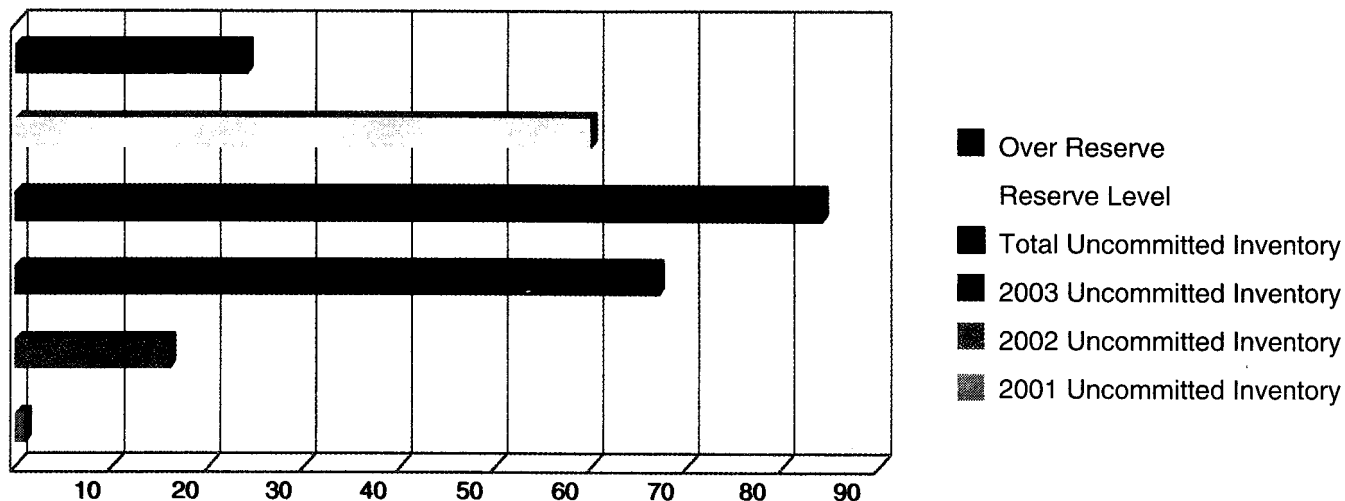
Stabilization Marketing Centers, Independent Auctions, Contract Stations Comparison

	Designations	Producer Sales	Percent Sold	Average Price	Loan Receipts	Average Support	Loan Percent
Marketing Centers	66,478,320	59,997,824	90.25	\$1.8075	44,087,090	\$1.8113	73.48
Independent Auctions	41,727,840	33,678,104	80.71	\$1.7719	24,013,097	\$1.7866	71.30
Total Auctions	108,206,160	93,675,928	86.57	\$1.7947	68,100,187	\$1.8026	72.70
Contract Centers	428,293,840	411,978,909	96.19	\$1.8648	No Support	N/A	N/A

FINANCIAL STATEMENTS

ACTIVE CROPS RECEIPTS - SALES - INVENTORY (in millions—farm weight)

Crop Years	1997	2001	2002	2003	TOTAL
Original Receipts 1997-2003 Crops	194	15	60	68	337
Sales through 4-30-04	193	6	20	0	219
Inventory as of 4-30-04	1	9	40	68	118
Purchase Commitments	1	8	24	1	34
Uncommitted Inventory 4-30-04	0	1	16	67	84
Percent of Original Receipts Sold or Committed	100%	93%	73%	1%	75%



Tobacco Loan Fund Summary

April 30, 2004

Open Crop Pools	Total Costs	Total Cash Receipts	Balance Due Commodity Credit Corporation
1997	\$460,362,981	\$339,119,099	\$121,243,882
2001	35,996,795	11,677,810	24,318,985
2002	128,042,308	23,601,075	104,441,233
2003	145,925,083	599,433	145,325,650
Total	\$770,327,167	\$374,997,417	\$395,329,750

Condensed Consolidated Balance Sheet

April 30, 2004 and 2003

	2004	2003
Assets		
Cash	\$ 5,472,777	\$ 4,111,639
Investments In Interest-Bearing Obligations, At Amortized Cost	230,952,290	229,096,344
Accrued Interest Receivable	2,727,041	3,107,073
Accounts Receivable	430,056	448,342
Inventory	525,175	0
Prepaid Expenses And Other Current Assets	520,948	218,216
Prepaid Retirement Cost	2,609,073	2,733,609
Land, Buildings And Equipment - Net	2,466,450	2,592,078
Total Assets	\$ 245,703,810	\$ 242,307,301
Liabilities and Stockholders' Equity		
Liabilities:		
Accounts Payable And Other Accrued Expenses	\$ 196,691	\$ 32,402
Deferred Income Taxes	1,292,090	1,286,000
Total Liabilities	1,488,781	1,318,402
Stockholders' Equity:		
Common Stock	4,020,490	4,019,560
Additional Paid-In Capital	110,753,161	110,753,161
Capital Equity Credits	26,802,854	26,802,854
Retained Earnings	102,638,524	99,413,324
Total Stockholders' Equity	244,215,029	240,988,899
Total Liabilities And Stockholders' Equity	\$ 245,703,810	\$ 242,307,301

This condensed balance sheet was prepared by management from audited financial statements on which an unqualified opinion was rendered. This condensed balance sheet excludes the tobacco inventory and related assets and liabilities.

STABILIZATION MARKETING CENTERS

2004 Stabilization Marketing Centers

<u>Designation #</u>	<u>Location</u>	<u>Contact</u>	<u>Telephone</u>
253	Moultrie, GA	Aldine Hart	229-985-5586
287	Statesboro, GA	Jamie Brannen	912-682-2660
340	Lake City, SC	Carlyle Chandler	843-374-8821
365	Mullins, SC	Johnny Shelley	843-421-2444
418	Fairmont, NC	Joey Hardin	910-628-7565
503	Clinton, NC	Carlton Barefoot	910-594-1576
555	Kinston, NC	Joe Parker	252-569-1901
623	Williamston, NC	Greg Ray	252-792-2254
632	Wilson, NC	Kenneth Kelly	252-230-6778
585	Smithfield, NC	Edward Stephenson	919-934-4574
766	Oxford, NC	Sam Crews	919-693-5267
865	Winston-Salem, NC	Dean Denny	336-969-6891
917	Danville, VA	Nancie Motley	434-836-1119
975	S. Hill/Chase City, VA	W. M. "Bunky" Warren	434-447-4768

Stabilization Marketing Centers will operate primarily for the benefit of the farmer-members of Flue-Cured Tobacco Cooperative Stabilization Corporation. The purpose is to provide members an alternative to contracts and to enable Stabilization the ability to provide the benefits of the price support program according to Federal law and USDA-Commodity Credit Corporation guidelines.



Flue-Cured Tobacco Cooperative Stabilization Corporation

**P.O. Box 12300
Raleigh, NC 27605**

**Office Location: 1304 Annapolis Drive
Raleigh, NC 27608**

www.ustobaccofarmer.com

SC 00110

EXHIBIT N

Flue-Cured Tobacco Cooperative Stabilization Corporation



CONSUMER PRODUCTS

A Tradition of Taste



CUT RAG BLENDS



TOBACCO STRIPS

2007 Annual Report

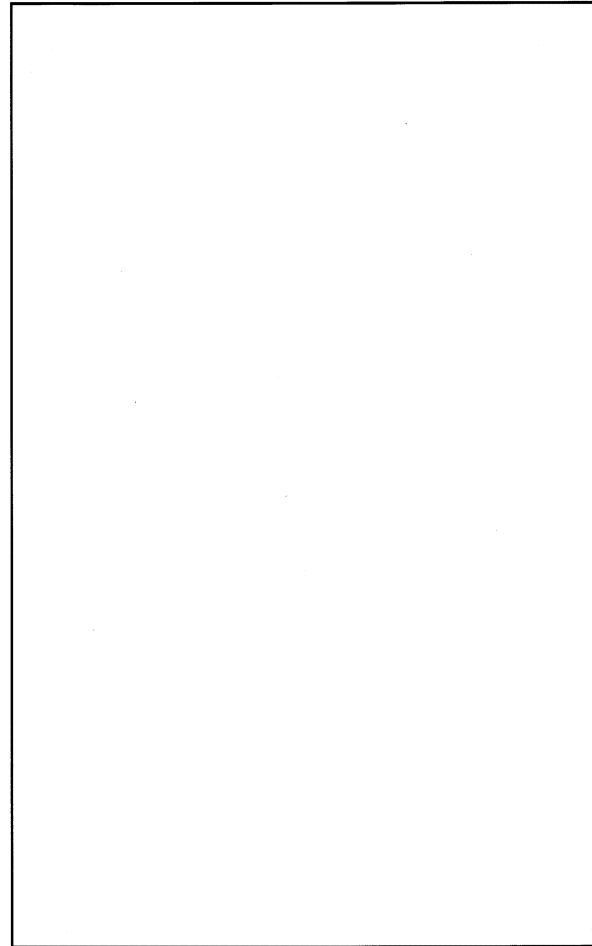
Flue-Cured Tobacco Cooperative Stabilization Corporation

P.O. Box 12300
Raleigh, NC 27605

Office Location:
1304 Annapolis Drive
Raleigh, NC 27608

www.ustobaccofarmer.com

Notes



Regulatory Issues

Pending FDA Legislation

The current form of the pending Food and Drug Administration legislation (S.625; HR 1108) is a punitive bill for any post June 1, 2003 tobacco product manufacturer. While Flue-Cured Tobacco Cooperative Stabilization Corporation is aware of the significance and importance of FDA's role in the regulatory process of tobacco in the United States, Stabilization understands S.625 will effectively reduce or eliminate any opportunity for small tobacco manufacturers to compete in the U.S. cigarette market.

Stabilization sent letters to the Chairman of the Senate Committee on Health, Education, Labor and Pensions and the Chairman of the House Energy and Commerce Committee expressing our concerns with bill S.625. In the letters to Senator Edward Kennedy and Congressman John D. Dingell, we identified the following concerns:

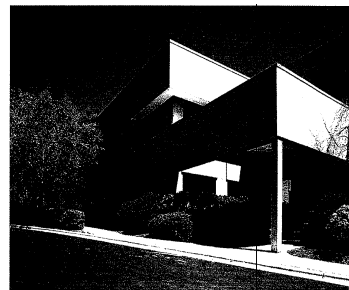
- S.625 gives the Secretary of H.H.S. unprecedented authority over the manufacturing, sale, marketing, and distribution of tobacco products.
- Definitions contained in S.625 are vague and could be subject to a wide range of interpretation.
- The proposed Scientific Advisory Panel includes one individual representing tobacco product manufacturers and one individual representing the interests of tobacco growers, but neither of these proposed members has a vote in panel recommendations.
- The provisions in S.625 allows for the absolute FDA regulation of tobacco products, with the exception of reducing nicotine levels to zero, that could in fact render tobacco products unmarketable. This alone could lead to a sizable black market for undocumented tobacco products.

- S.625 contains language that exempts certain major brands that entered the market prior to 1997 from the product packaging requirements mandated for new brands.
- S.625 allows the Secretary far reaching powers regarding advertising and the illicit trade of tobacco products. Is it wise to remove the current authority from other agencies such as the Federal Trade Commission and the Justice Department?
- The reporting and testing requirements of S.625 are onerous and expensive. Small tobacco manufacturers have limited resources and personnel and compliance with these provisions would be burdensome.

Additionally, Arnold Hamm, General Manager/CEO of the Flue-Cured Tobacco Cooperative Stabilization Corporation, states, "While the Board of Directors is generally amenable to some form of regulation of tobacco products, we believe that any such regulations should restrict tobacco product marketing from minors and contain provisions so that adult tobacco consumers can be afforded the same protections under law as consumers of other products. I can only stress that Stabilization opposes S.625 in its current form because it would virtually eliminate any opportunity for our growers/members to participate in the future tobacco market in the U.S."

Stabilization will continue following the progress of this critical legislation. We urge our farmers/members to get involved. Communicate with your U.S. Congressman and/or U.S. Senator and express your concerns on the negative impact this legislation will have on your business and your community. Our new cigarette brand **1839** is just being introduced into the U.S. market. S.625 will directly impact the future marketing strategies and viability for **1839** as well as for all current tobacco products being manufactured at our small factory. As events unfold, Stabilization will keep you informed on this crucial pending FDA legislation.

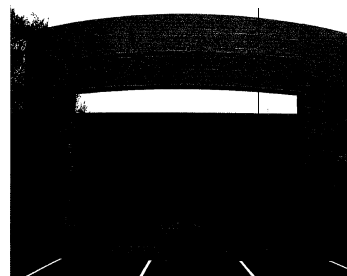
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*"Serving Flue-Cured Tobacco Farmers since 1946"
(1946 - 2007)*

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Message to our members...

We are entering our 61st year of operation and fiscal 2007 is a year that will be remembered for the cooperative's achievements.

The Stabilization board and staff have accomplished its goals this year. We are confident and have a very positive attitude with the progress we are making.

Following are the accomplishments that should be noted in fiscal year ended April 30, 2007:

- Stabilization remains the largest supplier of U.S. flue-cured tobacco to China for the third consecutive year. Sixty percent of the 2006 crop was sold to China.
- First value-added consumer product, **1839** RYO (roll your own) launched in July, 2006.
- First Leadership Class for young farmers completed in February, 2007.
- First cooperative cigarette **1839** launched in May, 2007.

China, as our primary customer, is a tremendous benefit to our farmers for several reasons and it is important for our members to understand this customer's needs. China Tobacco is the single largest consumer of flue-cured tobacco in the world. We now have the opportunity to expand our production this year and in the future.

China Tobacco wants a reliable source of quality U.S. tobacco. China is very concerned about quality issues, but they are confident Stabilization can address these issues. The biggest problem for all tobacco customers is NTRM (Non-Tobacco Related Material) and excessive moisture content. We have asked our members to be aware of these issues at the farm level and we have taken measures in our marketing agreements, marketing centers, and factory to address these issues.

China has indicated that they will increase purchases in 2007. It is our goal to introduce China Tobacco personnel to U.S. tobacco farms, U.S. tobacco

farming practices, and issues facing U.S. tobacco farmers. We intend to bring these customers to you on a personal level this season, with visits to many farms.

We are very proud and appreciative of our first class of young farmers that participated in the leadership program this year. It is vitally important to the future of this cooperative that we continue to educate our young farmers about the function and purpose of this organization. We intend to continue this program in the future and encourage young farmers to participate.

It has been the dream of many tobacco farmers to manufacture and sell their own consumer products. For the members of this cooperative, the fulfillment of that dream is now very possible with the development and launch of the **1839** line of RYO and cigarette products. We can only claim success once we have market share with these products. Market share is difficult to obtain in this very competitive business. However, members can rest assured that Stabilization is taking all necessary measures in order to market our products properly in order to have a fair chance of success. Achieving profitability with consumer products can be slow and very expensive. If we are successful, the benefits can be great for all of us.

The annual report gives an overview of operations from May 1, 2006 to April 30, 2007. We wish all tobacco farmers good luck this season.



Albert M. Johnson
Albert M. Johnson
President

2007 Marketing Centers

<u>Mkt Ctr #</u>	<u>Location</u>	<u>Contact</u>	<u>Telephone</u>
262	Planters Whse. 300 Watson Street Nashville, GA 31639	Jimmy Parker L. E. Watson	229-316-0541 877-850-5733
287	Brannen's Whse. 17156 Hwy 301 N Statesboro, GA 30459	Jamie Brannen	912-682-2660
340	Planters-Growers Golden Leaf 847 W Main St. Lake City, SC 29560	Carlyle Chandler	843-374-8821
365	Big L Whse. 901 NE Front Street Mullins, SC 29574	Johnny Shelley	843-421-2444
503	Sampson Tobacco Whse. 343 Pugh Road Clinton, NC 28329	Carlton Barefoot	910-592-8933
623	Rogers Whse., Inc. 114 West Blvd. Williamston, NC 27892	Greg Ray	252-792-2254
865	Old Belt Coop 1395 Old Belt Way Rural Hall, NC 27045	Dean Denny	336-462-3586
917	Motley's Whse. 144 Wilborne Ave Danville, VA 24540	Nancie Motley	434-836-1119
975	Exchange Whse. 408 West Danville St. South Hill, VA 23970	Bunky Warren	434-917-4418

Product Development

Your Brand "1839" Launched

The much anticipated launch of **1839** is here! U.S. Flue-Cured Tobacco Growers, Inc. was assigned the task to showcase your hard working efforts to produce, unquestionably, the finest smoking quality tobacco in the world.

Why the name **1839**? In the year 1839, a farmhand in Caswell County, North Carolina accidentally discovered what was called "bright leaf tobacco" through a process that imparted a distinctive golden color and mild flavor and aroma to the tobacco but left a residual charcoal taste. After the Civil War, U.S. growers standardized the use of flues in their barns to remove the charcoal taste and called the result "flue-cured tobacco." Today, the tradition lives on in our new tobacco products' brand name, **1839**.

The **1839** Roll Your Own products were introduced in July, 2006. We currently have five wholesalers that purchase **1839** RYO. The RYO market is growing and **1839** is showing steady growth. **1839** RYO brand is offered in three styles: full flavor, mild, and menthol.

The **1839** cigarette product line has taken approximately one year to develop for sale. A marketing firm was hired to work and exchange ideas with our management/sales team. Our blenders skillfully combined aged U.S. flue-cured tobacco with U.S. burley tobacco to give our consumers a premium U.S.A. quality blend with a rich flavorful taste. Consumer and smoking panels were established to receive feedback concerning your **1839** tobacco product. Our R&D Department has worked and will continue to work closely with our management/sales team to insure the consistency and integrity of the product to consumers.

In addition, U.S. Flue-Cured Tobacco Growers, Inc. is a member of the MSA (Master Settlement Agreement) and the brand is currently registered for sale in three states: Virginia, North Carolina, and South Carolina. Both **1839** product lines have been well received as the sales team has visited numerous trade shows to introduce and promote your **1839** tobacco product lines. The available styles are full flavor (filter and non filter), light, ultra light, and menthol full flavor and light. **1839** is available in box and softpack, and king and 100 size.

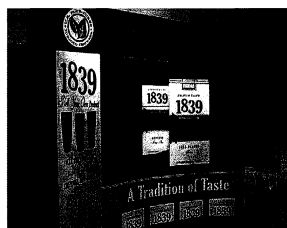
The success of **1839** will ultimately benefit our members. Inquire about **1839** at your local retail outlets.



1839 cartons stream out awaiting shipping orders



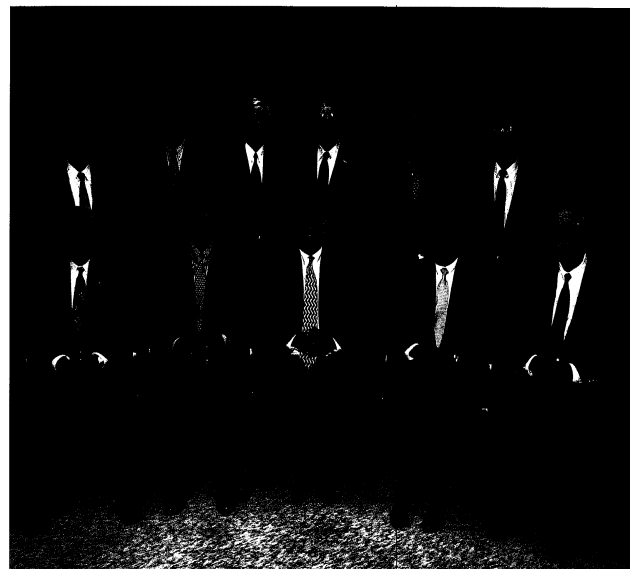
The first 1839 master case rolls off the production line!



1839 trade show booth in Myrtle Beach, SC

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Directors



Sitting from left to right: Kenneth Dasher, Lamar DeLoach, Albert Johnson, Jimmy Pate, Andy Shepherd
Standing from left to right: Keith Parrish, Richard Renegar, Blythe Casey, Richard Jenks, Keith Beavers, Jimmy Hill

Board of Directors

Kenneth Dasher, Vice President	District One	Live Oak, Florida
D. Lamar DeLoach, Vice President	District Two	Statesboro, Georgia
Albert M. Johnson, President	District Three	Gallivants Ferry, South Carolina
James C. Pate, Vice President	District Four	Rowland, North Carolina
Keith Beavers	District Five	Mt. Olive, North Carolina
Blythe H. Casey	District Six	Kinston, North Carolina
Keith Parrish	District Seven	Benson, North Carolina
Richard J. Jenks	District Eight	Apex, North Carolina
Richard Renegar	District Nine	Harmony, North Carolina
Andrew Q. Shepherd, Vice President	District Ten	Blackstone, Virginia
James T. Hill, Jr.	Public Director	Kinston, North Carolina

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Factors Affecting 2006 - 2007 Business Operations

- Declining U.S. dollar continues to favor exports
- China continues to increase its presence in U.S. tobacco markets
- Launched first consumer product, RYO "1839"
- Launched first cigarette product, "1839"
- Unstable fuel prices continue to impact tobacco production cost
- Regulatory environment in the U.S. and developed countries continue to increase
- Continued consolidation of U.S. flue-cured production and growers

ACTIVE CROPS DRY BASIS

(in millions)

Crop Years	2001	2002	2003	2004	2005	2006	TOTAL
Original Receipts 2001-2006 Crops	13	51	59	81	28	26	258
Less: Tobacco Bid/Sold by CCC to Industry	0	5	28	40	0	0	73
Sales Prior To 3/22/05 Program End	10	35	3	0	0	0	48
Sales 3/22/05 to 4-30-07	3	7	19	33	26	13	101
Inventory as of 4-30-07	0	4	9	8	2	13	36
Percent of Original Receipts Sold or Committed	100%	93%	85%	90%	91%	52%	86%

Financial Statements

Condensed Consolidated Balance Sheet

April 30, 2007 and 2006

	2007	2006
ASSETS		
Cash and Cash Equivalents	\$ 65,579,305	\$ 31,052,229
Investments In Interest-Bearing Obligations, At Amortized Cost	186,605,392	189,087,071
Accrued Interest Receivable	2,523,197	2,111,144
Accounts Receivable	42,348,235	46,044,646
Refundable Income Taxes	0	1,603,203
Inventory	75,589,598	84,808,047
Prepaid Expenses And Other Current Assets	238,795	994,449
Prepaid Retirement Cost	3,189,964	2,283,206
Land, Buildings and Equipment - Net	32,157,079	28,901,818
Total Assets	<u>\$ 408,231,565</u>	<u>\$ 386,885,813</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Liabilities:		
Accounts Payable And Other Accrued Expenses	\$ 3,371,563	\$ 3,638,605
Stock Redemption Payable	4,015,455	4,004,400
Revolving Line of Credit	59,733,658	22,358,021
Income taxes Payable	6,452,968	17,136,992
Deferred Income Taxes	14,397,000	21,753,090
Total Liabilities	<u>87,970,644</u>	<u>68,891,108</u>
Stockholders Equity:		
Common Stock	8,230	18,065
Additional Paid-In capital	110,753,161	110,753,161
Contributed Capital	80,917,818	80,917,818
Capital Equity Credits	26,802,854	26,802,854
Retained Earnings	101,778,858	99,502,807
Total Stockholders' Equity	<u>320,260,921</u>	<u>317,994,705</u>
Total Liabilities And Stockholder's Equity	<u>\$ 408,231,565</u>	<u>\$ 386,885,813</u>

This condensed balance sheet was prepared by management from audited financial statements on which an unqualified opinion was rendered.

EXHIBIT O

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Financial Report
April 30, 2012

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Independent Auditor's Report

To the Board of Directors
U.S. Tobacco Cooperative, Inc.
Raleigh, North Carolina

We have audited the accompanying consolidated balance sheets of U.S. Tobacco Cooperative, Inc. and Subsidiaries as of April 30, 2012 and 2011, and the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Cooperative's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of U.S. Tobacco Cooperative, Inc. and Subsidiaries as of April 30, 2012 and 2011, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

McGladrey LLP

Orlando, Florida
July 25, 2012

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Balance Sheets
April 30, 2012 and 2011

Assets	2012	2011
Current Assets		
Cash and cash equivalents	\$ 6,749,053	\$ 16,707,936
Investment in interest-bearing obligations	63,870,054	147,053,294
Investment in preferred stock	4,999,020	4,999,020
Accounts receivable, net	53,852,227	61,583,173
Accrued interest receivable	789,830	1,121,576
Inventories, net	81,497,610	80,152,694
Prepaid expenses and other assets	1,163,264	362,082
Deferred tax assets	1,156,623	-
Total current assets	214,077,681	311,979,775
Investment in Interest-Bearing Obligations	113,425,377	131,375,700
Property, Plant, and Equipment, net	27,134,893	27,072,246
Intangible Assets	132,849,379	-
Total assets	\$ 487,487,330	\$ 470,427,721

(Continued)

Liabilities and Stockholders' Equity	2012	2011
Current Liabilities		
Accounts payable	\$ 6,392,937	\$ 7,556,605
Accrued expenses	10,502,161	7,189,472
Deferred income taxes	-	1,361,000
Current portion of note payable	5,739,251	-
Redeemable stockholders' equity credits	7,218,730	-
Stock redemption payable	5,502,717	4,022,125
Revolving line of credit	61,329,675	104,898,304
Income taxes payable	1,310,999	1,490,314
Customer deposits	1,064,648	1,142,876
Total current liabilities	99,061,118	127,660,696
Deferred Income Taxes	3,592,774	3,123,896
Pension Benefits	6,437,070	1,433,432
Note Payable, less current portion	42,084,177	-
Total liabilities	151,175,139	132,218,024
Commitments and Contingencies		
Stockholders' Equity		
Common stock	4,535	4,700
Additional paid-in capital	110,753,161	110,753,161
Accumulated other comprehensive loss	(4,219,094)	(988,350)
Contributed capital	81,520,000	81,520,000
Capital equity credits:		
Qualified	22,336,142	25,977,095
Non-qualified	549,957	825,759
Retained earnings	125,367,490	120,117,332
Total stockholders' equity	336,312,191	338,209,697
Total liabilities and stockholders' equity	\$ 487,487,330	\$ 470,427,721

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Statements of Operations
Years Ended April 30, 2012 and 2011

	2012	2011
Revenue	\$ 282,739,240	\$ 235,490,867
Cost of sales	<u>253,558,649</u>	<u>217,785,617</u>
Gross margin	29,180,591	17,705,250
Expenses:		
Selling, general and administrative expenses	<u>19,578,053</u>	<u>12,924,819</u>
Operating margin	<u>9,602,538</u>	<u>4,780,431</u>
Other income (expense):		
Other revenue, net	1,250,984	1,502,382
Interest expense	(2,296,781)	(1,261,704)
Interest income	3,687,746	5,091,899
Gain (loss) on sale of assets	<u>1,781</u>	<u>(49,395)</u>
	<u>2,643,730</u>	<u>5,283,182</u>
Margin before income taxes	12,246,268	10,063,613
Income tax benefit (expense)	<u>101,016</u>	<u>(1,421,444)</u>
Net margin	<u>\$ 12,347,284</u>	<u>\$ 8,642,169</u>
Distribution of net margin:		
Paid or payable in cash	\$ 1,479,527	\$ 2,315,624
Issuance of qualified capital equity credits	986,352	2,315,623
Non-patronage source margin retained	<u>9,881,405</u>	<u>4,010,922</u>
	<u>\$ 12,347,284</u>	<u>\$ 8,642,169</u>

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Statements of Comprehensive Income
Years Ended April 30, 2012 and 2011

	2012	2011
Net margin	\$ 12,347,284	\$ 8,642,169
(Loss) gain on pension	(5,357,785)	294,826
Amortization of net loss	-	69,189
Gain on curtailment due to benefit accrual freeze	-	3,733,346
Adjustment to prior service credit due to curtailment	-	728,509
	(5,357,785)	4,825,870
Less: deferred taxes	2,127,041	(1,915,870)
Net (loss) gain on defined benefit pension plan	(3,230,744)	2,910,000
Comprehensive income	\$ 9,116,540	\$ 11,552,169

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

**Consolidated Statements of Stockholders' Equity
Years Ended April 30, 2012 and 2011**

	Common Stock Issued		Additional Paid-In Capital	Accumulated Other Comprehensive (Loss)	Contributed Capital	Capital Equity Credits		Retained Earnings	Total
	Shares	Amount				Qualified	Non-qualified		
Balances, April 30, 2010	1,110	\$ 5,550	\$ 110,753,161	\$ (3,898,350)	\$ 81,520,000	\$ 25,977,095	\$ 825,759	\$ 111,475,163	\$ 326,658,378
Net income	-	-	-	-	-	-	-	8,642,169	8,642,169
Net gain on pension plan	-	-	-	2,910,000	-	-	-	-	2,910,000
Membership stock issued and cancelled, net	(170)	(850)	-	-	-	-	-	-	(850)
Balances, April 30, 2011	940	4,700	110,753,161	(988,350)	81,520,000	25,977,095	825,759	120,117,332	338,209,697
Net margin	-	-	-	-	-	-	-	12,347,284	12,347,284
Net loss on pension plan	-	-	-	(3,230,744)	-	-	-	-	(3,230,744)
Patronage declared on 2011 earnings (see Note 14):									
Issuance of qualified capital equity credits	-	-	-	-	-	2,315,623	-	(2,315,623)	-
Distributed in cash	-	-	-	-	-	-	-	(2,315,624)	(2,315,624)
Patronage declared on 2012 earnings (see Note 14):									
Issuance of qualified capital equity credits	-	-	-	-	-	986,352	-	(986,352)	-
Distributable in cash	-	-	-	-	-	-	-	(1,479,527)	(1,479,527)
1967 and 1968 capital equity credits offered for redemption	-	-	-	-	-	(6,942,928)	(275,802)	-	(7,218,730)
Membership stock issued and cancelled, net	(33)	(165)	-	-	-	-	-	-	(165)
Balances, April 30, 2012	907	\$ 4,535	\$ 110,753,161	\$ (4,219,094)	\$ 81,520,000	\$ 22,336,142	\$ 549,957	\$ 125,367,490	\$ 336,312,191

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Statements of Cash Flows
Years Ended April 30, 2012 and 2011

	2012	2011
Cash Flows From Operating Activities		
Net margin	\$ 12,347,284	\$ 8,642,169
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation	4,241,447	3,908,943
Amortization of (discounts) and premiums on interest-bearing obligations, net	(4,543)	179,134
Provision for obsolete inventory	179,116	212,958
Loss on write-down of inventory	2,354,000	-
Loss on sale of assets	9,691	49,395
Net periodic benefit costs (benefit)	(354,147)	556,052
Deferred income taxes	78,296	(1,422,974)
Cash provided by (used in) changes in:		
Accrued interest receivable	331,746	467,393
Accounts receivable	13,501,388	(3,505,118)
Income taxes receivable/payable	(179,315)	2,546,130
Inventories	7,835,276	8,958,999
Prepaid expenses and other assets	(197,304)	311,863
Accounts payable	(4,718,959)	4,875,051
Accrued expenses	(3,397,777)	(1,018,199)
Customer deposits	(78,228)	(129,533)
Net cash provided by operating activities	31,947,971	24,632,263
Cash Flows From Investing Activities		
Purchase of property, plant and equipment	(3,308,557)	(2,923,155)
Proceeds on disposal of assets	24,278	13,915
Purchase of preferred stock	-	(4,999,020)
Purchases of interest-bearing obligations	(245,336,894)	(364,112,575)
Maturities and calls of interest-bearing obligations	346,475,000	362,285,000
Acquisition of Premier and Franchise, net of cash acquired	(61,731,391)	-
Payment of seller debt at closing of The Premier Acquisition	(20,655,903)	-
Acquisition of Big South Wholesale, LLC and Big South Wholesale of Virginia, LLC	(8,668,397)	-
Net cash provided by (used) in investing activities	6,798,136	(9,735,835)

(Continued)

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Statements of Cash Flows (Continued)
Years Ended April 30, 2012 and 2011

	2012	2011
Cash Flows From Financing Activities		
Payments on revolving line of credit	(57,031,884)	(109,705,936)
Draws on revolving line of credit	13,463,255	106,736,717
Payments on note payable	(2,820,572)	-
Net payments on redemption of common stock	(165)	(850)
Patronage distribution	(2,315,624)	-
Net cash used in financing activities	(48,704,990)	(2,970,069)
Net (decrease) increase in cash and cash equivalents	(9,958,883)	11,926,359
Cash and cash equivalents:		
Beginning	16,707,936	4,781,577
Ending	<u>\$ 6,749,053</u>	<u>\$ 16,707,936</u>
Supplemental Disclosure of Cash Flow Information		
Cash paid for income taxes	<u>\$ -</u>	<u>\$ 720,000</u>
Cash paid for interest	<u>\$ 2,140,247</u>	<u>\$ 1,311,321</u>
Supplemental Schedule of Noncash Investing and Financing Activities		
Issuance of Qualified Capital Equity Credits	<u>\$ 3,301,975</u>	<u>\$ -</u>
Patronage payable	<u>\$ 1,479,527</u>	<u>\$ -</u>
1967 and 1968 Capital Equity Credits offered for Redemption	<u>\$ 7,218,730</u>	<u>\$ -</u>
Note payable issued in connection with The Premier Acquisition	<u>\$ 50,644,000</u>	<u>\$ -</u>

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies

Organization data: U.S. Tobacco Cooperative, Inc. (the "Cooperative") was incorporated on June 1, 1946 under the provisions of the Cooperative Marketing Act of the State of North Carolina as a corporation operating on a cooperative basis, with capital stock. The primary business activities of the Cooperative and its subsidiaries consist of purchasing, processing, storing, manufacturing, marketing, and selling tobacco products for its members.

The authorized capital stock of the Cooperative consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who shall patronize the Cooperative. At all meetings of the stockholders, each stockholder is entitled to only one vote. No dividends are payable on the common stock. The Cooperative has adopted a bylaw consent form in which each member agrees to take into taxable gross income patronage refunds allocated to them.

The Cooperative is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members and patrons. The capital equity credits are used to accumulate capital as considered necessary by the Board of Directors. Capital equity credits bear no interest, have no due date, and may only be redeemed or retired at the discretion of the Board of Directors in order of issuance by years.

A summary of the Cooperative's significant accounting policies follows:

Consolidation policy: For the year ended April 30, 2011, the accompanying consolidated financial statements include the accounts of the Cooperative and its wholly-owned subsidiaries, Tobacco Growers Services, Inc. and U.S. Flue-Cured Tobacco Growers, Inc. (USFC). During 2012, the Cooperative acquired Premier Manufacturing, Inc. (Premier), Franchise Wholesale Co., L.L.C. (Franchise), and Big South Distribution, LLC (Big South). The results of operations of companies acquired during the year are included in the consolidated financial statements from the effective dates of the respective acquisitions. All material intercompany balances and transactions have been eliminated.

Revenue recognition: Revenues are generated primarily from leaf tobacco and tobacco products sales. Sales are recognized upon shipment of goods to the customer at which time there is transfer of the title and risk of loss passes to customer.

The Cooperative's accounting policy is to include federal excise taxes in revenues and cost of sales. Federal excise tax revenues and cost of sales totaled \$109,550,597 and \$68,068,823 for the years ended April 30, 2012 and 2011, respectively.

Shipping and handling costs: Shipping and handling costs are included in cost of sales.

Cash and cash equivalents: For purposes of the statement of cash flows, the Cooperative considers money market funds and all other short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

The Cooperative maintains cash and cash equivalents in accounts with federally insured financial institutions. At times, these balances may exceed the federally insured limits. The Federal Deposit Insurance Corporation (FDIC) provides for all deposits at FDIC insured institutions to be insured up to \$250,000 and also provides for temporary full guarantee of funds held in non-interest bearing transaction accounts above the existing deposit insured limit at April 30, 2012. All accounts are fully guaranteed by the FDIC at April 30, 2012. The Cooperative has not experienced any credit losses in such accounts.

Interest-bearing obligations: Interest-bearing obligations are stated at amortized cost.

As of April 30, 2012 and 2011, all of the Cooperative's debt securities are classified as held to maturity as the Cooperative has the ability and the positive intent to hold its debt securities until maturity. No securities are classified as either available for sale or held for trading purposes. Debt securities intended to be held to maturity are stated at cost adjusted for amortization of premium and accretion of discount. Accreted discounts and amortized premiums are included in interest income.

Investment in preferred stock: The Cooperative has an investment in the preferred stock of a financial institution. The investment is recorded at cost.

Accounts receivable: Accounts receivable are recorded at net realizable value. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history, and current economic conditions. The allowance is reviewed periodically and adjusted for accounts deemed uncollectible by management. After all attempts to collect have failed, the receivable is written off against the allowance.

Inventories: Raw materials, work in process and tobacco products inventories are carried at the lower of cost or market, with cost determined on a first-in, first-out (FIFO) basis, and market based on current values less disposal costs. Tobacco purchased from members under marketing agreements is stated at cost. Tobacco received upon termination of the tobacco price support program, ceded tobacco, is stated at estimated net realizable value at the date received. Determining market value of inventories involves numerous judgments, including projecting average selling prices and sales volumes for future periods and costs to complete products in work in process inventories.

The Cooperative evaluates its inventory value at the end of each year to ensure that it is carried at the lower of cost or market. This evaluation includes a review of potential obsolete and slow-moving stock, based on historical product sales and forecasted sales, and an overall consolidated analysis of potential excess inventories. Events which could affect the amount of reserves for obsolete or slow moving inventories include a decrease in demand for the products due to economic conditions, price decreases by competitors on specific products or systems, or the discontinuance by a vendor. To the extent historical physical inventory results are not indicative of future results and if future events impact, either favorably or unfavorably, the salability of the Cooperative's products or its relationship with certain key vendors, the Cooperative's inventory reserves could differ significantly, resulting in either higher or lower future inventory provisions.

Property, plant, and equipment: Property, plant, and equipment are stated at cost and depreciated over their estimated useful lives using the declining balance or the straight-line method. Routine maintenance and repairs are charged to expense when incurred. When an asset is disposed of, the asset and related accumulated depreciation are written off and any gain or loss on the disposal is recognized. Major replacements and improvements are capitalized and depreciated over their estimated useful lives.

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Accounting for impairment of long-lived assets: Management periodically reviews long-lived assets to be held and used in operations for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. An impairment loss is recognized when the estimated undiscounted future cash flows from the assets are less than the carrying value of the assets. The amount of the impairment loss is the amount by which the carrying amount of the asset exceeds its fair value. Assets to be disposed of are reported at the lower of their carrying amount or fair value less cost to sell. Management is of the opinion that the carrying amounts of its long-lived assets and identifiable intangibles do not exceed their estimated recoverable amounts.

Intangible assets: Intangible assets represent the fair market value of trademarks and the Master Settlement Agreement Grandfather Exemption at the time of purchase. These items were acquired in a purchase business combination and were determined to have an indefinite useful life. They are not amortized, but instead, they are tested for impairment at least annually. An impairment loss is recognized to the extent that the carrying amount exceeds the asset's fair value.

Income taxes: Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis and net operating loss and capital loss carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized.

The Cooperative recognizes the tax benefit from an uncertain tax position only if it is more-likely-than-not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Cooperative's policy is to recognize interest and penalties related to income taxes in its income tax provision. The Cooperative has not accrued or paid interest or penalties which were material to its results of operations for the years ended April 30, 2012 and 2011. As of April 30, 2012 and 2011, the Cooperative had no material unrecognized tax benefits and does not expect the unrecognized tax benefit to significantly change within the next 12 months. The Cooperative files in the U.S and various state jurisdictions. With few exceptions, the Cooperative is no longer subject to income tax examinations by the U.S. federal, state or local tax authorities for years before 2008.

Pension plan: The Cooperative has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan provides benefits through mutual funds invested in common stocks and bonds.

The Cooperative is required to recognize in its balance sheet the funded status of a benefit plan measured as the difference between the fair value of plan assets and benefit obligations, recognize net of tax, the gains or losses and prior service costs or credits that arise during the period but are not recognized as components of net periodic benefit cost and measure defined benefit plan assets and obligations as of the date of the employer's balance sheet.

On May 17, 2010, the Cooperative formally amended its defined benefit pension plan to provide for a freeze of the plan. The action is not related to a disposal of a segment of a business. Employees are not terminated, but cease to accrue additional pension benefits as of July 31, 2010 (the effective date of the pension plan freeze), and pension benefits are not anticipated to be provided under a successor plan.

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Advertising costs: Advertising costs are expensed as incurred. Advertising expenses of \$770,252 and \$1,113,910 for the years ended April 30, 2012 and 2011, respectively, are included in selling, general and administrative expenses in the accompanying consolidated statements of operations.

Use of estimates: The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates include those effecting the valuation and useful lives of property, plant, and equipment, those effecting the valuation of the trademarks, the valuation of the master settlement agreement grandfather exemption, and are used in determining the master settlement agreement obligation, pension benefit obligations, accrued and deferred income taxes, and litigation contingencies.

Reclassifications: Certain amounts in the 2011 consolidated financial statements have been reclassified for comparative purposes to conform with the presentation in the 2012 consolidated financial statements. The results of these reclassifications had no effect on net margin or stockholders' equity.

New accounting pronouncements: In May 2011, the Financial Accounting Standards Board (FASB) issued updated accounting guidance related to fair value measurements and disclosures that result in common fair value measurements and disclosures between U.S. GAAP and International Financial Reporting Standards. This guidance includes amendments that clarify the application of the existing fair value measurement requirements, in addition to other amendments that change principles or requirements for measuring fair value and for disclosing information about fair value measurements. This guidance is effective for annual periods beginning after December 15, 2011. Management is currently evaluating the effect the adoption of this guidance will have on the Company's financial statements.

In June 2011, the FASB issued new accounting guidance related to the presentation of comprehensive income that eliminates the option to present components of other comprehensive income as part of the statement of changes in stockholders' equity. The amendments require that all non-owner changes in stockholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The amendments do not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income. This guidance is effective for fiscal years beginning after December 15, 2011, with early adoption permitted. The Cooperative has adopted this guidance and it did not impact the Cooperative's financial position, results of operations, or cash flows, in the consolidated financial statements.

Recent accounting pronouncements: In addition to the item discussed above, FASB and other entities issued new or modifications to, or interpretations of, existing accounting guidance during the year ended April 30, 2012. The Company has considered the new pronouncements that altered accounting principles generally accepted in the United States of America, and other than as disclosed in these notes to the financial statements, does not believe that any other new or modified principles will have a material impact on the Company's reported financial position or operations in the near term.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 2. Acquisition of Premier and Franchise

During the fiscal year ended 2012, the Board of Directors of U.S. Tobacco Cooperative, Inc. (USTC) approved the plan to purchase 100% of Premier Manufacturing, Inc. and Franchise Wholesale Co., L.L.C (collectively, The Premier Acquisition). The Premier Acquisition closed on October 11, 2011.

Premier is principally a sales and marketing organization selling its four proprietary brands of tobacco products throughout the United States. Premier is a Subsequent Participating Member (SPM) of the Master Settlement Agreement (MSA) and processes four brands registered with the Food and Drug Administration (FDA). Premier has a significant intangible asset, which exempts it in perpetuity from payment obligations under the MSA, except to the extent that its market share exceeds approximately 0.25% of the total number of cigarettes sold in the United States. The annual value of this MSA exemption is approximately \$21,000,000 per year in perpetuity. This intangible asset is commonly referred to in the industry as a MSA Grandfather Exemption. Franchise is an Omaha, Nebraska based captive distribution company, which serves wholesale and retail customers primarily west of the Mississippi River. Franchise also has an operation based in Las Vegas, Nevada. The Premier Acquisition substantially increased the Cooperative's presence in the United States, provided an increased sales force, and created the seventh largest MSA member tobacco products company.

The authoritative guidance for business combinations requires that all business combinations be accounted for using the purchase method of accounting. The Premier Acquisition has been accounted for in accordance with FASB authoritative guidance for business combinations.

Consideration for The Premier Acquisition consisted of:

Cash	\$ 64,998,141
Note payable	50,644,000
Payoff of seller debt at closing	20,655,903
Total consideration	<u><u>\$ 136,298,044</u></u>

There were no pre-acquisition contingencies identified which would require measurement or disclosure.

The following table summarizes the allocation of the total consideration paid for The Premier Acquisition to the assets acquired and liabilities assumed.

Operating working capital	
Cash	\$ 3,266,750
Accounts receivable	3,328,563
Inventories	6,194,087
Prepays and other current assets	480,032
Accounts payable and accrued expenses	(10,266,822)
	<u>3,002,610</u>
Fixed assets	446,055
Intangible assets (Note 7)	132,849,379
	<u><u>\$ 136,298,044</u></u>

The fair value of accounts receivable acquired in the acquisition is \$3,328,563, which represents the amount due from customers based on sales prior to the acquisition date. Management believes the full amount is collectable.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 3. Acquisition of Big South Distribution

On March 25, 2011, management of USFC filed with the Secretary of State of North Carolina the articles of incorporation for a new subsidiary entity, Big South Distribution, LLC (Big South). On May 1, 2011, Big South Distribution, LLC acquired the assets of Big South Wholesale, LLC (BSW) and Big South Wholesale of Virginia, LLC (BSWVA) (collectively, The Big South Distribution Acquisition).

BSW and BSWVA serve wholesale and retail customers located in Georgia, Tennessee and Virginia. The acquisition of BSW and BSWVA substantially expanded the Cooperative's exposure to retail customers and diversified consumer products to maximize gross profit.

The Big South Distribution Acquisition has been accounted for in accordance with the FASB authoritative guidance for business combinations.

Consideration for The Big South Distribution Acquisition consisted of:

Cash	<u>\$ 8,668,397</u>
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There were no pre-acquisition contingencies identified which would require measurement or disclosure.

The following table summarizes the allocation of the total consideration paid for The Big South Distribution Acquisition to the assets acquired:

Inventories	\$ 5,519,221
Accounts receivable	2,441,879
Fixed assets	583,451
Prepaid assets	123,846
	<u>\$ 8,668,397</u>

The fair value of accounts receivable acquired in the acquisition is \$2,441,879, which represents the amount due from customers based on sales prior to the acquisition date. Management believes the full amount is collectable.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 4. Investments

The Cooperative invests in various government-guaranteed, interest-bearing obligations. Since the investments are held to maturity, the Cooperative carries these investments at amortized cost. These investments are scheduled to mature at various times ranging from one week to ten years from the balance sheet date. The policy of the management of the Cooperative is to hold the investments until maturity, at which time the proceeds will be reinvested in similar securities.

The investments are classified by maturity, with short-term investments being those scheduled to mature within the next fiscal year and long-term investments being those with a scheduled maturity between one and ten years. In some instances, actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without prepayment penalties.

Investments in interest-bearing obligations at April 30, 2012 and 2011 were as follows:

		2012			
		Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term		\$ 63,870,054	\$ 482,427	\$ (1,232)	\$ 64,351,249
Long-term		113,425,377	1,388,368	(9,621)	114,804,124
		<u>\$ 177,295,431</u>	<u>\$ 1,870,795</u>	<u>\$ (10,853)</u>	<u>\$ 179,155,373</u>

		2011			
		Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term		\$ 147,053,294	\$ 448,714	\$ (993)	\$ 147,501,015
Long-term		131,375,700	3,258,842	(2,535)	134,632,007
		<u>\$ 278,428,994</u>	<u>\$ 3,707,556</u>	<u>\$ (3,528)</u>	<u>\$ 282,133,022</u>

The unrealized gains and losses on debt securities were primarily due to changes in interest rates. Because the increase or decline in market values of these securities is attributable to changes in interest rates and not credit quality and because the Cooperative has the ability to hold these investments until a recovery of fair value, which may be until maturity, the Cooperative does not believe any of the unrealized losses represent other than temporary impairment based on evaluations of available evidence as of April 30, 2012.

Contractual maturities of interest-bearing obligations as of April 30, 2012 are summarized below.

	Amortized Cost	Estimated Fair Value
Due in one year or less	\$ 63,870,054	\$ 64,351,249
Due after one year through five years	111,549,114	112,648,384
Due after five years through ten years	1,876,263	2,155,740
	<u>\$ 177,295,431</u>	<u>\$ 179,155,373</u>

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 4. Investments (Continued)

As of April 30, 2012 and 2011, investments totaling \$111,345,000 and \$158,615,000 are held as collateral for the Cooperative's outstanding line of credit, respectively.

As of April 30, 2012 and 2011, investment in preferred stock consists of 999,804 shares of preferred stock in AgCarolina. Shares of preferred stock are valued at \$5 par by AgCarolina, with quarterly dividends of up to 8%. During 2012, there were \$78,000 in dividends paid, which were recorded as interest income. There were no dividends during 2011. Preferred stock in AgCarolina is non-voting in nature, and can be withdrawn daily, with dividends available for withdrawal upon declaration. The Cooperative records the investment on the cost method.

Note 5. Inventories

Inventories consisted of the following at April 30, 2012 and 2011:

	2012	2011
Ceded tobacco	\$ 659,647	\$ 4,188,770
Purchased tobacco	59,211,683	69,212,899
Materials and work in process	4,168,535	4,500,685
Tobacco products	18,143,596	2,757,075
	82,183,461	80,659,429
Reserve for obsolete and slow moving inventory	(685,851)	(506,735)
	<u>\$ 81,497,610</u>	<u>\$ 80,152,694</u>

During the years ended April 30, 2012 and 2011, the Cooperative determined that the market value of various products had permanently declined due to obsolescence. In response, the Cooperative recorded an inventory allowance of approximately \$686,000 and \$507,000, respectively.

As a result of the American Jobs Creation Act of 2004, ending the federal tobacco program, 83,705,300 pounds of re-dried tobacco with an estimated net realizable value of \$81,520,000 was "ceded" to the Cooperative during the fiscal year ended April 30, 2005. All but \$659,647 of this ceded tobacco has been sold as of April 30, 2012.

At April 30, 2012, the Cooperative determined that the purchased tobacco inventories were recorded at a cost greater than market value, which resulted in a write-down of approximately \$2,354,000. No such write-down was necessary for the year ended April 30, 2011.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 6. Property, Plant, and Equipment

Property, plant, and equipment, their estimated useful lives, and related accumulated depreciation at April 30, 2012 and 2011, are summarized as follows:

	Estimated Useful Lives in Years	2012	2011
Land	-	\$ 936,589	\$ 936,589
Buildings	5 – 40	12,198,354	12,059,451
Furniture and fixtures	3 – 10	2,165,759	1,891,309
Machinery and equipment	3 – 15	40,358,345	36,906,852
Automobiles and trucks	3 – 5	945,260	574,037
Construction in progress	-	1,072,522	1,067,430
		57,676,829	53,435,668
Less: accumulated depreciation		(30,541,936)	(26,363,422)
		<u>\$ 27,134,893</u>	<u>\$ 27,072,246</u>

For the years ended April 30, 2012 and 2011, depreciation expense amounted to \$4,241,447 and \$3,908,943, respectively.

Note 7. Intangible Assets

Intangible assets consisted of the following as of April 30, 2012 and 2011:

	2012	2011
Trademarks	\$ 5,064,000	\$ -
Master Settlement Agreement – Grandfather Exemption	127,785,379	-
	<u>\$ 132,849,379</u>	<u>\$ -</u>

By acquiring Premier and Franchise, the Cooperative is now able to produce, market, and distribute under the Shield, First Class, Ultra Buy, and Wild Horse brands. The trademarks are protected by registration with the United States Patent and Trademark Office.

In 1998, the major United States cigarette manufacturers entered into the MSA with attorneys general representing 46 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa and the Northern Marianas. The MSA became effective on November 23, 1998, when final approval was achieved in 80% of the settling jurisdictions. The MSA settled all health care cost recovery actions brought by settling jurisdictions and contains releases of various additional present and future claims. To entice other cigarette manufacturers into joining the MSA, the agreement provided that if a SPM joined within ninety days following the MSA's "Execution Date," that SPM is exempt from making annual payments to the settling states unless their share of the national cigarette market exceeds its 1998 market share or 125% of its 1997 market share.

Premier became a signatory to the MSA in February 1999, and was granted an exemption in perpetuity from payment obligations under the Master Settlement Agreement except to the extent that its market share exceeds approximately 0.25% of the total cigarettes sold in the United States.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 8. Accrued Expenses

The components of accrued expenses at April 30, 2012 and 2011 are summarized as follows:

	2012	2011
Accrued tobacco product related taxes	\$ 7,717,653	\$ 4,923,205
Accrued accounts payable	596,476	1,970,230
Accrued salaries and related benefits	349,882	97,497
Accrued interest	319,118	102,584
Accrued insurance	290,035	95,956
Accrued legal and regulatory fees	287,997	-
Accrued master settlement agreement obligation (Note 9)	941,000	-
	<u>\$ 10,502,161</u>	<u>\$ 7,189,472</u>

Note 9. Master Settlement Agreement Obligation

As a party to the MSA, Premier is required to make certain payments to the extent that cases of cigarettes sold exceed a specified level. The payment amount is based generally on Premier's relative market share and is subject to several adjustments, including inflation, United States cigarette volume, and certain other factors. At April 30, 2012, Premier's management estimated the liability to be \$941,000, which is expected to be paid in April 2013, along with the accumulated obligation from April 30, 2012, through the end of the 2012 calendar year.

Note 10. Stock Redemption Payable

Cooperative membership requires participation in the crop year, which runs May 1 through April 30. Beginning in May 2004, the Board of Directors approved a plan to eliminate stock ownership of members who did not enter into marketing agreements with the Cooperative for the subsequent year. The amounts are payable on demand and are classified as a current liability in the accompanying balance sheets.

Note 11. Revolving Line of Credit

The Cooperative has a \$100,000,000 line of credit that matures July 27, 2012. Interest-only payments are due monthly at the LIBOR rate plus 0.90% (1.14% as of April 30, 2012). The outstanding balance was \$61,329,675 at April 30, 2012. The line of credit is collateralized by pledged investment securities which are required to be greater than 111.11% of the commitment amount.

During the year ended April 30, 2011, the Cooperative had a \$140,000,000 line of credit that matured on July 28, 2011. The outstanding balance was \$104,898,304 as of April 30, 2011.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 12. Note Payable

On October 11, 2011, the Cooperative entered into a \$50,644,000 promissory note payable to the Mark James Dunham Revocable Trust in connection with the acquisition of Premier and Franchise. The note is collateralized by the common stock of Premier.

Long-term debt consisted of the following as of April 30, 2012.

Note payable to Mark James Dunham Revocable Trust, payments of \$666,667 including interest at 5% are due monthly, maturing on October 11, 2016.	\$ 47,823,428
Less: current portion of long-term debt	(5,739,251)
	<u>\$ 42,084,177</u>

Remaining maturities of long-term debt subsequent to April 30, 2012 are as follows:

Year Ending April 30,	Amount
2013	\$ 5,739,251
2014	6,032,882
2015	6,341,536
2016	6,665,981
2017	23,043,778
	<u>\$ 47,823,428</u>

Note 13. Operating Leases

During the fiscal years ended April 30, 2012 and 2011, the Cooperative entered into year-to-year operating leases, for purposes of operating tobacco marketing centers for the 2011 and 2010 crop years. Total lease expense for the centers amounted to approximately \$305,000 and \$310,000 for the years ended April 30, 2012 and 2011, respectively.

The Cooperative has noncancellable operating leases, primarily for certain equipment and vehicles, that provide for renewal options for varying periods. Commitments for minimum future lease payments, by year and in aggregate, to be paid under noncancellable operating leases with initial or remaining terms in excess of one year as of April 30, 2012 are as follows:

Year Ending April 30,	Minimum Lease Payments
2013	\$ 646,150
2014	393,641
2015	245,744
2016	214,742
2017	101,343

Total lease and rental expenses for operating leases amounted to approximately \$1,025,000 and \$440,000 for the years ended April 30, 2012 and 2011, respectively, and are included as a component of selling, general and other administrative expenses in the accompanying consolidated statement of operations.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 14. Capital Equity Credits

At April 30, 2012 and 2011, capital equity credits are comprised of \$22,336,142 and \$25,977,095 qualified certificates, respectively, and \$549,957 and \$825,759 non-qualified certificates, respectively. Qualified certificates represent allocations of the gains from the 1967-1973 crop pool settlements and the 2011 and 2012 patronage allocations. The patrons have consented to take into their income that portion of the gain, which is allocated and distributed as a qualified certificate as provided for in the Internal Revenue Code. Non-qualified certificates represent allocations of capital reserve net of income taxes paid by the Cooperative for crop pool settlements prior to the adoption of the by-law consent provisions in 1980. Capital equity credits are redeemable at the discretion of the board of directors.

During the year ended April 30, 2012, the Cooperative declared a patronage allocation of 2011 earnings in the amount of \$4,631,247, of which, \$2,315,624 was redeemed in cash, and qualified capital equity credit certificates were issued for \$2,315,623.

During the year ended April 30, 2012, the Cooperative declared a patronage allocation of 2012 earnings in the amount of \$2,465,879, of which, \$1,479,527 was redeemed in cash, and qualified capital equity credit certificates were issued for \$986,352.

The Cooperative offered for redemption \$4,902,301 and \$2,316,429 of the 1967 and 1968 capital equity credits, respectively, during the year ended April 30, 2012. At April 30, 2012, the redeemable balance is included in the redeemable stockholders' equity credits balance on the consolidated balance sheet. No redemptions were made during the year ended April 30, 2011.

Note 15. Other Revenue, Net

Other revenue, net, consisted of the following for the years ended April 30, 2012 and 2011:

	2012	2011
Importer revenue	\$ 863,573	\$ 1,145,124
Rental income	81,754	81,247
Miscellaneous, net	305,657	276,011
	<u>\$ 1,250,984</u>	<u>\$ 1,502,382</u>

Note 16. Income Taxes

Income tax benefit (expense) for the years ended April 30, 2012 and 2011 consists of:

	2012		
	Current	Deferred	Total
Federal	\$ 256,836	\$ (62,004)	\$ 194,832
State	(77,524)	(16,292)	(93,816)
	<u>\$ 179,312</u>	<u>\$ (78,296)</u>	<u>\$ 101,016</u>

	2011		
	Current	Deferred	Total
Federal	\$ (2,258,628)	\$ 1,163,112	\$ (1,095,516)
State	(585,790)	259,862	(325,928)
	<u>\$ (2,844,418)</u>	<u>\$ 1,422,974</u>	<u>\$ (1,421,444)</u>

U.S. Tobacco Cooperative, Inc. and Subsidiaries**Notes to Consolidated Financial Statements****Note 16. Income Taxes (Continued)**

The actual income tax (expense) benefit for 2012 and 2011 differs from the "expected" tax (expense) benefit (computed by applying the U.S. federal corporate income tax rate of 35%) to the income before income taxes as follows:

	2012	2011
Computed "expected" tax expense	\$ (4,286,000)	\$ (3,522,000)
Change in income tax (expense) benefit resulting from:		
State income taxes, net of federal income tax benefit	(168,183)	(328,377)
State tax rate change	156,166	-
Patronage dividends	2,766,649	-
Domestic manufacturing deduction	1,899,356	2,409,945
Non-deductible expenses	(93,455)	(72,064)
Valuation allowance	(222,032)	(130,843)
Other, net	48,515	221,895
	<u>\$ 101,016</u>	<u>\$ (1,421,444)</u>

The tax effects of temporary differences that give rise to the net deferred tax liabilities at April 30, 2012 and 2011 are presented below:

	2012	2011
Deferred tax assets:		
Recognition of certain retirement costs	\$ 2,560,697	\$ 568,130
Net operating losses	2,134,327	1,966,000
Master settlement agreement	363,602	-
Allowances and reserves	114,002	38,000
Inventories	231,551	-
Accrued expenses	447,467	100,974
Less: valuation allowance	(1,526,032)	(1,304,000)
	<u>4,325,614</u>	<u>1,369,104</u>
Deferred tax liabilities:		
Property, plant and equipment, primarily due to differences in depreciation	4,677,019	4,624,000
Intangibles	2,084,746	-
Inventories	-	1,230,000
	<u>6,761,765</u>	<u>5,854,000</u>
Net deferred tax liability	<u>\$ (2,436,151)</u>	<u>\$ (4,484,896)</u>

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 16. Income Taxes (Continued)

At April 30, 2012 and 2011, the deferred income taxes are reflected in the accompanying consolidated balance sheets as follows:

	2012	2011
Deferred income tax asset (liability) – current	<u>\$ 1,156,623</u>	<u>\$ (1,361,000)</u>
Deferred income tax liability – noncurrent	<u>\$ (3,592,774)</u>	<u>\$ (3,123,896)</u>

As of April 30, 2012 and 2011, the Cooperative had North Carolina state net operating loss carryovers of approximately \$29,439,000 and \$27,112,000, respectively. The losses originate from the operations of U.S. Flue-Cured Tobacco Growers, Inc. The state net operating loss carryovers begin to expire in 2024. A valuation allowance is required to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all the evidence, both positive and negative, management has determined that a \$1,526,032 and \$1,304,000 valuation allowance at April 30, 2012 and 2011, respectively, is necessary to reduce the deferred tax asset related to the state net operating losses that will not be realized. The increase in the valuation allowance for 2012 and 2011 was \$222,032 and \$130,843, respectively.

Note 17. Retirement Plans

Defined Benefit Pension Plan: The Cooperative sponsors a defined benefit pension plan. Prior to 2010, employees of the Cooperative were eligible to participate after one year of service, based on the completion of 1,000 or more hours of service within twelve consecutive months of employment. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service.

On May 31, 2010, the Cooperative's Board of Directors approved a Certificate of Resolution to freeze benefits after July 31, 2010. During the year ended April 30, 2011, the Cooperative recorded a curtailment gain of \$3,733,893 and an adjustment to prior service costs of \$728,509, as a result of the freeze. The curtailment gain was recorded as a reduction in accumulated other comprehensive loss, net of tax, offset by a corresponding reduction in the liability reflected in the accompanying balance sheet to reflect the funded status of the plan at year end. The adjustment to prior service costs was recorded as a reduction in accumulated other comprehensive loss, net of tax, offset by a loss in the accompanying consolidated statement of operations.

The Cooperative's funding policy requires a contribution in the amount necessary to satisfy the minimum required contributions under Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), subject to the Cooperative's long-term funding strategy. The Cooperative's funding policy is to contribute funds to the trust for the plan as necessary to provide for current service and for any unfunded projected benefit obligation over a reasonable period. To the extent that these requirements are fully covered by assets in the trust, the Cooperative may elect not to make a contribution in a particular year. The Cooperative did not make any contributions to the plan for the years ending April 30, 2012 and 2011. The Cooperative anticipates making contributions of \$425,278 to the plan for the year ended April 30, 2013.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Retirement Plans (Continued)

The following table sets forth the plans' funded status and amounts recognized in the Cooperative's consolidated balance sheets at April 30, 2012 and 2011, as follows:

	Pension Benefits	
	2012	2011
Change in projected benefit obligation:		
Projected benefit obligation – beginning of year	\$ 19,775,497	\$ 22,663,795
Service cost	-	-
Interest cost	1,055,997	1,057,644
Actuarial loss	3,168,791	1,072,297
Curtailments	-	(3,733,893)
Benefit payments	(1,264,749)	(1,284,346)
Projected benefit obligation – end of year	22,735,536	19,775,497
Change in plan assets:		
Fair value of plan assets – beginning of year	18,342,065	16,960,545
Actual return on plan assets	(778,850)	2,665,866
Employer contributions	-	-
Participant contributions	-	-
Benefit payments	(1,264,749)	(1,284,346)
Fair value of plan assets – end of year	16,298,466	18,342,065
Funded status – end of year, and noncurrent liability recognized in the consolidated balance sheets	\$ (6,437,070)	\$ (1,433,432)

The accumulated benefit obligation as of April 30, 2012 and 2011 was \$22,735,535 and \$19,775,497, respectively.

Amounts recognized in accumulated other comprehensive loss as of April 30, 2012 and 2011, not yet reflected in net periodic benefit cost, consist of:

	Pension Benefits	
	2012	2011
Net loss	\$ 6,994,715	\$ 1,636,930
Less: deferred tax benefit	(2,775,621)	(648,580)
	\$ 4,219,094	\$ 988,350

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Retirement Plans (Continued)

The net periodic (benefit) cost of the plan was (\$354,147) and (\$171,908) for 2012 and 2011, respectively. These amounts included the following reclassification adjustments of other comprehensive income:

	2012	2011
Amortization of net loss	\$ -	\$ 69,189

The estimated actuarial gains and losses that will be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2013 is \$342,000.

The following table provides the weighted average actuarial assumptions at April 30, 2012 and 2011:

	Pension Benefits	
	2012	2011
Weighted-average assumptions used to determine benefit obligations as of April 30:		
Discount rate	4.25%	5.50%
Weighted-average assumptions used to determine net periodic benefit cost for years ended April 30:		
Discount rate	5.50%	5.50%
Expected long-term return on plan assets	8.00%	8.00%

Management determines the expected return on plan assets based on historical performance of the plan's investments. Management compares their expected rate of return with other companies to ensure that it is in line with broad market expectations.

At April 30, 2012 and 2011, the plan held investments in fourteen mutual funds, administered by five fund families. The various mutual funds invest in publicly traded securities covering a wide range of investment opportunities. The various mutual funds are valued at fair market value based on quoted market prices.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Retirement Plans (Continued)

The fair values of the Cooperative's pension plan assets at April 30, 2012 and 2011, respectively, are as follows:

2012				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurement 4/30/2012
Shares of registered investment companies (mutual funds)				
Large cap equities	\$ 6,495,395	\$ -	\$ -	\$ 6,495,395
Mid-cap equities	1,269,142	-	-	1,269,142
Small cap equities	537,807	-	-	537,807
International equities	2,305,762	-	-	2,305,762
Fixed income securities	5,678,749	-	-	5,678,749
Money market account	-	11,610	-	11,610
Total	\$ 16,286,855	\$ 11,610	\$ -	\$ 16,298,465
2011				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurement 4/30/2011
Shares of registered investment companies (mutual funds)				
Large cap equities	\$ 6,658,755	\$ -	\$ -	\$ 6,658,755
Mid-cap equities	1,278,675	-	-	1,278,675
Small cap equities	554,050	-	-	554,050
International equities	2,999,273	-	-	2,999,273
Fixed income securities	6,728,706	-	-	6,728,706
Money market account	-	122,606	-	122,606
Total	\$ 18,219,459	\$ 122,606	\$ -	\$ 18,342,065

The investment policy guidelines outline risk tolerance, goals, permissible and prohibited investments, and target investment allocations.

Risk tolerance as defined by the policy guidelines identify that historical capital market returns allow for the assumption of short run investment risks in favor of greater returns provided by capital markets over the longer term.

Permissible investments as defined by the policy guidelines are individual securities, separate accounts, mutual funds, trusts, private placements, partnerships, commingled funds, pooled funds, contracts and other legally constituted means of buying and selling investments including domestic equities, fixed income investments, cash equivalents, international equities, and real estate.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Retirement Plans (Continued)

Prohibited investments as defined by the policy guidelines are short sales, margin purchases, securities lending, borrowings of plan assets, purchase of letter stock (restricted stock), options, futures, loans, investments requiring pledging of plan assets as collateral and any other investment not outlined as a permissible investment under the policy guidelines unless authorized in writing by the committee.

The current investment policy target mix is as follows:

Large Cap Equities	37%
Mid-Cap Equities	7%
Small Cap Equities	3%
International Equities	16%
Fixed Income Securities	37%

Schedule of benefits expected to be paid in each of the next five fiscal years, and in the aggregate for the five fiscal years thereafter:

Year Ending April 30,	Amount
2013	\$ 1,293,155
2014	1,253,146
2015	1,301,788
2016	1,311,866
2017	1,327,402
5 years thereafter	6,822,739

Defined Contribution 401(k) Plan: The Cooperative has two 401(k) plans. One plan includes employees of USTC, USFC, and TGS (the USTC Plan). The other plan includes employees of Premier and Franchise (the Premier Plan). The Premier Plan was acquired in conjunction with The Premier Acquisition.

Both plans allow eligible employees to defer a portion of their compensation up to the maximum dollar amount which is set by law (\$17,000 in 2012 with catch-up contribution of \$5,500 for age 50 or older).

The Cooperative may make discretionary matching contributions to the plans equal to a percentage of the elective contributions made by the participants to the plans. The Cooperative may also make discretionary profit sharing contributions to the plans at the end of each respective plan year. The Board of Directors of the Cooperative determines both the discretionary matching and profit sharing contributions. The Cooperative made no discretionary matching or profit sharing contributions to either plan for the years ended April 30, 2012 and 2011.

In 2011, the Cooperative's Board of Directors amended the USTC Plan to permit the USTC Plan to be administered as a safe harbor 401(k) plan providing for a 3% nonelective safe harbor contribution to eligible participants effective as of January 1, 2011. The nonelective safe harbor contributions made to the USTC Plan during the years ended April 30, 2012 and 2011 was \$238,115 and \$219,811, respectively.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 18. Market Centers

For the fiscal years ended April 30, 2012 and 2011, the Cooperative provided four tobacco auction market facilities in Virginia, North Carolina, South Carolina, and Georgia at a cost of \$2,559,663 and \$2,482,882, respectively, all of which was capitalized into the 2011 and 2010 crop inventory.

Note 19. Letters of Credit

As of April 30, 2012, the Cooperative has seven outstanding letters of credit amounting to \$1,554,265. These letters of credit serve as security for the import revenue program, the Cooperative's self-funded health insurance program, and as performance bonds for certain foreign sales. The letters of credit expire on dates ranging from May 29, 2012 through January 31, 2013, renewing annually for a period of one year. As of April 30, 2011, the Cooperative had seven outstanding letters of credit amounting to \$1,304,640.

Note 20. Fair Value Measurements

The carrying value of cash and cash equivalents, accounts receivable, accrued interest receivable, income taxes receivable, accounts payable, accrued expenses, redeemable stockholders' equity credits, stock redemption payable, revolving line of credit, income taxes payable, and customer deposits approximates fair value due to the short-term maturity of these financial instruments. The fair value of the investment in interest-bearing obligations exceeded the carrying value by approximately \$1,860,000 and \$3,704,000 at April 30, 2012 and 2011, respectively. The fair value of the investment in preferred stock was not estimated by management, as there were no identified events or changes in circumstances identified by management that may have a significant adverse effect on the fair value of the investment, and it was not practicable to estimate the fair value.

Management performed a present value analysis of the note payable by discounting the future cash flows at April 30, 2012 and determined the difference between the book value of the note payable and the fair value was deemed immaterial due to the fact that the interest rate on the Cooperative's note payable approximated the market rate on debt with similar maturities. Based upon the analysis, management concluded that the carrying value of the Cooperative's fixed rate note payable approximates fair value.

Nonfinancial instruments such as inventories and property and equipment are excluded from the fair value disclosures.

Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Fair value measurements are not adjusted for transaction costs. There is a three-level valuation hierarchy for disclosure of fair value measurements. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs. The three levels are defined as follows:

Level	Input	Input Definition
Level I	Quoted prices in active markets for identical assets or liabilities.	
Level II	Observable market based inputs or unobservable inputs that are corroborated by market data.	
Level III	Unobservable inputs are not corroborated by market data.	

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 21. Contingencies

Litigation

The Cooperative is currently engaged in two separate lawsuits, *Lewis vs. Flue-Cured Tobacco* and *Fisher vs. Flue-Cured Tobacco*, which were filed in 2005.

Lewis vs. Flue-Cured Tobacco, alleges the fundamental purpose for which the Cooperative was formed, marketing of members' tobacco under the federal tobacco loan program, is no longer valid since the U.S. Congress terminated the Tobacco Loan Program. The suit alleges that since the fundamental purpose is no longer being served, the Cooperative should be judicially dissolved and the assets of the Cooperative distributed to all members. As part of the suit, plaintiffs allege the Cooperative improperly cancelled their stock in the Cooperative.

Fisher vs. Flue-Cured Tobacco, seeks to have a court imposed "constructive trust" on the assets of the Cooperative for the benefit of the owners. The suit alleges various improprieties by the Board of Directors in its handling of producer and purchaser assessments held by the Commodity Credit Corporation in conjunction with the Tobacco Loan Program, the disenfranchisement of members, and the reduction of the number of members in the Cooperative illegally.

On May 4, 2009, the plaintiffs in the Lewis case and Fisher case filed a motion for leave to be allowed to file a second amended and consolidated complaint. The consolidated complaint seeks certification of a class of all present and former shareholders/members of the Cooperative from 1946 through 2004, imposition of a constructive trust, declaration of membership rights, appointment of a receiver, dissolution of the Cooperative and the distribution of assets, and compensatory, special, treble and punitive damages, amongst other claims.

California Board of Equalization (BOE) Dispute, during July 2009, the state of the California performed a Cigarette and Tobacco Products Tax audit of Franchise Wholesale Co, LLC. The audit period was from June 2006 through June 2009. During the audit period, Franchise had been routinely selling both stamped and unstamped product into California. At the conclusion of the audit, Franchise was notified that California statutes preclude Franchise from shipping unstamped product into California which was in contradiction of guidance the State of California had previously provided the Company.

In March 2010, Franchise received a Notice of Determination from the state of California dated February 24, 2010 stating that Franchise owed California back taxes and interest of \$1,380,000 related to the sale of unstamped product. Franchise management does not agree with the state of California's findings and has engaged outside counsel to petition for redetermination of the liability. At April 30, 2012, accrued expenses include the full amount of the original California assessment. This matter is ongoing and the Company does not expect a final determination regarding its petition until later in calendar 2012.

The Cooperative is also party to other legal actions arising in the ordinary course of its business. Management has asserted that these cases are without merit and will be defended vigorously. While the results of these matters cannot be predicted with certainty, management believes it is not possible to form an assessment of potential outcome or an estimate of liability, if any, and that the final outcome of such legal actions will not have a material adverse effect on the Cooperative's financial position.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 22. Business Concentrations

At April 30, 2012 and 2011, 93% and 82%, respectively, of accounts receivable represents open credit shipments with a buyer in mainland China.

For the year ended April 30, 2012, major customers exceeding 10% of net sales accounted for approximately 16% of net sales.

Customer	Net Sales	Percentage of Net Sales
A	\$ 45,580,079	16%

For the year ended April 30, 2011, major customers exceeding 10% of net sales accounted for approximately 30% of net sales.

Customer	Net Sales	Percentage of Net Sales
A	\$ 71,179,636	30%

Note 23. Subsequent Events

Management evaluated and noted no additional subsequent events requiring recognition or disclosure through July 25, 2012, which is the date the financial statements were available to be issued.

EXHIBIT P

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Independent Auditor's Report

To the Board of Directors
U.S. Tobacco Cooperative, Inc.
Raleigh, North Carolina

We have audited the accompanying consolidated balance sheets of U.S. Tobacco Cooperative, Inc. and Subsidiaries as of April 30, 2011 and 2010, and the related consolidated statements of operations, stockholders' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Cooperative's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of U.S. Tobacco Cooperative, Inc. and Subsidiaries as of April 30, 2011 and 2010, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

McGladrey & Pullen, LLP

Orlando, Florida
June 15, 2011

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Balance Sheets
April 30, 2011 and 2010

Assets	2011	2010
Current Assets		
Cash and cash equivalents	\$ 16,707,936	\$ 4,781,577
Investment in interest-bearing obligations	147,053,294	47,055,907
Investment in preferred stock	4,999,020	-
Accounts receivable, net	61,583,173	58,078,055
Accrued interest receivable	1,121,576	1,588,969
Inventories, net	80,152,694	89,324,651
Income taxes receivable	-	1,055,816
Prepaid expenses and other assets	362,082	673,945
Total current assets	311,979,775	202,558,920
Investment in Interest-Bearing Obligations	131,375,700	229,724,646
Property, Plant, and Equipment, net	27,072,246	28,121,344
Total assets	\$ 470,427,721	\$ 460,404,910

See Notes to Consolidated Financial Statements.

Liabilities and Stockholders' Equity	2011	2010
Current Liabilities		
Accounts payable	\$ 7,556,605	\$ 2,681,554
Accrued expenses	7,189,472	8,208,491
Deferred income taxes	1,361,000	2,384,000
Stock redemption payable	4,022,125	4,021,305
Revolving line of credit	104,898,304	107,867,523
Income taxes payable	1,490,314	-
Customer deposits	1,142,876	1,272,409
Total current liabilities	127,660,696	126,435,282
 Deferred Income Taxes	 3,123,896	 1,608,000
Pension Benefits	1,433,432	5,703,250
Total liabilities	132,218,024	133,746,532
 Commitments and Contingencies		
 Stockholders' Equity		
Common stock	4,700	5,550
Additional paid-in capital	110,753,161	110,753,161
Accumulated other comprehensive loss	(988,350)	(3,898,350)
Contributed capital	81,520,000	81,520,000
Capital equity credits:		
Qualified	25,977,095	25,977,095
Non-qualified	825,759	825,759
Retained earnings	120,117,332	111,475,163
Total stockholders' equity	338,209,697	326,658,378
Total liabilities and stockholders' equity	\$ 470,427,721	\$ 460,404,910

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Statements of Operations
Years Ended April 30, 2011 and 2010

	2011	2010
Revenue	\$ 235,490,867	\$ 215,691,493
Cost of sales	217,785,617	203,098,854
Gross Profit	17,705,250	12,592,639
Expenses:		
Selling, general and administrative expenses	12,924,819	12,009,161
Operating income	4,780,431	583,478
Other income (expense):		
Other revenue, net	1,502,382	1,097,803
Interest expense	(1,261,704)	(1,485,864)
Interest income	5,091,899	6,883,439
Gain (loss) on sale of assets	(49,395)	5,403
	5,283,182	6,500,781
Income before income taxes	10,063,613	7,084,259
Income tax expense	(1,421,444)	(138,000)
Net income	\$ 8,642,169	\$ 6,946,259

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Statements of Stockholders' Equity
Years Ended April 30, 2011 and 2010

	Common Stock Issued		Additional Paid-In Capital	Accumulated Other Comprehensive (Loss)	Contributed Capital	Capital Equity Credits		Retained Earnings	Total
	Shares	Amount				Qualified	Non-qualified		
Balances, April 30, 2009	818	\$ 4,090	\$ 110,753,161	\$ (4,060,580)	\$ 80,917,818	\$ 25,977,095	\$ 825,759	\$ 105,131,086	\$ 319,548,429
Comprehensive income:									
Net income	-	-	-	-	-	-	-	6,946,259	6,946,259
Reclassification of net income from sale of ceded tobacco	-	-	-		602,182	-	-	(602,182)	-
Net loss on pension liability, net of \$73,905 tax benefit	-	-	-	(112,254)	-	-	-	-	(112,254)
Amortization of prior service cost and net loss for May 1, 2009-April 30, 2010, net of \$180,713 tax expense	-	-	-	274,484	-	-	-	-	274,484
Memberships issued and cancelled, net	292	1,460	-	-	-	-	-	-	1,460
Total comprehensive income									7,108,489
Balances, April 30, 2010	1,110	5,550	110,753,161	(3,898,350)	81,520,000	25,977,095	825,759	111,475,163	326,658,378
Comprehensive income:									
Net income	-	-	-	-	-	-	-	8,642,169	8,642,169
Net gain on pension liability, net of \$117,046 tax expense	-	-	-	177,780	-	-	-	-	177,780
Amortization of net loss for May 1, 2010 – April 30, 2011, net of \$27,468 tax expense	-	-	-	41,721	-	-	-	-	41,721
Gain on curtailment due to benefit accrual freeze, net of \$1,482,138 tax expense	-	-	-	2,251,208	-	-	-	-	2,251,208
Adjustment to prior service credit due to curtailment, net of \$289,218 tax expense	-	-	-	439,291	-	-	-	-	439,291
Total comprehensive income									11,552,169
Memberships issued and cancelled, net	(170)	(850)	-	-	-	-	-	-	(850)
Balances, April 30, 2011	940	\$ 4,700	\$ 110,753,161	\$ (988,350)	\$ 81,520,000	\$ 25,977,095	\$ 825,759	\$ 120,117,332	\$ 338,209,697

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Statements of Cash Flows
Years Ended April 30, 2011 and 2010

	2011	2010
Cash Flows From Operating Activities		
Net income	\$ 8,642,169	\$ 6,946,259
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation	3,908,943	3,706,890
Change in interest rate swap	-	(156,455)
Amortization of premiums on interest-bearing obligations	179,134	677,682
Provision for doubtful accounts	-	178,326
Provision for obsolete inventory	212,958	159,924
(Gain) loss on sale of assets	49,395	(5,403)
Net periodic benefit costs (benefits)	556,052	(190,787)
Deferred income taxes	(1,422,974)	(7,000)
Cash provided by (used in) changes in:		
Accrued interest receivable	467,393	757,926
Accounts receivable	(3,505,118)	(6,964,275)
Income taxes receivable/payable	2,546,130	(1,143,349)
Inventories	8,958,999	(29,034,247)
Prepaid expenses and other assets	311,863	(497,409)
Accounts payable	4,875,051	(1,400,672)
Accrued expenses	(1,019,019)	182,876
Customer deposits	(129,533)	631,160
Net cash provided by (used in) operating activities	24,631,443	(26,158,554)
Cash Flows From Investing Activities		
Purchase of property, plant and equipment	(2,923,155)	(717,743)
Proceeds on disposal of assets	13,915	5,101
Purchase of preferred stock	(4,999,020)	-
Purchases of interest-bearing obligations	(364,112,575)	(259,888,137)
Maturities and calls of interest-bearing obligations	362,285,000	251,950,000
Net cash used in investing activities	(9,735,835)	(8,650,779)

(Continued)

U.S. Tobacco Cooperative, Inc. and Subsidiaries

Consolidated Statements of Cash Flows (Continued)
Years Ended April 30, 2011 and 2010

	2011	2010
Cash Flows From Financing Activities		
Payments on revolving line of credit	(109,705,936)	(76,142,234)
Draws on revolving line of credit	106,736,717	111,848,160
Net payments on redemption of common stock	(30)	(360)
Issuance of new common stock	-	2,325
Net cash provided by (used in) financing activities	(2,969,249)	35,707,891
 Net increase in cash and cash equivalents	 11,926,359	 898,558
 Cash and cash equivalents:		
Beginning	4,781,577	3,883,019
Ending	<u>\$ 16,707,936</u>	<u>\$ 4,781,577</u>
 Supplemental Disclosure of Cash Flow Information		
Cash paid for income taxes	<u>\$ 720,000</u>	<u>\$ 1,244,440</u>
 Cash paid for interest	<u>\$ 1,311,321</u>	<u>\$ 1,434,294</u>

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies

Organization data: U.S. Tobacco Cooperative, Inc. (the "Cooperative") was incorporated on June 1, 1946 under the provisions of the Cooperative Marketing Act of the State of North Carolina as a Cooperative operating on a cooperative basis, with capital stock. The primary business activities of the Cooperative and its subsidiaries consist of purchasing, processing, storing, manufacturing and selling tobacco products of its members.

On November 17, 2008, Flue-Cured Tobacco Cooperative Stabilization Corporation changed its name to U.S. Tobacco Cooperative, Inc.

The authorized capital stock of the Cooperative consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who shall patronize the Cooperative. At all meetings of the stockholders, each stockholder is entitled to only one vote. No dividends are payable on the common stock. The Cooperative has adopted a bylaw consent form in which each member agrees to take into taxable gross income patronage refunds allocated to them.

The Cooperative is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members and patrons. The capital equity credits are used to accumulate capital as considered necessary by the Board of Directors. Capital equity credits bear no interest, have no due date, and may only be redeemed or retired at the discretion of the Board of Directors in order of issuance by years.

A summary of the Cooperative's significant accounting policies follows:

Consolidation policy: The accompanying consolidated financial statements include the accounts of the Cooperative and its wholly-owned subsidiaries, Tobacco Growers Services, Inc. and U.S. Flue-Cured Tobacco Growers, Inc. All material intercompany balances and transactions have been eliminated.

Revenue recognition: Revenues are generated primarily from leaf tobacco and tobacco products sales. Sales are recognized upon shipment of goods to the customer at which time there is transfer of the title and risk of loss to customer.

The Cooperative's accounting policy is to include federal excise taxes in revenues and cost of sales. Such revenues and cost of sales totaled \$68,068,823 and \$77,970,421 for the years ended April 30, 2011 and 2010, respectively.

Shipping and handling costs: Shipping and handling costs are included in cost of sales.

Cash and cash equivalents: For purposes of the statement of cash flows, the Cooperative considers money market funds and all other short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents.

The Cooperative maintains cash and cash equivalents in accounts with federally insured financial institutions. At times, these balances may exceed the federally insured limits. The Cooperative has not experienced any credit losses in such accounts.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Interest-bearing obligations: Interest-bearing obligations are stated at amortized cost.

As of April 30, 2011 and 2010, all of the Cooperative's debt securities are classified as held to maturity as the Cooperative has the ability and the positive intent to hold its debt securities until maturity. No securities are classified as either available for sale or held for trading purposes. Debt securities intended to be held to maturity are stated at cost adjusted for amortization of premium and accretion of discount. Accreted discounts and amortized premiums are included in interest income.

Investment in preferred stock: The Cooperative has an investment in the preferred stock of a financial institution. The investment is recorded at cost.

Accounts receivable: Accounts receivable are recorded at net realizable value. The allowance for doubtful accounts is estimated based on prior collection experience and management analysis of specific accounts. The allowance is reviewed periodically and adjusted for accounts deemed uncollectible by management. After all attempts to collect have failed, the receivable is written off against the allowance. Management believes an allowance for doubtful accounts is not necessary as of April 30, 2011 and 2010.

Inventories: Raw materials, work in process and tobacco products inventories are priced at the lower of cost or market, with cost determined on a first-in, first-out (FIFO) basis, and market based on current values less disposal costs. Tobacco purchased from members under marketing agreements is stated at cost. Tobacco received upon termination of the tobacco price support program, ceded tobacco, is stated at estimated net realizable value at the date received. Determining market value of inventories involves numerous judgments, including projecting average selling prices and sales volumes for future periods and costs to complete products in work in process inventories.

The Cooperative evaluates its inventory value at the end of each year to ensure that it is carried at the lower of cost or market. This evaluation includes a review of potential obsolete and slow-moving stock, based on historical product sales and forecasted sales, and an overall consolidated analysis of potential excess inventories. Events which could effect the amount of reserves for obsolete or slow moving inventories include a decrease in demand for the products due to economic conditions, price decreases by competitors on specific products or systems, or the discontinuance by a vendor. To the extent historical physical inventory results are not indicative of future results and if future events impact, either favorably or unfavorably, the salability of the Cooperative's products or its relationship with certain key vendors, the Cooperative's inventory reserves could differ significantly, resulting in either higher or lower future inventory provisions.

Property, plant, and equipment: Property, plant, and equipment are stated at cost and depreciated over their estimated useful lives using the declining balance or the straight-line method. Routine maintenance and repairs are charged to expense when incurred. When an asset is disposed of, the asset and related accumulated depreciation are written off and any gain or loss on the disposal is recognized. Major replacements and improvements are capitalized and depreciated over their estimated useful lives.

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Accounting for impairment of long-lived assets: Management periodically reviews long-lived assets to be held and used in operations for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. An impairment loss is recognized when the estimated undiscounted future cash flows from the assets are less than the carrying value of the assets. Assets to be disposed of are reported at the lower of their carrying amount or fair value less cost to sell. Management is of the opinion that the carrying amounts of its long-lived assets and identifiable intangibles do not exceed their estimated recoverable amounts.

Income taxes: Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis and net operating loss carryforwards. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The Cooperative recognizes the tax benefit from an uncertain tax position only if it is more-likely-than-not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Cooperative's policy is to recognize interest and penalties related to income taxes in its income tax provision. The Cooperative has not accrued or paid interest or penalties which were material to its results of operations for the years ended April 30, 2011 and 2010. As of April 30, 2011 and 2010, the Cooperative had no material unrecognized tax benefits and does not expect the unrecognized tax benefit to significantly change within the next 12 months. The Cooperative files in the U.S and various state jurisdictions. With few exceptions, the Cooperative is no longer subject to income tax examinations by the U.S. federal, state or local tax authorities for years before 2007.

Pension plan: The Cooperative has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan provides benefits through mutual funds invested in common stocks and bonds.

The Cooperative is required to recognize in its balance sheet the funded status of a benefit plan measured as the difference between the fair value of plan assets and benefit obligations, recognize net of tax, the gains or losses and prior service costs or credits that arise during the period but are not recognized as components of net periodic benefit cost and measure defined benefit plan assets and obligations as of the date of the employer's balance sheet.

On May 17, 2010, the Cooperative formally amended its defined benefit pension plan to provide for a freeze of the plan. The action is not related to a disposal of a segment of a business. Employees are not terminated, but cease to accrue additional pension benefits as of July 31, 2010 (the effective date of the pension plan freeze), and pension benefits are not anticipated to be provided under a successor plan.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Advertising costs: Advertising costs are expensed as incurred. Advertising expenses of \$1,113,910 and \$782,152 for the years ended April 30, 2011 and 2010, respectively, are included in selling, general and administrative expenses in the accompanying consolidated statements of operations.

Use of estimates: The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates include those effecting the valuation and useful lives of property, plant, and equipment and those used in determining pension benefit obligations, accrued and deferred income taxes and litigation contingencies.

Reclassifications: Certain amounts in the 2010 consolidated financial statements have been reclassified for comparative purposes to conform with the presentation in the 2011 consolidated financial statements. The results of these reclassifications had no effect on net income or stockholders' equity.

New accounting pronouncements: In January 2010, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update No. 2010-06, *Improving Disclosures about Fair Value Measurements*, which provide for new disclosures, as well as clarification of existing disclosures on fair value measurements including employers' disclosures about postretirement benefit plan assets. The update was effective for the Cooperative beginning on May 1, 2010, and its adoption did not materially impact the consolidated financial statements.

Recent accounting pronouncements: The FASB and other entities issued new or modifications to, or interpretations of, existing accounting guidance during 2010. The Cooperative has considered the new pronouncements that altered accounting principles generally accepted in the United States of America and, other than as disclosed in these notes to the consolidated financial statements, does not believe that any other new or modified principles will have a material impact on the Cooperative's reported consolidated financial position or operations in the near term.

Note 2. Investments

The Cooperative invests in various government-guaranteed, interest-bearing obligations. Since the investments are held to maturity, the Cooperative carries these investments at amortized cost. These investments are scheduled to mature at various times ranging from one week to ten years from the balance sheet date. The policy of the management of the Cooperative is to hold the investments until maturity, at which time the proceeds will be reinvested in similar securities.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 2. Investments (Continued)

The investments are classified by maturity, with short-term investments being those scheduled to mature within the next fiscal year and long-term investments being those with a scheduled maturity between one and ten years. In some instances, actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without prepayment penalties.

Investments in interest-bearing obligations at April 30, 2011 and 2010 were as follows:

		2011			
		Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term		\$ 147,053,294	\$ 448,714	\$ (993)	\$ 147,501,015
Long-term		131,375,700	3,258,842	(2,535)	134,632,007
		<u>\$ 278,428,994</u>	<u>\$ 3,707,556</u>	<u>\$ (3,528)</u>	<u>\$ 282,133,022</u>

		2010			
		Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term		\$ 47,055,907	\$ 809,747	\$ (299,512)	\$ 47,566,142
Long-term		229,724,646	4,296,484	(76,176)	233,944,954
		<u>\$ 276,780,553</u>	<u>\$ 5,106,231</u>	<u>\$ (375,688)</u>	<u>\$ 281,511,096</u>

The unrealized gains and losses on debt securities were primarily due to changes in interest rates. Because the increase or decline in market values of these securities is attributable to changes in interest rates and not credit quality and because the Cooperative has the ability to hold these investments until a recovery of fair value, which may be until maturity, the Cooperative does not believe any of the unrealized losses represent other than temporary impairment based on evaluations of available evidence as of April 30, 2011.

Contractual maturities of interest-bearing obligations as of April 30, 2011 are summarized below.

	Amortized Cost	Estimated Fair Value
Due in one year or less	\$ 147,053,294	\$ 147,501,015
Due after one year through five years	116,535,929	119,568,448
Due after five years through ten years	14,839,771	15,063,559
	<u>\$ 278,428,994</u>	<u>\$ 282,133,022</u>

As of April 30, 2011, investments totaling \$158,615,000 are held as collateral for the Cooperative's outstanding line of credit.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 2. Investments (Continued)

As of April 30, 2011, investment in preferred stock consists of 999,804 shares of preferred stock in AgCarolina. Shares of preferred stock are valued at \$5 par by AgCarolina, with quarterly dividends of up to 8% automatically reinvested in preferred stock shares. Preferred stock in AgCarolina is non-voting in nature, and can be withdrawn daily, with dividends available for withdrawal upon declaration. The Cooperative records the investment on the cost method.

Note 3. Inventories

Inventories consisted of the following at April 30, 2011 and 2010:

	2011	2010
Ceded tobacco	\$ 4,188,770	\$ 7,805,287
Purchased tobacco	69,212,899	77,212,413
Materials and work in process	4,500,685	3,906,956
Tobacco products	2,757,075	1,119,688
	<u>80,659,429</u>	<u>90,044,344</u>
Reserve for obsolete and slow moving inventory	(506,735)	(719,693)
	<u>\$ 80,152,694</u>	<u>\$ 89,324,651</u>

During the years ended April 30, 2011 and 2010, the Cooperative determined that the market value of various products had permanently declined due to obsolescence. In response, the Cooperative recorded an inventory allowance of approximately \$507,000 and \$720,000, respectively.

As a result of the American Jobs Creation Act of 2004, ending the federal tobacco program, 83,705,300 pounds of re-dried tobacco with an estimated net realizable value of \$81,520,000 was "ceded" to the Cooperative during the fiscal year ended April 30, 2005.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 4. Property, Plant, and Equipment

Property, plant, and equipment, their estimated useful lives, and related accumulated depreciation at April 30, 2011 and 2010, are summarized as follows:

	Estimated Useful Lives in Years	2011	2010
Land	-	\$ 936,589	\$ 936,589
Buildings	5 – 40	12,059,451	12,044,294
Furniture and fixtures	3 – 10	1,891,309	1,618,212
Machinery and equipment	3 – 15	36,906,852	34,861,262
Automobiles and trucks	3 – 5	574,037	603,416
Construction in progress	-	1,067,430	683,993
		53,435,668	50,747,766
Less: accumulated depreciation		(26,363,422)	(22,626,422)
		\$ 27,072,246	\$ 28,121,344

For the years ended April 30, 2011 and 2010, depreciation expense amounted to \$3,908,943 and \$3,706,890, respectively.

Note 5. Accrued Expenses

The components of accrued expenses at April 30, 2011 and 2010 are summarized as follows:

	2011	2010
Accrued tobacco product related taxes	\$ 4,923,205	\$ 5,728,225
Accrued accounts payable	1,970,230	1,770,813
Accrued salaries and related benefits	97,497	428,810
Accrued interest	102,584	143,402
Accrued insurance	95,956	109,018
Other	-	28,223
	\$ 7,189,472	\$ 8,208,491

Note 6. Stock Redemption Payable

Cooperative membership requires participation in the crop year, which runs May 1 through April 30. Beginning in May 2004, the Board of Directors approved a plan to eliminate stock ownership of members who did not enter into marketing agreements with the Cooperative for the subsequent year. The amounts are payable on demand and are classified as a current liability in the accompanying balance sheets.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 7. Revolving Line of Credit

During the year ended April 30, 2011, the Cooperative had a \$140,000,000 line of credit that matures July 28, 2011. Interest-only payments are due monthly at the LIBOR rate plus 0.90% (1.11% as of April 30, 2011). The outstanding balance was \$104,898,304 at April 30, 2011. The line of credit is collateralized by pledged investment securities which are required to be greater than 111.11% of the commitment amount.

During the year ended April 30, 2010, the Cooperative had a \$120,000,000 line of credit that matured on July 29, 2010. The outstanding balance was \$107,867,523 as of April 30, 2010.

Note 8. Capital Equity Credits

Capital equity credits are comprised of \$25,977,095 qualified certificates and \$825,759 non-qualified certificates. Qualified certificates represent allocations of the gains from the 1967-1973 crop pool settlements. The patrons have consented to take into their income that portion of the gain, which is allocated and distributed as a qualified certificate as provided for in the Internal Revenue Code. Non-qualified certificates represent allocations of capital reserve net of income taxes paid by the Cooperative for crop pool settlements prior to the adoption of the by-law consent provisions in 1980. Capital equity credits are distributable at the discretion of the board of directors.

Note 9. Other Revenue, Net

Other revenue, net, consisted of the following for the years ended April 30, 2011 and 2010:

	2011	2010
Importer revenue	\$ 1,145,124	\$ 672,482
Rental income	81,247	78,485
Miscellaneous, net	276,011	346,836
	<u>\$ 1,502,382</u>	<u>\$ 1,097,803</u>

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 10. Income Taxes

Income tax (expense) benefit consists of:

		2011		
		Current	Deferred	Total
Federal	\$	(2,258,628)	\$ 1,163,112	\$ (1,095,516)
State		(585,790)	259,862	(325,928)
	\$	(2,844,418)	\$ 1,422,974	\$ (1,421,444)

		2010		
		Current	Deferred	Total
Federal	\$	345,000	\$ 6,000	\$ 351,000
State		(490,000)	1,000	(489,000)
	\$	(145,000)	\$ 7,000	\$ (138,000)

The actual income tax (expense) benefit for 2011 and 2010 differs from the "expected" tax (expense) benefit (computed by applying the U.S. federal corporate income tax rate of 35%) to the income before income taxes as follows:

	2011	2010
Computed "expected" tax expense	\$ (3,522,000)	\$ (2,479,000)
Increase (reduction) in income tax (expense) benefit resulting from:		
State income taxes, net of federal income tax benefit	(328,377)	(317,000)
Non-taxable interest income	-	12,000
Domestic manufacturing deduction	2,409,945	2,470,000
Non-deductible expenses	(72,064)	(87,000)
Valuation allowance	(130,843)	759,000
Other, net	221,895	(496,000)
	<u>\$ (1,421,444)</u>	<u>\$ (138,000)</u>

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 10. Income Taxes (Continued)

The tax effects of temporary differences that give rise to the net deferred tax liabilities at April 30, 2011 and 2010 are presented below:

	2011	2010
Deferred tax assets:		
Recognition of certain retirement costs	\$ 568,130	\$ 2,463,000
Net operating losses	1,966,000	2,149,843
Insurance reserve	38,000	43,000
Accrued vacation	100,974	109,000
Less: valuation allowance	(1,304,000)	(1,434,843)
	<u>1,369,104</u>	<u>3,330,000</u>
Deferred tax liabilities:		
Property, plant and equipment, primarily due to differences in depreciation	4,624,000	4,895,000
Inventories	1,230,000	2,427,000
	<u>5,854,000</u>	<u>7,322,000</u>
Net deferred tax liability	<u><u>\$ (4,484,896)</u></u>	<u><u>\$ (3,992,000)</u></u>

At April 30, 2011 and 2010, the deferred income taxes are reflected in the accompanying consolidated balance sheets as follows:

	2011	2010
Deferred income tax liability – current	<u><u>\$ (1,361,000)</u></u>	<u><u>\$ (2,384,000)</u></u>
Deferred income tax liability – noncurrent	<u><u>\$ (3,123,896)</u></u>	<u><u>\$ (1,608,000)</u></u>

As of April 30, 2011 and 2010, the Cooperative had North Carolina state net operating loss carryovers of approximately \$27,112,000 and \$29,653,000, respectively. The losses originate from the operations of U.S. Flue-Cured Tobacco Growers, Inc. The state net operating loss carryovers begin to expire in 2024. A valuation allowance is required to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all the evidence, both positive and negative, management has determined that a \$1,304,000 and \$1,434,843 valuation allowance at April 30, 2011 and 2010, respectively, is necessary to reduce the deferred tax asset related to the state net operating losses that will not be realized. The change in the valuation allowance for 2011 and 2010 was (\$130,843) and \$759,000, respectively.

Notes to Consolidated Financial Statements

Note 11. Retirement Plans

Defined Benefit Pension Plan: The Cooperative sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Cooperative are eligible to participate after one year of service, which is the completion of 1,000 or more hours of service within a period in which the employee is employed for twelve consecutive months. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service.

The Cooperative's funding policy requires a contribution in the amount necessary to satisfy the minimum required contributions under Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code ("IRC"), subject to the Cooperative's long-term funding strategy. The Cooperative's funding policy is to contribute funds to the trust for the plan as necessary to provide for current service and for any unfunded projected benefit obligation over a reasonable period. To the extent that these requirements are fully covered by assets in the trust, the Cooperative may elect not to make a contribution in a particular year. The Cooperative did not make any contributions to the plan for the years ending April 30, 2011 and 2010. No contributions are expected to be made to the plan for the year ended April 30, 2012.

On May 31, 2010, the Cooperative's Board of Directors approved a Certificate of Resolution to freeze benefits thereunder after July 31, 2010. During the year ended April 30, 2011, the Cooperative recorded a curtailment gain of \$3,733,893 and an adjustment to prior services costs of \$728,509, as a result of the freeze. The curtailment gain was recorded as a reduction in accumulated other comprehensive loss, net of tax, offset by a corresponding reduction in the liability reflected in the accompanying balance sheet to reflect the funded status of the plan at year end. The adjustment to prior service costs was recorded as a reduction in accumulated other comprehensive loss, net of tax, offset by a loss in the accompanying consolidated statements of operations.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 11. Retirement Plans (Continued)

The following table sets forth the plans' funded status and amounts recognized in the Cooperative's consolidated balance sheets at April 30, 2011 and 2010, as follows:

	Pension Benefits	
	2011	2010
Change In Projected Benefit Obligation:		
Projected Benefit Obligation – Beginning of Year	\$ 22,663,795	\$ 20,005,000
Service Cost	-	863,237
Interest cost	1,057,644	1,227,443
Actuarial (gain) loss	1,072,297	1,772,371
Curtailments	(3,733,893)	-
Benefit payments	(1,284,346)	(1,204,256)
Projected benefit obligation – end of year	19,775,497	22,663,795
Change in plan assets:		
Fair value of plan assets – beginning of year	16,960,545	13,714,733
Actual return on plan assets	2,665,866	4,450,068
Employer contributions	-	-
Participant contributions	-	-
Benefit payments	(1,284,346)	(1,204,256)
Fair value of plan assets – end of year	18,342,065	16,960,545
Funded status – end of year, and noncurrent liability recognized in the consolidated balance sheets	\$ (1,433,432)	\$ (5,703,250)

The accumulated benefit obligation as of April 30, 2011 and 2010 was \$19,775,497 and \$18,830,540, respectively.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 11. Retirement Plans (Continued)

Amounts recognized in accumulated other comprehensive loss as of April 30, 2011 and 2010, not yet reflected in net periodic benefit cost, consist of:

	Pension Benefits	
	2011	2010
Prior service cost	\$ -	\$ 728,509
Net loss	1,637,480	5,734,841
	1,637,480	6,463,350
Less: deferred tax benefit	(649,130)	(2,565,000)
	\$ 988,350	\$ 3,898,350

The net periodic (benefit) cost of the plan was (\$171,908) and (\$190,787) for 2011 and 2010, respectively. These amounts included the following reclassification adjustments of other comprehensive income:

	2011	2010
Amortization of prior service cost	\$ -	\$ 89,010
Recognized net actuarial loss	69,189	366,188

The estimated prior service cost and actuarial gains and losses that will be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2012 is \$0.

The following table provides the weighted average actuarial assumptions at April 30, 2011 and 2010:

	Pension Benefits	
	2011	2010
Weighted-average assumptions used to determine benefit obligations as of April 30:		
Discount rate	5.50%	5.50%
Rate of compensation increase	N/A	4.50%
Weighted-average assumptions used to determine net periodic benefit cost for years ended April 30:		
Discount rate	5.50%	6.40%
Rate of compensation increase	4.50%	4.50%
Expected long-term return on plan assets	8.00%	8.00%

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 11. Retirement Plans (Continued)

Management determines the expected return on plan assets based on historical performance of the plan's investments. Management compares their expected rate of return with other companies to ensure that it is in line with broad market expectations.

At April 30, 2011 and 2010, the plan held investments in ten mutual funds, administered by five fund families. The various mutual funds invest in publicly traded securities covering a wide range of investment opportunities. The various mutual funds are valued at fair market value based on quoted market prices.

The fair values of the Cooperative's pension plan assets at April 30, 2011 and 2010, respectively, are as follows:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurement 04/30/2011
Shares of registered investment companies (mutual funds)				
Large cap equities	\$ 6,658,755	\$ -	\$ -	\$ 6,658,755
Mid-cap equities	1,278,675	-	-	1,278,675
Small cap equities	554,050	-	-	554,050
International equities	2,999,273	-	-	2,999,273
Fixed income securities	6,728,706	-	-	6,728,706
Money market account	-	122,606	-	122,606
Total	\$ 18,219,459	\$ 122,606	\$ -	\$ 18,342,065
2010				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurement 04/30/2010
Shares of registered investment companies (mutual funds)				
Large cap equities	\$ 7,500,850	\$ -	\$ -	\$ 7,500,850
Mid-cap equities	1,375,586	-	-	1,375,586
Small cap equities	514,650	-	-	514,650
International equities	2,740,123	-	-	2,740,123
Fixed income securities	4,708,446	-	-	4,708,446
Money market account	-	120,890	-	120,890
Total	\$ 16,839,655	\$ 120,890	\$ -	\$ 16,960,545

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 11. Retirement Plans (Continued)

The investment policy guidelines outline risk tolerance, goals, permissible and prohibited investments, and target investment allocations.

Risk tolerance as defined by the policy guidelines identify that historical capital market returns allow for the assumption of short run investment risks in favor of greater returns provided by capital markets over the longer term.

Permissible investments as defined by the policy guidelines are individual securities, separate accounts, mutual funds, trusts, private placements, partnerships, commingled funds, pooled funds, contracts and other legally constituted means of buying and selling investments including domestic equities, fixed income investments, cash equivalents, international equities, and real estate.

Prohibited investments as defined by the policy guidelines are short sales, margin purchases, securities lending, borrowings of plan assets, purchase of letter stock (restricted stock), options, futures, loans, investments requiring pledging of plan assets as collateral and any other investment not outlined as a permissible investment under the policy guidelines unless authorized in writing by the committee.

The current investment policy target mix is as follows:

Large Cap Equities	37%
Mid-Cap Equities	7%
Small Cap Equities	3%
International Equities	16%
Fixed Income Securities	37%

Schedule of benefits expected to be paid in each of the next five fiscal years, and in the aggregate for the five fiscal years thereafter:

Year Ending April 30	Amount
2012	\$ 1,314,128
2013	1,290,851
2014	1,251,231
2015	1,347,093
2016	1,379,510
5 years thereafter	7,940,363

Defined Contribution 401(k) Plan: The plan allows eligible employees to defer a portion of their compensation up to the maximum dollar amount which is set by law (\$16,500 in 2011 with catch-up contribution of \$5,500 for age 50 or older). The Cooperative, at its option, may match a portion of the employees' contribution. The Cooperative made no matching contribution for the years ended April 30, 2011 and 2010.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 12. Market Centers

The Cooperative for the fiscal years ended April 30, 2011 and 2010 provided four and six tobacco auction market facilities, respectively, in Virginia, North Carolina, South Carolina, and Georgia at a cost of \$2,482,882 and \$2,483,030, respectively, all of which was capitalized into the 2010 and 2009 crop inventory.

Note 13. Operating Leases

During the fiscal years ended April 30, 2011 and 2010, the Cooperative entered into year-to-year operating leases, for purposes of operating tobacco marketing centers for the 2010 and 2009 crop years. Total lease expense for the centers amounted to approximately \$310,000 and \$359,000 for the years ended April 30, 2011 and 2010, respectively.

Note 14. Letters of Credit

As of April 30, 2011, the Cooperative has seven outstanding letters of credit amounting to \$1,304,640. These letters of credit serve as security for the import revenue program, the Cooperative's self-funded health insurance program, and as performance bonds for certain foreign sales. The letters of credit expire on dates ranging from August 31, 2011 through November 30, 2012, renewing annually for a period of one year. As of April 30, 2010, the Cooperative had six outstanding letters of credit amounting to \$1,436,830.

Note 15. Fair Value Measurements

The carrying value of cash and cash equivalents, accounts receivable, accrued interest receivable, income taxes receivable, accounts payable, stock redemption payable, revolving line of credit, income taxes payable, and customer deposits approximates fair value due to the short-term maturity of these financial instruments. The fair value of the investment in interest-bearing obligations exceeded the carrying value by approximately \$3,704,000 and \$4,731,000 at April 30, 2011 and 2010, respectively. The fair value of the investment in preferred stock was not estimated by management, as there were no identified events or changes in circumstances identified by management that may have a significant adverse effect on the fair value of the investment, and it was not practicable to estimate the fair value.

Nonfinancial instruments such as inventories and property and equipment are excluded from the fair value disclosures.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 15. Fair Value Measurements (Continued)

Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Fair value measurements are not adjusted for transaction costs. There is a three-level valuation hierarchy for disclosure of fair value measurements. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs. The three levels are defined as follows:

Level Input	Input Definition
Level I	Inputs are unadjusted, quoted prices for identical assets or liabilities in active markets at the measurement date.
Level II	Inputs other than quoted prices included in Level I that are observable for the asset or liability through corroboration with market data at the measurement date.
Level III	Unobservable inputs that reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date.

Note 16. Contingencies

Litigation

The Cooperative is currently engaged in two separate lawsuits, *Lewis vs. Flue-Cured Tobacco* and *Fisher vs. Flue-Cured Tobacco*, which were filed in 2005.

Lewis vs. Flue-Cured Tobacco, alleges the fundamental purpose for which the Cooperative was formed, marketing of members' tobacco under the federal tobacco loan program, is no longer valid since the U.S. Congress terminated the Tobacco Loan Program. The suit alleges that since the fundamental purpose is no longer being served, the Cooperative should be judicially dissolved and the assets of the Cooperative distributed to all members. As part of the suit, plaintiffs allege the Cooperative improperly cancelled their stock in the Cooperative.

Fisher vs. Flue-Cured Tobacco, seeks to have a court imposed "constructive trust" on the assets of the Cooperative for the benefit of the owners. The suit alleges various improprieties by the Board of Directors in its handling of producer and purchaser assessments held by the Commodity Credit Corporation in conjunction with the Tobacco Loan Program, the disenfranchisement of members, and the reduction of the number of members in the Cooperative illegally.

On May 4, 2009, the plaintiffs in the Lewis case and Fisher case filed a motion for leave to be allowed to file a second amended and consolidated complaint. The consolidated complaint seeks certification of a class of all present and former shareholders/members of the Cooperative from 1946 through 2004, imposition of a constructive trust, declaration of membership rights, appointment of a receiver, dissolution of the Cooperative and the distribution of assets, and compensatory, special, treble and punitive damages, amongst other claims.

U.S. Tobacco Cooperative, Inc. And Subsidiaries

Notes to Consolidated Financial Statements

Note 16. Contingencies (Continued)

The Cooperative is also party to other legal actions arising in the ordinary course of its business. Management has asserted that these cases are without merit and will be defended vigorously. While the results of these matters cannot be predicted with certainty, management believes it is not possible to form an assessment of potential outcome or an estimate of liability, if any, and that the final outcome of such legal actions will not have a material adverse effect on the Cooperative's financial position.

Note 17. Business Concentrations

At April 30, 2011 and 2010, 82% and 81%, respectively, of accounts receivable represents open credit shipments with a buyer in mainland China.

For the year ended April 30, 2011, major customers exceeding 10% of net sales accounted for approximately 30% of net sales.

Customer	Net Sales	Percentage of Net Sales
A	\$ 71,179,636	30%

For the year ended April 30, 2010, major customers exceeding 10% of net sales accounted for approximately 47% of net sales.

Customer	Net Sales	Percentage of Net Sales
A	\$ 53,112,236	25%
B	\$ 47,068,692	22%

Note 18. Subsequent Events

Effective May 1, 2011, US Flue Cured Tobacco Growers, Inc. purchased various assets of Big South Wholesale of Virginia, LLC and Big South Wholesale of Georgia, LLC for a purchase price of \$8,668,397. Assets purchased consist of inventories, accounts receivable, fixed assets and prepaid expenses.

Management evaluated and noted no additional subsequent events requiring recognition or disclosure through June 15, 2011, which is the date the financial statements were available to be issued.

EXHIBIT Q

US TOBACCO COOPERATIVE

2012 Annual Report



“Serving Flue-Cured Tobacco Growers since 1946”

U.S. Tobacco Cooperative Officers 2012-2013

Chairman	Albert Johnson
Vice-Chairman	Kenneth Dasher
Vice-Chairman	Andy Shepherd
Vice-Chairman	Jimmy Pate
President/Secretary	Tommy Bunn
Senior Vice-President of Global Sales	Mike Lynch
Senior Vice-President of Leaf Procurement	Wayne Crawford
Chief Financial Officer	Stuart Thompson
Treasurer	Ken Bopp

Subsidiary Companies:

U.S. Flue-Cured Tobacco Growers
Tobacco Grower Services
Big South Distribution
Premier Manufacturing
Franchise Wholesale

U.S. Tobacco Cooperative, Inc.

P.O. Box 12300
Raleigh, NC 27605

Office Location:
1304 Annapolis Drive
Raleigh, NC 27608

919-821-4560

www.ustobaccofarmer.com



**U.S. Tobacco Cooperative
Headquarters: Raleigh, NC**



**U.S. Flue-Cured Tobacco Growers
Processing/Manufacturing:
Timberlake, NC**



**Tobacco Growers Services
Storage: Fuquay-Varina, NC**

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U.S. Tobacco Cooperative: Mission Statement



To enhance the livelihood of our member growers by educating potential customers about the superior taste and aroma of U.S. flue-cured tobacco; and promoting its use in increasing percentages to companies that produce tobacco products.



To gain further economic opportunities for our member growers by supporting our subsidiary — U.S. Flue-Cured Tobacco Growers Inc. — in creating products and partnerships developed for the express purpose of increasing the preference for U.S. flue-cured tobacco by adult consumers who use tobacco.



To educate and encourage our member growers in the maintenance of high standards of integrity and agronomy practices in growing and curing tobacco so that adult consumers who use tobacco products will express with their brand choices a preference for those products that contain U.S. flue-cured tobacco.



To educate and encourage our member growers in the use of sound economic practices so that they, along with future generations, can maintain the centuries-old American tradition of tobacco farming as a viable option for supporting their families.



Message to our members....

The U.S. Tobacco Cooperative Chairman's report to members includes information on the 2011-2012 fiscal year activities, as well as, highlights for the current season that is rapidly approaching conclusion.

A review of the 2011 season can demonstrate how good plans and good practices can be circumvented by natural forces that interrupt our production potential. The grueling hot temperatures in the summer of 2011 deteriorated the quality of our tobacco crop.

However, the most dramatic weather factor was Hurricane Irene. Irene moved slowly across eastern North Carolina and eastern Virginia and destroyed a large portion of the 2011 crop that she touched. The damage from Irene was so severe that your Cooperative only received 58 percent of the contracted pounds for the season.

In 2011, our customers went home with orders unfilled. Fortunately for us, we had inventories that helped supply some tobacco to the customers until we could grow another crop in 2012.

These dramatic weather situations help keep us mindful of how dynamic our tobacco production really is, and how resilient the U.S. tobacco growers can be.

We sold most of the 2011 crop and a large amount of our older crop inventories. The information in the 2012 Annual Report gives a snap shot of the inventory level at the end of the fiscal year.

Most of your deliveries to our Cooperative are destined for off-shore customers. China continues to be our largest customer and their loyalty to U.S. Tobacco Cooperative is certainly recognized and appreciated.

All of our customers are important and our mission is to supply each customer's needs whether it is one container or hundreds of containers.

Your sales force travels overseas frequently to attend trade shows, to call on customers, to stay current on customer needs and to seek out new customers. Just like tobacco production, selling tobacco is a never ending process. When we sell a pound of your tobacco, we then have the space and the need for you to grow another pound of tobacco.

We are marketing your tobacco in China and most of the Southeast Asian countries including Indonesia, Malaysia, Thailand, Taiwan, South Korea, Philippines and Vietnam. Our marketing program for European countries includes Germany, Denmark, Greece, Poland, Belarus, United Kingdom, Russia and one African country which is Egypt. All this means that your Cooperative is marketing your production on four continents.



Albert M. Johnson
Chairman of the Board

In addition to supplying leaf strips, as you know, your Cooperative supplies tobacco consumer products. Your Timberlake manufacturing plant, U.S. Flue-Cured Tobacco Growers, manufactures cigarettes, filtered cigars, cut tobacco for roll your own products and pipe tobacco.

The Cooperative's legacy brand is 1839. With the purchase of Premier Manufacturing in October 2011, we acquired four more brands including Wild Horse, First Class, Shield and Ultra Buy.

With Premier came Franchise Wholesale in Omaha, Nebraska. Franchise provides distribution to mid-western and western states. Your other distribution company, Big South Distribution in Bristol, Virginia, was acquired in May of 2011 and covers several southeastern states. The northeastern states are being serviced by U.S. Flue-Cured Tobacco Growers sales staff. The net effect of our brand acquisitions and distribution expansion is that we now have product under our management in at least 23 states.

Additionally, we supply custom made products for the export market. As a member grower of U.S. Tobacco Cooperative, you have representation that spans from the grower's contract all the way to the retailer.

During the 2011 season, at the request of our customers, we implemented a Good Agricultural Practices program for our grower members. Multiple training sessions were held and all grower

members were GAP-certified. The compliance audit report we received showed that our members are following the GAP production methods.

Also, we know that member growers are adjusting their production practices to meet the residue tolerances on leaf. We tested each grower's tobacco several times during the season in order to document that tolerances are being met.

For 2012, we held regional meetings to train and GAP-certify all of our members/growers. For 2013, we are anticipating that the Extension Service will conduct meetings for GAP training that will meet the needs of all purchasing companies. This will certainly be more convenient and efficient for the growers and the instructors. We have advocated such a plan for more than a year and will continue to support an industry GAP training program.

During the 2011-2012 year, FDA officials made an inspection visit to our factory in Timberlake. We anticipate that there will be other visits by FDA officials in the future.

For the 2012-2013 fiscal year, Directors from Districts Four, Six and Nine were re-elected for another three year term. Those Directors are Jimmy Pate from District Four, Blythe Casey from District Six and Richard Renegar from District Nine.

In 2012, the Cooperative's Board of Directors began a program to allow for the voluntary redemption of certificates of interest held by current and former tobacco producers. In 2012, 1967 and 1968 certificates were offered for redemption. In early 2013, the unredeemed 1967 and 1968 certificates will be reoffered for redemption, along with the 1969, 1971 and 1972 certificates.

The operation of the 2013 voluntary redemption program will be similar to the 2012 program. There will be an update to the tobacco redemption website (www.tobaccocheck.com), updated application form (available from the website), and an update to our information call in number 877-277-7422. We anticipate this program will start in early 2013 and be completed prior to the end of our fiscal year in April.

The tobacco trade issues never go away. There is the continuing threat that tobacco will be deleted from U.S. Trade Agreements.

Our own government leaders continue to try to reduce world market access for U.S. tobacco growers. Your Cooperative's Board, staff and lobbyists will continue to advocate for equal world market access for U.S. tobacco at every opportunity.

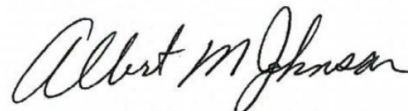
Activities for the 2012 crop year brighten our view of the overall U.S. tobacco situation. An excellent crop has once again validated the fact that U.S. tobacco is the best quality worldwide. The superb quality of the

crop resulted from mostly favorable weather and the tremendous talent U.S. growers have for managing all the production elements to achieve the styles of tobacco our customers need. The production capabilities of U.S. tobacco growers is a national treasure and your Cooperative recognizes your skills by trying to pay you well for what you do in order to keep you in the tobacco growing business. Not only do we want to keep you in business, we see new opportunities and are constantly planning ways to expand the role your Cooperative plays in supplying customers internationally and domestically.

For the 2013 crop, we need to expand our contracts substantially. We will need our current members to expand their contract pounds and we will need new members that will sign marketing contracts for enough production to satisfy our customers' needs.

Your Cooperative's Board and staff are very optimistic that we can do more to give the members security for investing in a livelihood of tobacco production for the current and the next generation of tobacco growers.

While there are many factors beyond our control, we plan to provide opportunities for flue-cured tobacco growers.



Albert M. Johnson
Chairman of the Board



Seated from left to right: Kenneth Dasher, Albert Johnson, Andy Shepherd. Standing from left to right: Jimmy Hill, Jimmy Crews, Blythe Casey, Charlie Batten, Keith Beavers, Richard Renegar, Jimmy Pate.

Board of Directors

Kenneth Dasher, Vice Chairman	District Two	Live Oak, Florida
Albert M. Johnson, Chairman	District Three	Galivants Ferry, South Carolina
James C. Pate, Vice Chairman	District Four	Rowland, North Carolina
Keith Beavers	District Five	Mt. Olive, North Carolina
Blythe H. Casey	District Six	Kinston, North Carolina
Charlie Batten, Jr.	District Seven	Four Oaks, North Carolina
Jimmy Crews	District Eight	Oxford, North Carolina
Richard Renegar	District Nine	Harmony, North Carolina
Andrew Q. Shepherd, Vice Chairman	District Ten	Blackstone, Virginia
James T. Hill, Jr.	Public Director	Kinston, North Carolina

Factors Affecting 2011-2012 Business Operations

Cooperative Accomplishments

- Value of the dollar continues to favor exports
- China continues to increase its presence in U.S. tobacco market
- Higher fuel prices continue to impact tobacco production costs
- Good Agricultural Practices (GAP) training continues to be an industry requirement for 2012

CANADA	CAD	1.0050	1.0050
CHINA	CNY	6.2700	6.2700
EURO	EUR	0.7550	0.7550
JAPAN	JPY	90.000	90.000
SINGAPORE	SGD	0.7000	0.7000
HONG KONG	HKD	7.7500	7.7500
NEW ZEALAND	NZD	1.2500	1.2500
MYR	MYR	3.4000	3.4000



Active Crops Dry Basis

(pounds in millions)

Crop Years	2001 to 2009	2010	2011	TOTAL
Original Receipts	367	44	26	437
Less Sales and Sales Commitments	367	41	23	431
Uncommitted Inventory 4-30-12	0	3	3	6
Percent of Original Sold or Committed	100%	93%	88%	99%

FINANCIAL STATEMENTS

Condensed Consolidated Balance Sheet

April 30, 2012 and 2011

ASSETS	<u>2012</u>	<u>2011</u>
Cash and Cash Equivalents	\$ 6,749,053	\$ 16,707,936
Investments in Interest-Bearing Obligations, at Amortized Cost	\$ 182,294,451	\$ 283,428,014
Accrued Interest Receivable	\$ 789,830	\$ 1,121,576
Accounts Receivable	\$ 53,852,227	\$ 61,583,173
Deferred Tax Assets	\$ 1,156,623	\$ -
Inventory	\$ 81,497,610	\$ 80,152,694
Prepaid Expenses & Other Current Assets	\$ 1,163,264	\$ 362,082
Land, Buildings & Equipment - Net	\$ 27,134,893	\$ 27,072,246
Intangible Assets	\$ 132,849,379	\$ -
Total Assets	<u>\$ 487,487,330</u>	<u>\$ 470,427,721</u>
LIABILITIES & STOCKHOLDERS' EQUITY		
Liabilities:		
Accounts Payable and Other Accrued Expenses	\$ 16,895,098	\$ 16,179,509
Redeemable Stockholders' Equity Credits	\$ 7,218,730	\$ -
Stock Redemption Payable	\$ 5,502,717	\$ 4,022,125
Revolving Line of Credit	\$ 61,329,675	\$ 104,898,304
Current Portion of Long Term Debt	\$ 5,739,251	\$ -
Income Taxes Payable	\$ 1,310,999	\$ 1,490,314
Deferred Income Taxes	\$ 3,592,774	\$ 4,484,896
Customer Deposits	\$ 1,064,648	\$ 1,142,876
Pension Benefits	\$ 6,437,070	\$ -
Note Payable	\$ 42,084,177	\$ -
Total Liabilities	<u>\$ 151,175,139</u>	<u>\$ 132,218,024</u>
Stockholders' Equity:		
Common Stock	\$ 4,535	\$ 4,700
Additional Paid-in Capital	\$ 110,753,161	\$ 110,753,161
Accumulated Other Comprehensive Loss	\$ (4,219,094)	\$ (988,350)
Contributed Capital	\$ 81,520,000	\$ 81,520,000
Capital Equity Credits	\$ 22,886,099	\$ 26,802,854
Retained Earnings	\$ 125,367,490	\$ 120,117,332
Total Stockholders' Equity	<u>\$ 336,312,191</u>	<u>\$ 338,209,697</u>
Total Liabilities and Stockholders' Equity	<u>\$ 487,487,330</u>	<u>\$ 470,427,721</u>

This condensed balance sheet was prepared by management from audited financial statements on which an unqualified opinion was rendered.

Consumer Tobacco Products Group

Dear Grower Members:

This past year in the tobacco industry has continued to be a very competitive and challenging period especially in the U.S. domestic cigarette market. Our organization has had a vision of continuing to establish itself as a growing participant in this industry and we are very proud to report that this past year, the consumer products segment of your Cooperative has made great strides in fulfilling this vision. Joining U.S. Flue-Cured Tobacco Growers, Inc. to form the Consumer Products Group are our new acquisitions of Premier Manufacturing, Inc., Franchise Wholesale, LLC, and Big South Distribution, LLC. We are very proud to report that the acquisition of these outstanding organizations has allowed us to continue the positive momentum we established last year.

Premier Manufacturing became part of the Consumer Products Group in October of 2011. Headquartered in St. Louis, Premier is a customer driven sales organization which has four U.S. cigarette brands. Its two flagship brands, WILDHORSE® and SHIELD®, are established brands sold throughout the U.S. Franchise Wholesale also became a part of the Consumer Products Group in October of 2011. Franchise is a specialty tobacco products distributor and is licensed to distribute tobacco products in over 40 states. It has warehouses in Nebraska and Nevada. Big South Distribution joined our team in May of 2011. Big South is also a specialty tobacco products distributor specializing in the southeastern U.S. market. It has warehouses in Virginia, Georgia and South Carolina. These additions have dramatically increased our ability to get our products to our consumers.

The Timberlake based manufacturing plant, U.S. Flue-Cured Tobacco Growers, continues to sell its two established U.S. brands. Its flagship brand, 1839®, continues to be a critical part of the overall strategic vision. The Consumer Products Group now has employees in 19 states throughout the U.S.

As we all continue to face very challenging and uncertain economic conditions, our business is affected by the downward pressures on our consumers' disposable income. By way of these acquisitions, we were able to continue to grow and strengthen our position in the industry. As we continue to deal with ever increasing government regulation of the tobacco industry at both the federal and local levels, these acquisitions have allowed us to increase the unit sales to the consumer. The strength of these acquisitions is shown by a significant increase over last year in the net margin of the Consumer Products Group. Our group is very proud to be a significant contributor to the net margin that allows for a patronage dividend to be returned to our Grower Members.

Our overall visibility and company recognition has continued to grow in the industry and we have increasing numbers of requests from companies who are interested in having us manufacture their brands for both the U.S. and International markets. We believe the use of our Grower Members' U.S. flue-cured tobacco in our products has helped us achieve the status of a very desirable high quality manufacturer. This contract manufacturing has been an increasingly positive segment of our overall operations.

We are very proud to be representing you, our Grower Members, with all of our brand families and will continue to promote the "A Product from U.S. Farmers" image around the world.

Our thanks for your continued support,

The Management of the Consumer Products Group:

U.S. Flue-Cured Tobacco Growers, Inc.
Franchise Wholesale, LLC

Premier Manufacturing, Inc.
Big South Distribution, LLC



2012 Marketing Centers

<u>Mkt Ctr #</u>	<u>Location</u>	<u>Contacts</u>	<u>Telephone</u>
262	Planters Warehouse 300 Watson Street Nashville, GA 31639	Jimmy Parker L.E. Watson	229-686-9763
365	Big L Warehouse 901 NE Front Street Mullins, SC 29574	Johnny Shelley Elton Johnson	843-464-4300
635	Big Star Tobacco Warehouse 1920 Black Creek Road SE Wilson, NC 27893	Arthur Ray Talley Jeff Radford	252-206-1800
925	USTC Danville 660 Kentuck Road Danville, VA 24540	W.H. Williams	434-799-8202



2012 Marketing Season

In 2012, we had one of the earliest openings of the marketing season in recent memory. Our marketing center located in Nashville, Georgia opened on July 17, 2012. Our other marketing centers were not far behind, opening within 7 to 10 days of Georgia. The early openings were very much in line with harvesting of the crop in their respective growing areas. Also, the Cooperative felt that it needed to be open for business and available for its member growers for those that may have had tobacco to sell.

The weather pattern this growing season was a change from the previous years. Instead of dry and excessive heat, we had excessive rains. There were some scattered dry areas but the rains were predominant in most areas. A tropical system brought tremendous rains to the tobacco producing area in Florida and parts of South Georgia. Rains in the spring brought excessive rains to parts of the Pee Dee area of South Carolina. The rains continued all through the Border Belt areas to the most eastern and northeastern areas of tobacco production in North Carolina. Southside Virginia experienced some areas of more than plentiful rains as did some areas of the Middle Belt and Western North Carolina Old Belts respectively. Besides the rains, there were numerous reports of hail and wind damage from South Georgia to the Western Old Belt.

Even though we may have experienced a less than desirable growing season (either too wet or too dry areas), the quality of the crop overall that we have purchased has been very pleasing. From the bottom to the top, this crop is as clean as one could ask for, and we say thank you to our member growers for their efforts. Weather conditions have also had some role in the production of the tobacco crop. Production yields have been affected by too much rain; therefore the amount of pounds produced will be reduced, which will have a bearing on the total production size of the crop.

Just prior to and after the Labor Day holiday, there were increases in the price of tobacco from all buying companies that contract directly with the grower. These price increases may be, in part, a result of a shortage of tobacco due to the weather conditions that were mentioned earlier. There is speculation that the shortage is also a result of growers signing contracts to grow tobacco but not planting the crop. Some growers may have "over contracted" to perhaps hedge on having a good production year in which the grower could produce more pounds to sell.

We again thank our member growers for their efforts in producing as good a quality crop as possible under all sorts of conditions. We recognize the support our member growers have provided by bringing good tobacco, which in turn provides our buying customers with the tobacco they need to produce a quality product.



A Product Of US FarmersTM

LB

Shield[®]
BLUE BOX

1st CLASS[®]

RED KINGS BOX

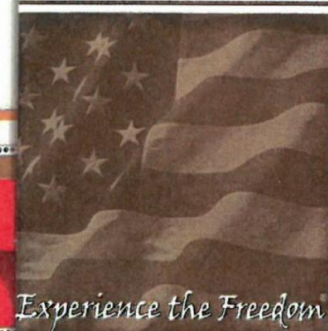


20 CLASS A CIGARETTE

100

Wildhorse[®]

GOLD BOX



20 CLASS A CIGARETTES

PREMIUM BLEND

1839

An American Heritage



RED KING BOX

A Product from U.S. Farmers



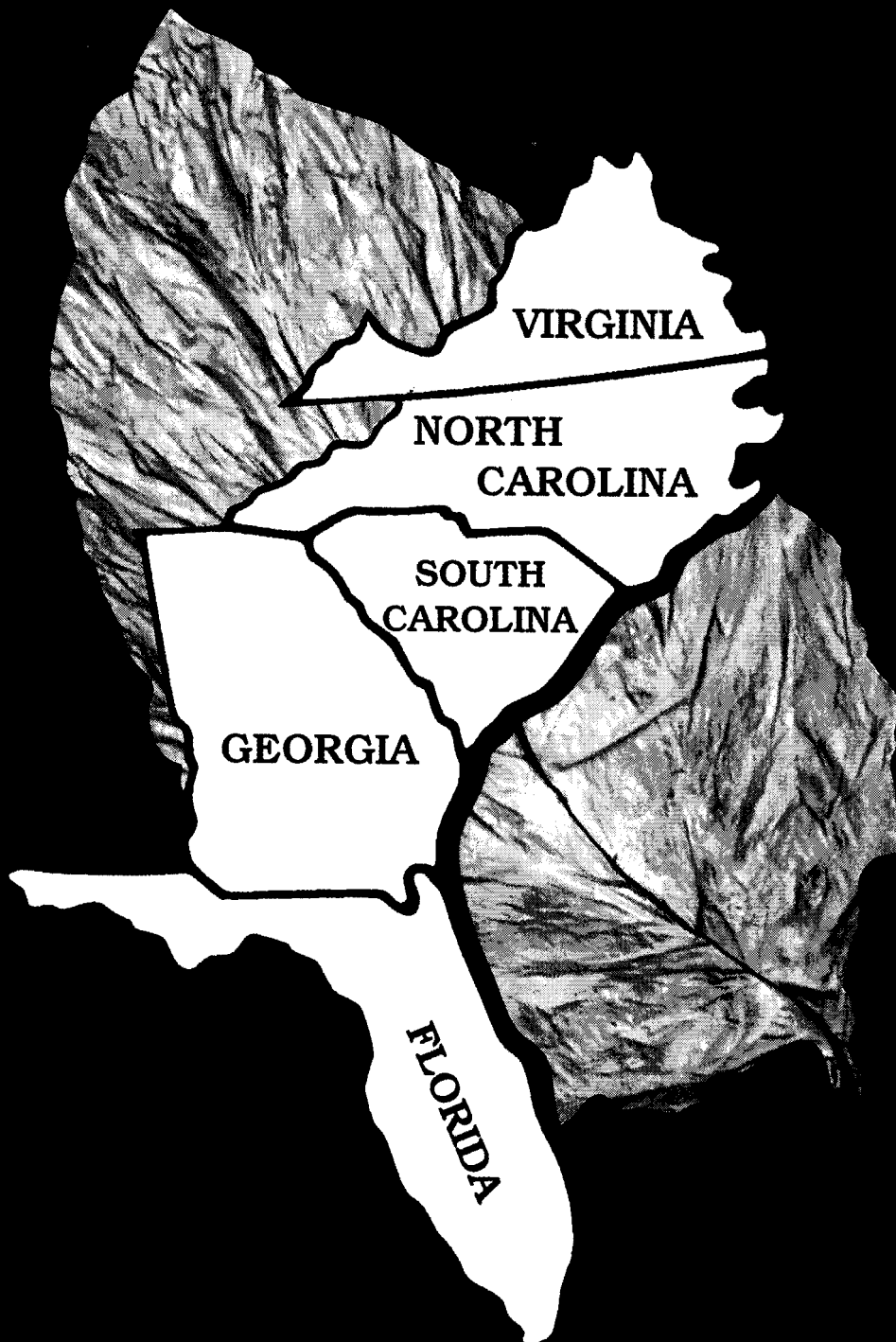
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SC 0075



<i>President's & General Manager's Report</i>	<i>1</i>
<i>Operations Report</i>	<i>3</i>
<i>2001 Season Statistics</i>	<i>4</i>
<i>Financial Statements</i>	<i>5</i>
<i>Directors & Officers</i>	<i>7</i>



Fiscal year 2002 was no different than recent years in presenting Stabilization's Board of Directors and staff with a myriad of challenges. This year we were challenged with trying to save the auction market and the price support system when designations to the auction declined to twenty percent in one year. Later, we were challenged with a lawsuit against our plan to save the auction system. We were challenged with trying to gain support in Washington on the final report of the President's Commission on Tobacco and that is an ongoing process. We were challenged with trying to reduce the inventory reserve to a more manageable level and that challenge was met and accomplished. We were challenged with administering the Barn Retrofit Project and completed it successfully. Stabilization's Board of Directors and staff met these challenges head on and with vigor. Some challenges have been accomplished, while others are ongoing.

After receiving designation figures from USDA in May 2001, it was obvious that the auction marketing system was in jeopardy of collapsing. Nearly eighty percent of all flue-cured tobacco was designated to direct contracts, bypassing the traditional auction system. This caused 80 of the 147 warehouses operating in 2000 to close prior to the 2001 marketing season. This possibility of losing the auction system also jeopardized price support and quota. The price support program in its current form cannot exist without the auction system. Without the price support program, flue-cured tobacco farmers would have no alternative except to accept the price buying companies would be willing to pay for their crop. Without the auction market, farmers could lose as much as 120 million pounds of quota due to lost export market share. Export customers prefer the auction market and many cannot afford to purchase a farmer's entire crop through contracts.

Based on the 97.6% positive vote in the most recent 3-year referendum held in January, 2001, it was obvious that Stabilization members wanted to keep the tobacco price support program, regardless of the fact that the majority of them designated their tobacco to direct contracts. Therefore, it was Stabilization's Board of Directors duty to find a way to save the auction system so that the price support program could continue. This led to the development of the Stabilization marketing center concept.

Stabilization opened and operated two pilot

marketing centers in 2001. The purpose was to test the feasibility of auction facilities controlled solely by Stabilization. The pilot centers were a success. Contract prices averaged \$4.25 per hundredweight higher than total gross auction sales. However, contract prices averaged only \$2.16 higher than the average price of gross sales at Stabilization's two pilot marketing centers. Farmers that designated to the centers were pleased with prices and complimentary of the operations. Designations increased at the centers during the season. Stabilization received numerous requests from farmers to open marketing centers in other areas so that they could have access.

In October, 2001, Stabilization's Board of Directors decided, due to the success of the pilot marketing centers, to open 14 marketing centers in 2002. It is the Board's intention that tobacco farmers in all flue-cured belts would have an alternative to contracting and the opportunity to sell at a Stabilization marketing center. The decision was also based on the need to provide domestic and export customers access to auctions in all belts. Stabilization will operate these marketing centers with the highest standards of good business practices and integrity. The ultimate goal is to implement changes that will modernize the U.S. tobacco auction system.

On March 14, 2002, a small group of warehouse operators filed suit against Stabilization. They claimed that Stabilization was putting them out of business by opening auction marketing centers and not charging farmers warehouse fees, auction fees, or commissions. On April 10, Special Superior Court Judge Ben Tennile rejected the challenge brought against Stabilization. The Board of Directors sympathizes with the plaintiff warehouse group. However, the demise of the warehouse auction came with the advent of direct contract marketing and reduced quotas, not as a result of Stabilization's plan for marketing centers. As directors of a farmer-owned cooperative, Stabilization's Board members have the fiduciary responsibility of insuring that its members continue to have full benefit of the tobacco price support program. Stabilization's Board has acted to create marketing centers in an effort to preserve the auction system and the price support program. The warehouse group filed an appeal on May 10, 2002; however, Stabilization will be able to continue with its marketing center plans this season.

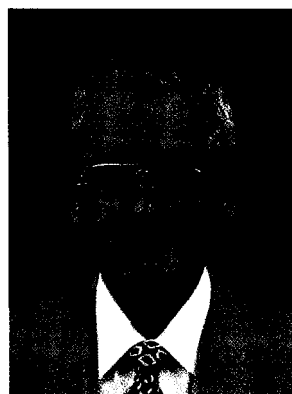
Flue-Cured Tobacco Cooperative Stabilization Corporation and the Burley Tobacco Growers Cooperative jointly agreed to send its Board of Directors and other tobacco farmers to Washington, DC on July 25, 2001 in an effort to gain congressional support of the final report from the President's Commission on tobacco. There have been several visits to Washington since that time in continued pursuit of congressional acceptance and possible buyout legislation. In October 2001, Stabilization sent out a mailer to over 120,000 flue-cured tobacco quota owners in all 50 states. The mailer asked quota owners to send in attached postcards to their Senators and Congressional leaders voicing their support for the final report from the President's Commission on tobacco. According to our sources in Washington, the response from quota owners was overwhelming and in favor of the final report. The report recommends a buyout of tobacco quota and revamping the quota system in the following manner:

- The adoption of a Tobacco Equity Reduction Program (TERP) that replaces the current quota system with production permits that would be held only by active tobacco growers. Unlike quotas, the permits would not be marketable assets, which would help ensure that the new system does not create the same economic asset as the current one.
- Quota owners and growers would be compensated for the loss of their quota assets. Small farmers and quota owners (1000 lbs. or less), the bulk of those who will benefit, will receive all of their payment in the first year. The committee recommends that all quota owners be compensated at \$8 per pound. Actual growers would receive \$4 per pound for every pound of tobacco they agree to stop producing. Farmers that elect to continue producing tobacco would receive a \$2 per pound transitional payment.

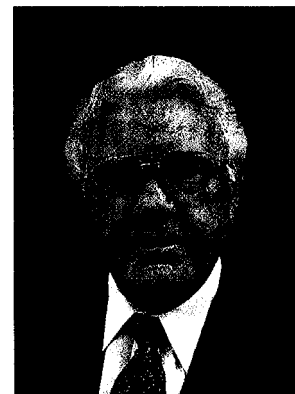
Political leaders have said there would be a problem with the Commission's recommendation of a 17 cents excise tax on cigarettes to provide funding for the buyout. There are also issues to be resolved between cigarette manufacturers on the FDA regulation recommended by the report. Two of Stabilization's Board members served on the President's Commission on tobacco; Mr. James T. Hill and Mr. Andrew Q. Shepherd. Mr. Hill, Mr. Shepherd, other Board members and staff are continuing to seek fair and equitable

buyout legislation as outlined in the President's Commission report. We will continue to update our members of any news on this matter.

We are happy to report to our members that your cooperative is in very good financial standing as you will see in this report. We had an exceptionally good marketing season in 2001. Average auction and contract prices were higher than 2000 averages and very little tobacco was placed under loan. Our members received a 6% increase in quota for the 2002 season. With inventories well below the reserve level, we possibly could receive another quota increase for 2003. Stabilization's Board of Directors are confident that our marketing center concept will protect the price support program for the present. However, the long term success of the Stabilization marketing centers depends heavily on farmer and purchaser participation. It is a farmer's right to designate tobacco pounds wherever they choose. However, the auction marketing centers give farmers another option if they are not satisfied with contracting. We are confident that, if farmers support the marketing center concept, the auction system and the price support program will survive and continue to allow farmers to make a decent living producing flue-cured tobacco in the future as it has for the past 56 years.



Bruce Flye
Bruce L. Flye
 Chairman &
 President



Lionel S. Edwards
Lionel S. Edwards
 General Manager



2001 SEASON

Demand for the 2001 crop was excellent, which is a reflection of the overall good quality of the crop. Total producer pounds marketed in 2001 amounted to 544,471,342 pounds. On the auction markets, producers sold 103,979,540 pounds of tobacco at an average sales price of \$181.84 per hundredweight—up \$3.75 over the 2000 average. Total pounds sold by direct contract amounted to 440,491,802 pounds for an average of \$186.71 per hundred pounds. Stabilization receipts were low with only 14,968,724 pounds of tobacco going under loan, which was 2.75% of total producer sales.

FINANCIAL RESULTS

Retained earnings for the fiscal year increased by \$0.3 million. The No Net Cost account decreased to \$295.0 million, including \$28.9 million of importer collections which are currently unavailable for tobacco discounts. The remaining funds are encumbered by USDA for the discounts negotiated on contracted tobacco sales and discount reserves corresponding to the equivalent of those negotiated discounts on the remaining uncommitted inventory.

The balance due for tobacco loan obligations to Commodity Credit Corporation decreased by \$140 million to \$272 million from \$412 million during the year. The No Net Cost account absorbed \$66.8 million of losses on the closed-out 1990, 1991, 1992, 1993, and 2000 crops.

MARKETING CENTERS

Stabilization will operate 14 marketing centers in 2002. The centers are strategically located to give farmer-members access in each flue-cured belt. As a service and benefit to Stabilization members, warehouse charges, auction fees, and commissions will be discounted 100% so there is no deduction from the farmer's sale proceeds. The only deductions from sales proceeds will be No Net Cost assessments, USDA grading fees, and any state authorized check-off fees.

SALES & MARKETING

Stabilization sold a total of 74.2 million pounds of inventory in fiscal year 2002. Crop years 1998 and 2000 are completely sold out. Current Stabilization inventories consist of 14.9 million pounds of 2001 crop.

Stabilization's marketing strategy in fiscal year 2002 focused on gaining access to the China market, recapturing lost export market share, and expanding into growth oriented markets.

For the first time, a buying team from China National Tobacco Corporation (CNTC) visited Stabilization in March, 2002. CNTC is the monopoly for all tobacco production, manufacturing, and import/export in China. The team inspected several grades of Stabilization's 2001 inventory and approved 2 grades. CNTC will present the approved grade samples to all cigarette manufacturers in China. Any interested manufacturers will submit orders through CNTC. China agreed to lift its ban on U.S. tobacco imports in 2001.

In cooperation with Tobacco Associates, Stabilization participated in a trade exhibition in Hong Kong in October, 2001. Samples of U.S. flue-cured tobacco were presented to many cigarette manufacturers from China and other countries throughout Asia.

BARN RETROFIT PROJECT

Stabilization completed the Barn Retrofit Project in July, 2001. A total of \$107.8 million was distributed to retrofit 35,492 barns throughout the flue-cured growing region. Stabilization agreed in 2000 to make a financial contribution and to administer an industry-wide effort to reduce the occurrence of known carcinogens, tobacco specific nitrosamines (TSNA's), in flue-cured tobacco. The tobacco buying companies discovered that TSNA's can be reduced 95% to 98% at the farm level by curing tobacco with an indirect heat source. Stabilization contributed \$25.8 million of the total \$107.8 million paid under the Barn Retrofit Project.

2002 QUOTA, ASSESSMENTS & PRICE SUPPORT LEVEL

On December 14, 2001, USDA announced figures for the 2002 basic quota, No Net Cost assessment, and price support level. The 2002 basic quota is 582 million pounds, which is 6% higher than the 2001 basic quota of 548.9 million pounds. The 2002 assessment will be 5 cents, 2.5 cents from the producer and 2.5 cents from the purchaser. The 2002 price support level is \$1.656, a decrease of 0.4 cents per pound from the 2001 level.

2001 SEASON STATISTICS



FLUE-CURED TOBACCO MARKET REPORT

FINAL REPORT--11/08/2001

	---GROSS---		---PRODUCER---		RESALE	---STABILIZATION RECEIPTS---		% OF	
	POUNDS	AVG	POUNDS	AVG		SUPPORT	POUNDS	NET	GROSS
ALMA	925,099	\$178.10	784,509	\$176.49	140,590	\$177.58	62,165	7.92	6.72
BLACKSHEAR	28,646	\$158.82	28,646	\$158.82	0	\$158.25	23,552	82.22	82.22
MOULTRIE	859,454	\$180.76	769,080	\$180.17	90,374	\$167.54	131,642	17.12	15.32
NASHVILLE	76,481	\$171.93	67,101	\$178.12	9,380	\$177.28	8,272	12.33	10.82
STATESBORO	2,098,954	\$182.93	1,912,904	\$182.40	186,050	\$169.84	102,704	5.37	4.89
VIDALIA	1,669,148	\$182.27	1,572,442	\$179.62	96,706	\$171.16	178,342	11.34	10.68
TYPE 14	5,657,782	\$181.35	5,134,682	\$180.12	523,100	\$170.24	506,677	9.87	8.96
CONWAY	620,716	\$181.80	553,141	\$180.54	67,575	\$174.50	54,551	9.86	8.79
DARL-TIMM	857,800	\$177.69	812,691	\$177.13	45,109	\$171.27	209,028	25.72	24.37
KING-HEMI	753,397	\$181.86	732,011	\$182.24	21,386	\$175.54	187,787	25.65	24.93
L CITY S C	10,473,737	\$182.29	9,048,609	\$181.55	1,424,956	\$178.41	1,445,558	15.98	13.80
LORIS	1,291,262	\$182.25	1,259,826	\$182.04	31,436	\$176.45	205,029	16.27	15.88
MULLINS	5,500,436	\$176.38	5,179,593	\$176.12	320,843	\$175.33	1,284,222	24.79	23.35
TIMMONSV	124,878	\$186.68	124,878	\$186.68	0	\$161.18	2,483	1.99	1.99
CLARK-CHAD	3,962,949	\$184.10	3,436,994	\$183.06	525,955	\$178.94	444,074	12.92	11.21
FAIRMONTBL	6,487,799	\$179.69	5,832,051	\$179.11	655,748	\$176.36	1,139,778	19.54	17.57
TAB-WHITE	8,455,274	\$183.15	7,435,276	\$182.88	1,019,998	\$179.08	1,071,960	14.42	12.68
TYPE 13	38,528,248	\$181.28	34,415,070	\$180.69	4,113,006	\$177.08	6,044,470	17.56	15.69
CLINTON	3,095,374	\$184.73	2,939,860	\$184.53	155,514	\$174.30	439,833	14.96	14.21
FARMVILLE	767,374	\$181.09	714,113	\$181.11	53,261	\$169.34	83,676	11.72	10.90
GOLDSBORO	6,050,074	\$182.22	5,804,712	\$182.04	245,362	\$177.18	1,213,018	20.90	20.05
GREENVILLE	1,953,526	\$181.96	1,771,372	\$181.54	182,154	\$179.29	188,183	10.62	9.63
KINSTON	1,649,607	\$182.46	1,580,128	\$182.14	69,479	\$173.36	175,522	11.11	10.64
ROCKY MT	2,367,852	\$185.40	2,277,359	\$185.52	90,493	\$174.46	305,402	13.41	12.90
SMITHFIELD	4,796,668	\$185.02	4,315,732	\$184.92	480,936	\$179.64	493,766	11.44	10.29
WALLACE	3,045,761	\$182.97	2,922,667	\$182.88	123,094	\$174.70	257,897	8.82	8.47
ROANOKE	8,537,802	\$183.79	7,589,073	\$183.72	948,729	\$179.49	1,378,974	18.17	16.15
WILSON	9,671,835	\$184.61	8,465,323	\$184.18	1,206,512	\$175.14	813,451	9.61	8.41
TYPE 12	41,935,873	\$183.81	38,380,339	\$183.59	3,555,534	\$177.01	5,349,722	13.94	12.76
HENDERSON	367,065	\$177.26	363,565	\$177.18	3,500	\$168.14	77,173	21.23	21.02
MT AIRY	821,580	\$182.04	790,757	\$181.76	30,823	\$161.18	38,341	4.85	4.67
OXFORD	1,490,789	\$179.99	1,432,951	\$179.77	57,838	\$174.90	149,405	10.43	10.02
REIDSVILLE	1,145,933	\$179.38	1,041,068	\$179.31	104,865	\$161.81	80,816	7.76	7.05
ROXBORO	692,749	\$182.22	602,176	\$181.51	90,573	\$174.07	94,108	15.63	13.58
STONE-MAD	2,476,635	\$179.44	2,194,681	\$178.36	281,954	\$173.75	292,327	13.32	11.80
WINSTN SAL	7,961,902	\$181.27	7,250,218	\$181.22	711,684	\$172.44	841,887	11.61	10.57
CLRK-CHASE	1,823,254	\$184.95	1,565,856	\$184.54	257,398	\$175.27	117,484	7.50	6.44
DANVILLE	5,152,377	\$180.63	4,928,366	\$180.47	224,011	\$172.58	758,791	15.40	14.73
KENBRIDGE	27,557	\$191.08	27,557	\$191.08	0	0	0	0	0
LAWRENCEV	597,194	\$185.90	596,010	\$185.89	1,184	\$170.60	108,535	18.21	18.17
SO BOSTON	3,386,009	\$182.03	3,239,718	\$182.38	146,291	\$176.62	274,006	8.46	8.09
SOUTH HILL	2,028,556	\$184.90	2,016,526	\$181.12	12,030	\$175.59	234,982	11.65	11.58
TYPE 11	27,971,600	\$181.54	26,049,449	\$181.10	1,922,151	\$172.90	3,067,855	11.78	10.97
ALL	114,093,503	\$182.28	103,979,540	\$181.84	10,113,791	\$175.97	14,968,724	14.40	13.12



**ACTIVE CROPS
RECEIPTS - SALES - INVENTORY**

Million Pounds (Farm Weight)

CROP YEARS	1997	1998	2001	TOTAL
ORIGINAL RECEIPTS 1997-2001 CROPS	194	80	15	289
LESS: SALES TO 4-30-02	178	25	0	203
INVENTORY 4-30-02	16	55	15	86
PURCHASE COMMITMENTS	16	55	0	71
UNCOMMITTED INVENTORY 4-30-02	0	0	15	15
 % OF ORIGINAL RECEIPTS SOLD OR COMMITTED	 100%	 100%	 0%	 95%

SUMMARY OF TOBACCO LOAN FUND

April 30, 2002

<u>OPEN CROP POOLS</u>	<u>TOTAL COSTS</u>	<u>TOTAL CASH RECEIPTS</u>	<u>BALANCE DUE COMMODITY CREDIT CORPORATION</u>
1997	\$455,139,005	\$326,483,451	\$128,655,554
1998	193,123,204	83,304,750	109,818,454
2001	<u>33,352,734</u>	<u>64,073</u>	<u>33,288,661</u>
Total	<u>\$681,614,943</u>	<u>\$409,852,274</u>	<u>\$271,762,669</u>

SC 0081

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEET
April 30, 2002 and 2001

	2002	2001
Assets		
Cash	\$ 634,322	\$ 11,869,690
Investments In Interest-Bearing Obligations, At Amortized Cost	226,125,406	215,316,254
Accrued Interest Receivable	3,412,359	3,294,661
Accounts Receivable	529,707	464,402
Refundable Income Taxes	1,165,698	1,770,598
Prepaid Expenses And Other Current Assets	290,132	50,302
Prepaid Retirement Cost	2,496,132	1,914,000
Land, Buildings And Equipment - Net	2,262,679	2,200,837
Total Assets	<u><u>\$ 236,916,435</u></u>	<u><u>\$ 236,880,744</u></u>
Liabilities and Stockholders' Equity		
Liabilities:		
Accounts Payable And Other Accrued Expenses	\$ 66,715	\$ 49,831
Accrued Barn Conversion Costs	-	460,096
Income Taxes Payable	-	-
Deferred Income Taxes	1,161,000	981,000
Total Liabilities	<u>1,227,715</u>	<u>1,490,927</u>
Stockholders' Equity:		
Common Stock	4,018,365	4,016,925
Additional Paid-In Capital	110,753,161	110,753,161
Capital Equity Credits	26,802,854	26,802,854
Retained Earnings	94,114,340	93,816,877
Total Stockholders' Equity	<u>235,688,720</u>	<u>235,389,817</u>
Total Liabilities And Stockholders' Equity	<u><u>\$ 236,916,435</u></u>	<u><u>\$ 236,880,744</u></u>

This condensed balance sheet was prepared by management from audited financial statements on which an unqualified opinion was rendered. This condensed balance sheet excludes the tobacco inventory and related assets and liabilities.



DIRECTORS

Kenneth Dasher	District One	Live Oak, Florida
D. Lamar DeLoach	District Two	Statesboro, Georgia
Albert M. Johnson	District Three	Galivants Ferry, South Carolina
James C. Pate	District Four	Rowland, North Carolina
Keith Beavers	District Five	Mt. Olive, North Carolina
McDaniel Wynne	District Six	Stokes, North Carolina
Bruce L. Flye	District Seven	Battleboro, North Carolina
Richard J. Jenks	District Eight	Apex, North Carolina
Claude B. French	District Nine	Reidsville, North Carolina
Andrew Q. Shepherd	District Ten	Blackstone, Virginia
James T. Hill, Jr.	Public Director	Kinston, North Carolina

OFFICERS

Bruce L. Flye	President
Kenneth Dasher	Vice President
D. Lamar DeLoach	Vice President
Albert M. Johnson	Vice President
Andrew Q. Shepherd	Vice President
Lioniel S. Edwards	General Manager and Secretary
L. Arnold Hamm	Assistant General Manager and Assistant Secretary
Kenneth M. Bopp	Financial Operations Manager and Treasurer
R. Marks Arnold	General Counsel

EXECUTIVE COMMITTEE

Kenneth Dasher
D. Lamar DeLoach
Albert M. Johnson
Andrew Q. Shepherd
Bruce L. Flye, Ex Officio



Our Mission Statement

Our mission is to always do our utmost to protect the interest and welfare of Flue-Cured Tobacco farmers by accomplishing the following goals and objectives: Be It Resolved, that the Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation on this fourteenth day of March in the year of our Lord nineteen hundred and ninety-seven hereby proclaim this official Mission Statement;

- I. Of utmost importance, Flue-Cured Tobacco Cooperative Stabilization Corporation will continue to stabilize market prices and encourage viable production quota increases.
- II. Flue-Cured Tobacco Cooperative Stabilization Corporation's stocks will be a benchmark of quality and integrity for U.S. flue-cured tobacco throughout the world.
- III. Study and prepare for the procedures necessary to maintain a system ensuring the continuation of a stable and beneficial tobacco program for U.S. farmers and a stable supply of tobacco for customers of U.S. tobacco.
- IV. Provide timely information to tobacco farmers that will or could affect their livelihood gained from the production of tobacco.
- V. Create opportunities for sales in new and traditional markets.
- VI. Implement aggressive export market promotion.
- VII. Establish warm hospitality and assistance for all foreign delegations interested in buying U.S. flue-cured tobacco.
- VIII. All business affairs of the corporation shall be carried out under the highest business standards of confidentiality and conduct.

The Tobacco Price Support Program is open to all eligible tobacco producers without regard to age, color, disability, marital status, national origin, race, religion or sex.



2002 Stabilization Marketing Centers

<u>Desig. #</u>	<u>Warehouse Name</u>	<u>Location</u>	<u>Contact</u>	<u>Telephone</u>
228	Tri-County Tob Whse	Douglas, GA	Tom Lewis	912-537-4383
287	Brannen's Tobacco	Statesboro, GA	Jamie Brannen	912-682-2660
340	Planters & Growers	Lake City, SC	Carlyle Chandler	843-394-8821
365	Big L Whse	Mullins, SC	Johnny Shelley	843-340-0825
418	Peoples Whse	Fairmont, NC	Joey Hardin	910-628-7565
503	Sampson Tob Whse	Clinton, NC	Carlton Barefoot	910-594-1576
555	Kinston Tob Whse	Kinston, NC	Joe Parker	252-569-1901
623	Roger's Whse	Williamston, NC	Greg Ray	252-792-2254
632	Liberty Whse	Wilson, NC	Kenneth Kelly	252-230-6778
			Robert Broadway	252-230-3382
585	Bright Leaf-Riverside	Smithfield, NC	Edward Stephenson	919-934-4574
766	Granville Whse	Oxford, NC	Sam Crews	919-693-3384
865	Old Belt Farmer's Coop	Winston-Salem, NC	Dean Denny	336-969-6891
917	Motley's Tob Whse	Danville, VA	Nancie Motley	434-836-1119
975	Exchange Whse	South Hill, VA	W. M. "Bunky" Warren	434-447-4768

Stabilization Marketing Centers will operate primarily for the benefit of the farmer-members of Flue-Cured Tobacco Cooperative Stabilization Corporation. The purpose is to provide members an alternative to contracts and to enable Stabilization the ability to provide the benefits of price support according to federal law and USDA-Commodity Credit Corporation guidelines.

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

**P. O. BOX 12300
RALEIGH, N. C. 27605**

OFFICE LOCATION: 1304 ANNAPOLIS DRIVE, RALEIGH, N. C. 27608

**<http://www.ustobaccofarmer.com/>
e-mail: fcmembers@ipass.net**

SC 0086

13 of 13

EXHIBIT S



FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

P. O. Box 12300
Raleigh, North Carolina 27605
Telephone: (919) 821-4560
Facsimile: (919) 821-4564

November 29, 2004

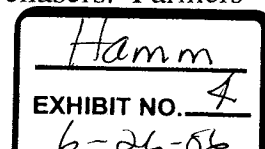
Dear Stabilization Member:

The Federal Tobacco Program was recently ended by "The American Jobs Creation Act of 2004." For 58 years, Flue-Cured Tobacco Cooperative Stabilization Corporation's primary role was to administer the price support portion of the Federal Tobacco Program. Now that price support and production controls are no longer available to U.S. tobacco farmers, people are asking what future role Stabilization will play in U.S. tobacco production. The Stabilization directors have an obligation to their tobacco farmer/members and their communities to explore and implement ways to improve the life of those who choose to make their living from growing tobacco.

At the November Board meeting, the Stabilization directors voted to offer tobacco farmers, who for whatever reason do not have a marketing contract with one of the traditional tobacco purchasers, the opportunity to enter into a Stabilization Marketing Agreement. Tobacco farmers who enter into a Stabilization Marketing Agreement will bring their entire 2005 tobacco crop to a Stabilization Marketing Center where their tobacco will be auctioned to purchasers who wish to lessen the risk associated with contracting grades and stalk positions for which they have no use or market. It is our estimate, based on past marketings, that 70% of the tobacco typically offered at a Stabilization Marketing Center would be eligible for an "advance" on export and some domestic grades. Downstalk grades including lugs and primings, low quality unripe leaf, and non-descript grades are the kind of grades for which an advance will not be available due to little demand in the export market. The advance is designed to help the farmer recover most, if not all, of the variable production costs. It is important to understand that the advance is not intended to be the market price. The tobacco for which an advance is accepted will be pooled, processed, stored, and if the tobacco is sold for a profit, the farmer will be paid his or her pro rata share of the pool profits.

Warranties and representations are critical to the success of the plan; otherwise purchasers will not have confidence in their purchases. The Stabilization Marketing Agreement will be designed to assure integrity for the tobacco being offered for sale. Warranties and representations involving pesticide use, foreign matter, TSNAs, etc. will be put into place to achieve the degree of integrity needed to attract purchasers. Farmers

Service to U.S. Flue-Cured Tobacco Farmers Since 1946



who enter into a Marketing Agreement with Stabilization will be expected to abide by the Agreement's terms and conditions. While the U.S. tobacco industry tries to find balance in this new era of tobacco production without a tobacco program, individuals who sign a Marketing Agreement for 2005 will be eligible for an advance on their 2004 "spring" effective quota or their total 2004 marketings, whichever is greatest, based on the proposed price in the accompanying grade price sheet.

Tobacco farmers who enter into a Stabilization Marketing Agreement will have the opportunity to participate in the profitability of future Stabilization operations, including U.S. Flue-Cured Tobacco Growers, Inc., the newly formed Stabilization processing and manufacturing facility. This past July, Stabilization acquired the new processing and manufacturing facility from Vector Tobacco, Inc. This new enterprise offers expanded opportunities currently not available to U.S. tobacco farmers. Stabilization now has the capability to sell farmers' tobacco into the export market, to manufacture and sell tobacco by-products and cut rag, and most importantly to manufacture and sell high quality cigarettes into the U.S. and foreign markets. No other purchaser of U.S. tobacco currently offers tobacco farmers the opportunity to share in the profits of its value added business. Stabilization would be the only U.S. company to deal exclusively in U.S. grown tobacco.

As we move forward in developing this plan, we need your help. First we need to know if you're interested in participating in such a program. We will need to know if you still plan on growing tobacco. We will need to know the number of pounds you produced this past year. If you are interested, we will need to know your telephone number so that you can be directly contacted in the near future.

Enclosed is a pre-addressed, postage paid envelope and card with several questions. Please answer the questions on the card, place the card in the envelope and mail it back to Stabilization within a week. Your assistance will help us determine where to place Stabilization Marketing Centers and the potential advance level. As you know, now is the time of year to start making plans for the 2005 crop of tobacco. We all need to know as quickly as possible what our plans are for next year.

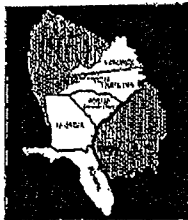
We look forward to your response. If you have questions, please feel free to call.

Sincerely yours,



Lioniel S. Edwards
General Manager

EXHIBIT T



Flue-Cured Tobacco Cooperative Stabilization Corporation

P.O. Box 12300
Raleigh, North Carolina 27605

Telephone: (919) 821-4560
Facsimile: (919) 821-4564

December 20, 2004

Dear Flue-Cured Farmer:

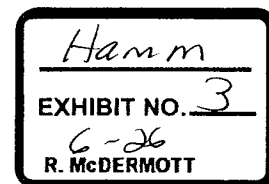
Several weeks ago Stabilization mailed a proposal to flue-cured tobacco farmers who sold tobacco at Stabilization Marketing Centers in 2004. With this letter we are attempting to notify farmers who sold tobacco in 2004 at either an independent auction warehouse or contract receiving station.

From 1946 to 2004, Stabilization administered the price support portion of the Tobacco Program through a contractual arrangement with USDA. During most of that period, the Tobacco Program had a stabilizing effect upon the flue-cured production economy. Now that the Tobacco Program has ended, Stabilization's future role may be more important than its past role.

Since 2002, Stabilization has operated 14 tobacco auction-marketing centers. Tobacco purchasers have been pleased with the operation of these centers as they have provided for the opportunity to purchase tobacco on a selective basis, and purchasers also have confidence in the integrity of their purchases. This past July, Stabilization purchased Vector Tobacco, Inc.'s processing and manufacturing facility in Timberlake, NC. This year Stabilization will process approximately 27 million pounds of loan receipts. Stabilization has entered into an agreement with a third party for whom we'll manufacture cigarettes and the same party has agreed to serve as distributor for brands to be developed by Stabilization. Stabilization now has the capacity to sell processed unmanufactured tobacco, blended cut rag and manufactured tobacco products. This concept is known as value-added manufacturing and has the potential to create additional marketing opportunities for flue-cured tobacco farmers.

For the 2005 crop year, Stabilization is offering all flue-cured tobacco farmers, whether they previously sold tobacco at auction or contracted with a tobacco company, the opportunity to sign an exclusive marketing agreement with Stabilization. Farmers who sign a Stabilization marketing agreement will bring their tobacco to a Stabilization marketing center where it will be offered to tobacco purchasers through the traditional auction. Export quality grades not purchased during the course of auction will be eligible for an advance. The proposed advance averages \$1.25/Lb. (when applied to the past 5-year percent of advance grades, graded within a crop) and ranges from \$.90/Lb. to \$1.40/Lb. Stabilization will not require a farmer who signs a marketing agreement to harvest the last four tip leaves separately; that's why Stabilization's highest advance prices are somewhat lower than other top prices you may have seen. While these advances are lower than recent levels of price support, the farmer may receive additional payments for his tobacco. Because of Federal legislation, profits made on loan stock inventories in past years had to be returned to the No Net Cost account. Now, because the Tobacco Program has been eliminated, when a farmer receives an advance at a Stabilization marketing center, the farmer can receive an additional payment, based on his level of patronage, if the tobacco is sold for a profit.

Service to U.S. Flue-Cured Tobacco Farmers Since 1946



An important feature of the Stabilization marketing agreement will be ^{ensuring} assuring integrity of tobacco. The majority of tobacco marketed at a Stabilization marketing center will eventually be exported. Farmers will be required to use only approved tobacco pesticides at the recommended rate, to have curing barns equipped with properly functioning heat exchangers, and to pay close attention to eliminating foreign matter such as stalks, suckers, weeds and non-organic matter. For 2005, a flue-cured tobacco farmer will be allowed to sign up for 100% of his 2004 spring effective quota pounds. Stabilization will only be able to offer advances on a total of 70 million pounds of "advance grades". If the total "advance grades" poundage of all signed marketing agreements exceeds 70 million pounds, every marketing agreement will be reduced by the same percentage so as not to exceed the 70 million pound cap. A tobacco farmer will not be able to sign a marketing agreement or sell his tobacco at a Stabilization marketing center unless he can certify that the pounds listed on the marketing agreement are the only pounds in which he has a beneficial interest. In other words, a farmer will not be able to split his agreement so that he could grow for a contract buyer and still deliver excess or rejected tobacco for sale at a Stabilization marketing center.

Only persons or entities that sign an exclusive marketing agreement with Stabilization will retain membership in Stabilization for 2005. This result is authorized by the North Carolina Cooperative Marketing Act, and required by Stabilization's Articles of Incorporation. The Articles of Incorporation provide, in part, that: **"The common stock of this corporation may be purchased, owned or held only by producers who shall patronize the corporation in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the corporation."** Any farmer who does not sign a marketing agreement for 2005 can write or call Stabilization and have his common stock redeemed at par value (\$5.00).

If a tobacco farmer elects to "withdraw" from membership by not signing the marketing agreement, he is not entitled to a share of the capital reserves by virtue of such withdrawal. Stabilization's Articles of Incorporation address this by stating, **"The death, withdrawal or expulsion of a member shall not give rise to any right to receive any payment from the capital reserve or to receive any payment on account of other equity credits except common stock of the corporation."** It should be noted that no part of Stabilization's capital reserves consists of assessments paid by farmers. All assessment payments were transferred to the USDA in accordance with federal law.

It is important to note that if you elect not to sign a marketing agreement for 2005, you will be able to do so in 2006 or subsequent years, provided Stabilization offers marketing agreements in those years. In other words, if you elect not to retain your membership for 2005, you would not be precluded from becoming a member in a subsequent year. As long as this proposed program continues, Stabilization membership will be open to all former tobacco farmers who are willing to sign an exclusive marketing agreement with Stabilization and abide by the uniform terms and conditions set forth in the marketing agreement.

In the event that the Board of Directors should adopt, at some future time, a resolution to dissolve the corporation and a majority of members vote in favor of such a resolution, distribution of Stabilization's assets would be accomplished in accordance with applicable law and By-Laws, and any person who was a Stabilization member during the twenty (20) year period prior to dissolution would be entitled to participate in the distribution of assets to the extent set forth in the By-Laws.

Service to U.S. Flue-Cured Tobacco Farmers Since 1946

1/2/2005

If you have not already sent in a reply from Stabilization's previous mailing, there is a form at the bottom of this letter and a postage paid envelope that will enable you to reply if you are interested in signing a marketing agreement with Stabilization. Please reply by January 2, 2005. If you have questions before or after you reply, feel free to call 919-821-4560. We will also post further information to Stabilization's web site, www.ustobaccofarmer.com and we plan to have a series of informational meetings after the first of the year.

We look forward to your response.

Sincerely,

Lioniel S. Edwards

Lioniel S. Edwards
General Manager

Cut here

Questionnaire

Please check all appropriate boxes and fill in blanks

- ☐ I do not plan to grow tobacco in 2005.
- ☐ I am interested in Stabilization's proposal and want more information.
- My spring 2004 effective quota was _____ Lbs.
- ☐ I am interested in touring Stabilization's processing and manufacturing plant at Timberlake, NC.
- My telephone number is (_____) _____
(Area Code)

Service to U.S. Flue-Cured Tobacco Farmers Since 1946

EXHIBIT U

**U.S. TOBACCO COOPERATIVE INC.
AND SUBSIDIARIES
Raleigh, North Carolina**

**CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015**

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INDEPENDENT AUDITORS' REPORT

Board of Directors
U.S. Tobacco Cooperative Inc.
Raleigh, North Carolina

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries, which comprise the consolidated balance sheets as of April 30, 2016 and 2015, and the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for the years then ended, and the related notes to consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Board of Directors
U.S. Tobacco Cooperative Inc.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of U.S. Tobacco Cooperative Inc. and Subsidiaries as of April 30, 2016 and 2015, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

CliftonLarsonAllen LLP

CliftonLarsonAllen LLP

Stevens Point, Wisconsin
July 1, 2016

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
April 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
ASSETS		
Current assets		
Cash and cash equivalents	\$ 12,710,115	\$ 10,225,984
Investment in interest-bearing obligations	21,095,615	13,818,146
Accounts receivable, net	60,333,034	66,800,446
Inventories, net	149,192,091	140,824,202
Prepaid expenses and other assets	1,414,833	347,185
Income taxes receivable	363,772	195,959
Total current assets	<u>245,109,460</u>	<u>232,211,922</u>
Investment in interest-bearing obligations	106,633,925	111,921,518
Property, plant, and equipment, net	29,364,765	26,197,661
Intangible assets, net	132,860,749	132,878,749
Other assets	<u>621,344</u>	<u>636,424</u>
TOTAL ASSETS	<u><u>\$ 514,590,243</u></u>	<u><u>\$ 503,846,274</u></u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	\$ 1,942,476	\$ 2,020,376
Accrued expenses	10,534,998	8,034,484
Current portion of long-term debt	8,008,524	8,000,000
Revolving line of credit	2,500,000	-
Patronage dividends payable in cash	4,486,543	5,669,240
Stock redemption payable	4,062,668	5,137,961
Customer deposits	1,948,701	2,421,777
Total current liabilities	<u>33,483,910</u>	<u>31,283,838</u>
Deferred income taxes	3,732,727	6,860,361
Pension benefits	7,577,240	5,773,111
Other	59,734	100,958
Revolving line of credit	95,000,000	79,000,000
Long-term debt, less current portion	11,146,116	19,555,415
Total liabilities	<u>150,999,727</u>	<u>142,573,683</u>
Stockholders' equity		
Common stock	3,695	4,245
Additional paid-in capital	110,753,161	110,753,161
Accumulated other comprehensive loss	(5,396,558)	(4,118,642)
Contributed capital	81,520,000	81,520,000
Capital equity credits:		
Qualified	34,895,751	35,508,215
Nonqualified	8,852,886	5,865,085
Retained earnings	132,961,581	131,740,527
Total stockholders' equity	<u>363,590,516</u>	<u>361,272,591</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u><u>\$ 514,590,243</u></u>	<u><u>\$ 503,846,274</u></u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
Years Ended April 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
REVENUE	\$ 247,363,257	\$ 276,153,134
COST OF SALES	<u>212,232,898</u>	<u>236,936,269</u>
Gross margin	35,130,359	39,216,865
SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES	<u>28,913,399</u>	<u>29,275,724</u>
Operating margin	<u>6,216,960</u>	<u>9,941,141</u>
OTHER INCOME (EXPENSE)		
Interest income	1,840,176	1,574,731
Interest expense	(2,197,331)	(2,059,520)
Other revenue, net	1,652,368	1,712,716
Gain (loss) on disposal of assets	(80,020)	91,911
Total other income (expense)	<u>1,215,193</u>	<u>1,319,838</u>
Margin before income taxes	7,432,153	11,260,979
PROVISION (CREDIT) FOR INCOME TAXES	<u>(2,089,006)</u>	<u>(291,173)</u>
NET MARGIN	<u>\$ 9,521,159</u>	<u>\$ 11,552,152</u>
Distribution of net margin:		
Patronage dividends payable in cash	\$ 4,486,543	\$ 5,669,240
Issuance of nonqualified equity credits	<u>3,813,562</u>	<u>5,039,324</u>
Total allocated net margin for members	8,300,105	10,708,564
Unallocated margin and income taxes retained	<u>1,221,054</u>	<u>843,588</u>
	<u>\$ 9,521,159</u>	<u>\$ 11,552,152</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
Years Ended April 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
NET MARGIN	<u>\$ 9,521,159</u>	<u>\$ 11,552,152</u>
OTHER COMPREHENSIVE LOSS, NET OF TAXES		
Available-for-sale investments		
Unrealized holding gains (losses) arising during the year	143,471	(164,190)
Add reclassification adjustment for losses included in net margin	4,440	72,762
	<u>147,911</u>	<u>(91,428)</u>
Defined benefit pension plan		
Net loss arising during the year	(1,652,766)	(1,272,748)
Add reclassification adjustment for amortization of net gain on pension included in net margin	226,939	187,126
	<u>(1,425,827)</u>	<u>(1,085,622)</u>
Other comprehensive loss, net of taxes	<u>(1,277,916)</u>	<u>(1,177,050)</u>
COMPREHENSIVE INCOME	<u><u>\$ 8,243,243</u></u>	<u><u>\$ 10,375,102</u></u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
Years Ended April 30, 2016 and 2015

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Contributed Capital	Capital Equity Credits		Retained Earnings	Total
	Shares	Amount				Qualified	Non-Qualified		
BALANCE, APRIL 30, 2014	952	\$ 4,760	\$ 110,753,161	\$ (2,941,592)	\$ 81,520,000	\$ 38,513,321	\$ 825,761	\$ 130,896,535	\$ 359,571,946
Net margin	-	-	-	-	-	-	-	11,552,152	11,552,152
Net loss on pension plan	-	-	-	(1,085,622)	-	-	-	-	(1,085,622)
Unrealized loss on investments	-	-	-	(91,428)	-	-	-	-	(91,428)
Patronage declared on 2015 net margin:									
Issuance of capital equity credits	-	-	-	-	-	-	5,039,324	(5,039,324)	-
Payable in cash	-	-	-	-	-	-	-	(5,669,240)	(5,669,240)
Capital equity credits called for redemption	-	-	-	-	-	(3,005,106)	-	404	(3,004,702)
Membership stock issued and cancelled, net	(103)	(515)	-	-	-	-	-	-	(515)
BALANCE, APRIL 30, 2015	849	4,245	110,753,161	(4,118,642)	81,520,000	35,508,215	5,865,085	131,740,527	361,272,591
Net margin	-	-	-	-	-	-	-	9,521,159	9,521,159
Net loss on pension plan	-	-	-	(1,425,827)	-	-	-	-	(1,425,827)
Unrealized gain on investments	-	-	-	147,911	-	-	-	-	147,911
Patronage declared on 2016 net margin:									
Issuance of capital equity credits	-	-	-	-	-	-	3,813,562	(3,813,562)	-
Payable in cash	-	-	-	-	-	-	-	(4,486,543)	(4,486,543)
Capital equity credits called for redemption	-	-	-	-	-	(1,438,225)	-	-	(1,438,225)
Transfers	-	-	-	-	-	825,761	(825,761)	-	-
Membership stock issued and cancelled, net	(110)	(550)	-	-	-	-	-	-	(550)
BALANCE, APRIL 30, 2016	<u>739</u>	<u>\$ 3,695</u>	<u>\$ 110,753,161</u>	<u>\$ (5,396,558)</u>	<u>\$ 81,520,000</u>	<u>\$ 34,895,751</u>	<u>\$ 8,852,886</u>	<u>\$ 132,961,581</u>	<u>\$ 363,590,516</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
Years Ended April 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Net margin	\$ 9,521,159	\$ 11,552,152
Adjustments to reconcile net margin to net cash provided by (used in) operating activities:		
Depreciation and amortization	4,231,345	3,957,433
Amortization of premiums on investments	1,385,239	1,204,289
Provision for obsolete inventory	3,515,760	4,093,627
Provision for doubtful accounts	699,165	155,000
Impairment of trademark	-	130,000
Realized loss on sale of investments	89,690	66,750
Gain on disposal of assets	(9,670)	(158,661)
Net periodic benefit costs (benefit)	(52,455)	(86,765)
Employer contribution to the pension plan	(632,719)	(341,764)
Deferred income taxes	(2,174,480)	(502,999)
Cash provided by (used in) changes in:		
Receivables	5,768,247	3,864,503
Income taxes receivable	(167,813)	48,037
Inventories	(11,883,649)	(50,292,353)
Prepaid expenses and other assets	(1,052,568)	630,458
Accounts payable	(77,900)	(8,649)
Accrued expenses and other liabilities	2,459,290	(2,093,478)
Customer deposits	(473,076)	461,333
Net cash provided by (used in) operating activities	<u>11,145,565</u>	<u>(27,321,087)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of property, plant, and equipment	(6,994,672)	(5,199,839)
Proceeds on disposal of assets	18,069	121,218
Purchase of interest-bearing obligations	(51,999,686)	(66,170,131)
Maturities and calls of interest-bearing obligations	48,793,114	63,478,098
Net cash used in investing activities	<u>(10,183,175)</u>	<u>(7,770,654)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Net borrowings on revolving line of credit	18,500,000	44,100,000
Payments on note payable	(8,016,686)	(8,000,000)
Payment of loan origination costs	(778,265)	-
Net payments on common stock	(550)	(515)
Redemption of stockholders' equity credits	(2,513,518)	(1,889,836)
Patronage distribution	(5,669,240)	(5,142,568)
Net cash provided by financing activities	<u>1,521,741</u>	<u>29,067,081</u>
INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	2,484,131	(6,024,660)
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	<u>10,225,984</u>	<u>16,250,644</u>
CASH AND CASH EQUIVALENTS, END OF YEAR	<u>\$ 12,710,115</u>	<u>\$ 10,225,984</u>

The accompanying notes are an integral part of the consolidated financial statements.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 1 - ORGANIZATION DATA AND SIGNIFICANT POLICIES

Organization Data

U.S. Tobacco Cooperative Inc. (USTC) was incorporated on June 1, 1946, under the provisions of the Cooperative Marketing Act of the State of North Carolina as a cooperative operating on a cooperative basis, with capital stock. USTC and its subsidiaries (collectively the Cooperative) have four primary business activities; 1) as a global leaf supplier, 2) as a manufacturer and distributor of six consumer tobacco product brands within the United States of America, 3) as a contract manufacturer of consumer products, principally internationally, and 4) as a producer of cut rag and pipe tobacco. The Cooperative purchases the majority of its leaf tobacco from member growers. The leaf tobacco is processed, stored, and shipped internationally, domestically, and for use in the Cooperative's own brands of consumer products.

The authorized capital stock of USTC consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who patronize USTC. At all meetings of the members, each member is entitled to only one vote. No dividends are payable on the common stock. USTC has adopted a bylaw consent form in which each member agrees to take into taxable gross income patronage refunds allocated to them.

USTC is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members. The capital equity credits are used to accumulate capital as considered necessary by the Board of Directors. Capital equity credits bear no interest, have no due date, and may only be redeemed or retired at the discretion of the Board of Directors in order of issuance by years.

A summary of the Cooperative's significant accounting policies follows:

Consolidation Policy

The accompanying consolidated financial statements include the accounts of USTC and its wholly owned subsidiaries, Tobacco Grower Services, Inc. (TGS), U.S. Flue-Cured Tobacco Growers, Inc. (USFC), Premier Manufacturing, Inc. (Premier), Franchise Wholesale Co., L.L.C. (Franchise), and Big South Distribution, LLC (Big South). TGS was merged into USTC effective May 1, 2015. All material intercompany balances and transactions have been eliminated.

Revenue Recognition

Revenues are generated primarily from leaf tobacco and tobacco consumer products sales. Sales are recognized upon shipment of goods to the customer at which time there is transfer of the title and risk of loss to the customer.

The Cooperative's accounting policy is to include federal and state excise taxes in revenues and cost of sales. Such revenues and cost of sales totaled \$54,149,701 and \$55,853,347 for the years ended April 30, 2016 and 2015, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 1 - ORGANIZATION DATA AND SIGNIFICANT POLICIES (continued)

Shipping and Handling Costs

Shipping and handling costs are included in cost of sales.

Cash and Cash Equivalents

For purposes of the statements of cash flows, the Cooperative considers money market funds and all other short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents. The Cooperative places its cash and cash equivalents with high credit-quality institutions.

The Cooperative maintains cash balances that from time to time may exceed the federally insured limits. The Cooperative has not experienced any losses on such accounts and management believes the Cooperative is not exposed to any significant credit risk on these accounts.

Interest-Bearing Obligations

The Cooperative's interest-bearing obligations consist of debt securities, which are classified as available for sale. Investments in debt securities are stated at fair values as adjusted for amortization of premium or discount, if applicable, and unrealized holding gains and losses are reported as accumulated other comprehensive income. Amortized discounts and premiums are included in net interest income. Interest on investments in debt securities is credited to income as it accrues on the principal amount outstanding adjusted for amortization of premiums and discounts computed by the effective interest method. Realized gains and losses on disposition of investments are included in net interest income in the accompanying consolidated statements of operations. The cost of investments sold is determined on the specific identification method.

Fair Value Measurements

The estimated fair value of the Cooperative's short-term financial instruments, including cash and cash equivalents, accounts receivable, income taxes receivable, accounts payable, accrued expenses, stock redemption and patronage payable, and customer deposits approximates their individual carrying amounts due to the relatively short period of time between their origination and expected realization. The fair value of the line of credit is estimated based on current rates offered to the Cooperative for similar debt of the same remaining maturities. The carrying value of the fixed rate long-term debt approximates fair value due to its proximity to current market rates for similar debt issues.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 1 - ORGANIZATION DATA AND SIGNIFICANT POLICIES (continued)

Accounts Receivable

Accounts receivable are recorded at net realizable value. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history, and current economic conditions. The allowance is reviewed periodically and adjusted for accounts deemed uncollectible by management. After all attempts to collect have failed, the receivable is written off against the allowance. The allowance for doubtful accounts totaled \$868,165 and \$169,000 as of April 30, 2016 and 2015, respectively.

Inventories

Inventories are priced at the lower of average cost (which approximates the first-in, first-out method) or market.

The Cooperative evaluates its inventory value at the end of each year to ensure that it is carried at the lower of cost or market. This evaluation includes a review of potential obsolete and slow-moving stock, based on historical product sales and forecasted sales, and an overall consolidated analysis of potential excess inventories. Events which could affect the amount of reserves for obsolete or slow moving inventories include a decrease in demand for the products due to economic conditions, price decreases by competitors on specific products or systems, or the discontinuance by a vendor. To the extent historical physical inventory results are not indicative of future results and if future events impact, either favorably or unfavorably, the salability of the Cooperative's products or its relationship with certain key vendors, the Cooperative's inventory reserves could differ significantly, resulting in either higher or lower future inventory provisions.

Property, Plant, and Equipment

Property, plant, and equipment are stated at cost and depreciated over their estimated useful lives using the declining balance or the straight-line method. Routine maintenance and repairs are charged to expense when incurred. When an asset is disposed of, the asset and related accumulated depreciation are written off and any gain or loss on the disposal is recognized. Major replacements and improvements are capitalized and depreciated over their estimated useful lives.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 1 - ORGANIZATION DATA AND SIGNIFICANT POLICIES (continued)

Accounting for Impairment of Long-Lived Assets

Long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate that an asset may not be recoverable and are grouped with other assets to the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. If the sum of the projected undiscounted cash flows is less than the carrying value of the assets, the assets are written down to the estimated fair value. Assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell.

No impairment of long-lived assets was recognized during the years ended April 30, 2016 and 2015.

Income Taxes

Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and net operating loss carryforwards. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The Cooperative recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Cooperative's policy is to recognize interest and penalties related to income taxes in its income tax provision. The Cooperative has not accrued or paid interest or penalties which were material to its results of operations for the years ended April 30, 2016 and 2015. As of April 30, 2016 and 2015, the Cooperative had no material unrecognized tax benefits. The Cooperative files in the U.S. and various state jurisdictions.

Pension Plan

The Cooperative has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan was frozen effective July 31, 2010. The plan provides benefits through mutual funds invested in common stocks and bonds. The Cooperative is required to recognize in its consolidated balance sheet the funded status of a benefit plan measured as the difference between the fair value of plan assets and benefit obligations, net of tax.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 1 - ORGANIZATION DATA AND SIGNIFICANT POLICIES (continued)

Self-Insurance

The Company maintains a self-insured employee benefit plan which covers health care costs. Benefit costs are accrued based on the aggregate of the liability for reported claims and an estimated liability for claims incurred but not reported. The accompanying consolidated statements of operations include expenses relating to self-insured plans.

Advertising Costs

Advertising costs are expensed as incurred. Advertising expenses of \$291,138 and \$701,595 for the years ended April 30, 2016 and 2015, respectively, are included in selling, general, and administrative expenses in the accompanying consolidated statements of operations.

Use of Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates include the valuation of accounts receivable, inventories, trademarks, and the master settlement agreement grandfather exemption. Estimates also include the useful lives of property, plant, and equipment and are used in determining the master settlement agreement obligation, pension benefit obligations, accrued and deferred income taxes, and litigation contingencies.

Recent Accounting Pronouncements

Effective May 1, 2014, the Cooperative changed its method of accounting for its existing interest rate swaps to the simplified hedge accounting approach, under which interest rate swaps are accounted for at settlement value. Previously, these interest rate swaps were accounted for at fair value. The effect of the change was not material.

Effective May 1, 2014, the Cooperative adopted the Accounting Standards Update 2015-03 - *Simplifying the Presentation of Debt Issuance Costs* which provides for the balance sheet classification of debt issuance costs as a direct deduction from the face amount of that note.

Effective May 1, 2015, the Cooperative adopted the Accounting Standards Update 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes*, which simplifies the presentation of deferred income taxes. ASU 2015-17 requires that deferred tax assets and liabilities be classified as noncurrent in a classified balance sheet, instead of separating deferred taxes into current and noncurrent amounts. The Cooperative elected to retrospectively adopt ASU 2015-17, resulting in a reclassification reducing both deferred tax assets and deferred tax liabilities by \$2,955,923 on the balance sheet at April 30, 2015.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 1 - ORGANIZATION DATA AND SIGNIFICANT POLICIES (continued)

Reclassifications

Certain amounts in these 2015 consolidated financial statements have been reclassified from where they were previously reported in order to conform to the 2016 presentation. These reclassifications did not affect the previously reported net margin.

NOTE 2 - FAIR VALUE MEASUREMENTS

Under the accounting standards authoritative guidance on fair value measurements, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value, the Cooperative uses various methods including market, income, and cost approaches. Based on these approaches, the Cooperative often uses certain assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and/or the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated, or generally unobservable inputs. The Cooperative uses valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs.

Based on the observability of the inputs used in the valuation techniques the Cooperative is required to provide the following information according to the fair value hierarchy. The fair value hierarchy ranks the quality and reliability of the information used to determine fair values. Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

- Level 1 – Quoted prices for identical assets and liabilities traded in active exchange markets, such as the New York Stock Exchange.
- Level 2 – Observable inputs other than Level 1 including quoted prices for similar assets or liabilities, quoted prices in less active markets, or other observable inputs that can be corroborated by observable market data. Level 2 also includes derivative contracts whose value is determined using a pricing model with observable market inputs or can be derived principally from or corroborated by observable market data.
- Level 3 – Unobservable inputs supported by little or no market activity for financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation, also includes observable inputs for nonbinding single dealer quotes not corroborated by observable market data.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 2 - FAIR VALUE MEASUREMENTS (continued)

The following tables summarize fair value measurements by level as of April 30, 2016 and 2015, for assets measured at fair value on a recurring basis:

April 30, 2016				
	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Available for sale securities				
Money market funds	\$ 401,569	\$ 401,569	\$ -	\$ -
Debt securities:				
Government agency (state taxable)	16,974,256	-	16,974,256	-
Agency mortgage-backed securities	38,829,748	-	38,829,748	-
Corporate bonds	71,523,967	-	71,523,967	-
Total available for sale securities	\$ 127,729,540	\$ 401,569	\$ 127,327,971	\$ -

April 30, 2015				
	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Available for sale securities				
Money market funds	\$ 923,137	\$ 923,137	\$ -	\$ -
Debt securities:				
Government agency (state taxable)	14,009,452	-	14,009,452	-
Agency mortgage-backed securities	38,355,743	-	38,355,743	-
Corporate bonds	72,451,332	-	72,451,332	-
Total available for sale securities	\$ 125,739,664	\$ 923,137	\$ 124,816,527	\$ -

NOTE 3 - INVESTMENTS

Investments in interest-bearing obligations at April 30, 2016 and 2015 were as follows:

2016				
	<u>Amortized Cost</u>	<u>Gross Unrealized Gain</u>	<u>Gross Unrealized Loss</u>	<u>Market</u>
Short-term	\$ 20,949,910	\$ 145,945	\$ (240)	\$ 21,095,615
Long-term	105,774,274	950,310	(90,659)	106,633,925
	<u>\$ 126,724,184</u>	<u>\$ 1,096,255</u>	<u>\$ (90,899)</u>	<u>\$ 127,729,540</u>

2015				
	<u>Amortized Cost</u>	<u>Gross Unrealized Gain</u>	<u>Gross Unrealized Loss</u>	<u>Market</u>
Short-term	\$ 13,799,455	\$ 20,157	\$ (1,466)	\$ 13,818,146
Long-term	111,693,218	319,234	(90,934)	111,921,518
	<u>\$ 125,492,673</u>	<u>\$ 339,391</u>	<u>\$ (92,400)</u>	<u>\$ 125,739,664</u>

The unrealized gains and losses on debt securities were primarily due to changes in interest rates. There were 39 and 37 debt securities in loss positions as of April 30, 2016 and 2015, respectively. The increase or decline in market values of these securities is attributable to changes in interest rates and not credit quality.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 3 - INVESTMENTS (continued)

Because it is unlikely that the Cooperative will be required to sell the investment before recovery of its amortized cost basis, which may be maturity, it does not consider the investment in debt securities to be other-than-temporarily impaired at April 30, 2016.

Contractual maturities of interest-bearing obligations as of April 30, 2016, are summarized below.

	Amortized Cost	Estimated Fair Value
Due in one year or less	\$ 20,949,910	\$ 21,095,615
Due after one year through five years	89,546,524	90,324,745
Due after five years through ten years	7,853,067	7,934,741
Due after ten years	8,374,683	8,374,439
	<u>\$ 126,724,184</u>	<u>\$ 127,729,540</u>

NOTE 4 - INVENTORIES

Inventories consisted of the following at April 30, 2016 and 2015:

	2016	2015
Processed tobacco	\$ 135,947,430	\$ 128,779,145
Materials and work in process	4,519,108	3,674,793
Tobacco products	10,777,799	11,003,163
	151,244,337	143,457,101
Reserve for obsolete and slow moving inventory	<u>(2,052,246)</u>	<u>(2,632,899)</u>
	<u>\$ 149,192,091</u>	<u>\$ 140,824,202</u>

During the years ended April 30, 2016 and 2015, the Cooperative determined that the market value of various tobacco products had permanently declined in value. In response, the Cooperative recorded an inventory allowance of \$2,052,246 and \$2,632,899 as of April 30, 2016 and 2015, respectively.

The Cooperative determined that various tobacco products were obsolete, slow moving, or may need to be discounted which resulted in a write-down of \$4,096,413 and \$2,142,130 for the years ended April 30, 2016 and 2015, respectively. These inventory write-downs were charged to the reserve for obsolete and slow moving inventory.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 5 - PROPERTY, PLANT, AND EQUIPMENT

Property, plant, and equipment, their estimated useful lives, and related accumulated depreciation at April 30, 2016 and 2015, are summarized as follows:

	Estimated Useful Lives In Years	2016	2015
Land	-	\$ 1,265,977	\$ 936,589
Buildings	5-20	14,388,917	13,056,828
Machinery and equipment	3-15	49,165,318	49,507,451
Furniture and fixtures	3-10	1,821,241	1,688,514
Automobiles and trucks	3-5	643,433	583,761
Construction in progress	-	2,691,055	932,839
		69,975,941	66,705,982
Less accumulated depreciation		(40,611,176)	(40,508,321)
		<u>\$ 29,364,765</u>	<u>\$ 26,197,661</u>

For the years ended April 30, 2016 and 2015, depreciation expense amounted to \$3,919,780 and \$3,606,659, respectively, and of which \$2,600,083 and \$2,457,384 are included in cost of sales, and \$1,319,697 and \$1,149,275 are included in selling, general, and administrative expenses, respectively, in the accompanying consolidated statements of operations.

The Company entered into various contracts during 2016 for the acquisition of property, equipment and facility upgrades. The acquisitions and upgrades are expected to be completed at various dates through January 2017. Costs totaling \$2,691,055 have been incurred and are included above as construction in progress at April 30, 2016. No interest has been capitalized in association with these contracts, and the total additional cost upon completion is estimated to be approximately \$16,550,000.

NOTE 6 - INTANGIBLE ASSETS

Intangible assets consisted of the following at April 30, 2016 and 2015:

	Estimated Lives	2016	2015
Master Settlement Agreement (MSA) - grandfather exemption	Indefinite	\$ 127,785,379	\$ 127,785,379
Trademarks	Indefinite	5,064,000	5,064,000
Customer list and non-compete	5 Years	180,000	180,000
		133,029,379	133,029,379
Less accumulated amortization		(168,630)	(150,630)
		<u>\$ 132,860,749</u>	<u>\$ 132,878,749</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 6 - INTANGIBLE ASSETS (continued)

Generally accepted accounting principles require that the unamortized value of indefinite lived intangible assets be evaluated annually to determine whether the amount reflected above has been impaired. During 2016, no amounts were determined to be impaired. During 2015, the Cooperative's management determined that \$130,000 of the trademarks owned by Franchise were impaired, and accordingly, were written off.

The customer list and noncompete agreement are amortized over five years on a straight-line basis, with final amortization of \$11,370 recorded in 2017.

As part of the acquisition of Premier, the Cooperative acquired the Wildhorse, First Class, Ultra Buy, and Shield trademarks. These trademarks were available commercially prior to February 15, 2007, the effective date of the FDA's Substantial Equivalence requirements.

The Cooperative also owns the 1839 and Traffic brands, which have no costs associated with them. These two brands were transferred to Premier during 2015, so that all six brands are owned by Premier.

In 1998, the major United States cigarette manufacturers entered into the MSA with attorneys general representing 46 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas. The MSA became effective on November 23, 1998, when final approval was achieved in 80% of the settling jurisdictions. The MSA settled all health care cost recovery actions brought by settling jurisdictions and contains releases of various additional present and future claims. To entice other cigarette manufacturers into joining the MSA, the agreement provided that if a subsequent participating manufacturer (SPM) joined within ninety days following the MSA's "Execution Date," that SPM is exempt from making annual payments to the settling states unless their share of the national cigarette market exceeds its 1998 market share or 125% of its 1997 market share.

Premier became a signatory to the MSA in February 1999, and was granted an exemption in perpetuity from payment obligations under the MSA except to the extent that its market share exceeds approximately 0.25% of the total cigarettes sold in the United States.

NOTE 7 - MASTER SETTLEMENT AGREEMENT OBLIGATION

As a party to the MSA, Premier and USFC are required to make certain payments to the extent cigarettes sold exceed a specified level. The payment amounts are based generally on Premier's and USFC's relative market share and are subject to several adjustments, including inflation, United States cigarette volume, and certain other factors. At April 30, 2016 and 2015, the Cooperative's management estimated the liability to be \$1,553,150 and \$774,374, respectively. The balances accrued at April 30, 2016, are expected to be paid in April 2017, along with the accumulated obligation from April 30, 2016, through the end of the 2016 calendar year. The balance accrued at April 30, 2015, was paid in April 2016, along with the accumulated obligation from April 30, 2015, through the end of the 2015 calendar year.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 8 - ACCRUED EXPENSES

The components of accrued expenses at April 30, 2016 and 2015 are summarized as follows:

	2016	2015
Accrued tobacco product related taxes	\$ 4,225,628	\$ 3,669,710
Other accrued expenses	2,959,507	2,390,298
Accrued master settlement agreement obligation	1,553,150	774,374
Accrued insurance	167,356	300,000
Accrued salaries and related benefits	1,569,357	840,102
Accrued interest	60,000	60,000
	<u>\$ 10,534,998</u>	<u>\$ 8,034,484</u>

NOTE 9 - REVOLVING LINES OF CREDIT

On March 24, 2016, the Cooperative entered into an amended and restated syndicated loan (Loan Agreement) with six financial institutions which consists of a term loan (Term Loan) and a revolving credit facility (Revolving Credit Facility). The Loan Agreement is collateralized by all assets of the Cooperative. The Cooperative is required to maintain a minimum tangible net worth and fixed charge coverage ratio under the conditions of the Loan Agreement.

The Revolving Credit Facility provides for up to \$205,000,000 in funding through the use of two separate tranches (Tranche A and Tranche B) and a swing line (Swing Line), all of which mature on March 24, 2021. Tranche A provides up to \$95,000,000 in funding, subject to a borrowing base limitation as defined in the Loan Agreement. Interest-only payments are due monthly at the one-month London Interbank Offered Rate (LIBOR) rate plus 1.00% (1.434% at April 30, 2016). Tranche B provides up to \$100,000,000 in funding, subject to a borrowing base limitation as defined in the Agreement, and requires a zero balance for sixty consecutive days within each fiscal year. Interest-only payments are due monthly at the one-month LIBOR rate plus 1.50% (1.934% at April 30, 2016). The Swing Line provides up to \$10,000,000 in funding. Interest-only payments are due monthly at the prime rate plus 1.00% (4.50% at April 30, 2016). At April 30, 2016 and 2015, Tranche A had an outstanding balance of \$95,000,000 and \$79,000,000, respectively. Tranche B had an outstanding balance of \$2,500,000 as of April 30, 2016. There was no balance outstanding on Tranche B at April 30, 2015. There was no balance outstanding on the Swing Line at April 30, 2016 or 2015.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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NOTE 10 - LONG-TERM DEBT

Long-term debt consisted of the following as of April 30, 2016 and 2015:

	<u>2016</u>	<u>2015</u>
Note payable to financial institutions, payable in monthly interest payments and quarterly principal payments of \$2,000,000 at a variable interest rate equal to the one-month LIBOR rate plus 1.00% (1.434% at April 30, 2016), maturing on September 27, 2018	\$ 20,000,000	\$ 28,000,000
Equipment financing contracts payable in various monthly payments including interest, through 2021	83,925	-
Loan origination fees and costs	(929,285)	(444,585)
	19,154,640	27,555,415
Less current portion of long-term debt	(8,008,524)	(8,000,000)
	<u>\$ 11,146,116</u>	<u>\$ 19,555,415</u>

Remaining maturities of long-term debt subsequent to April 30, 2016 are as follows:

<u>Year Ending</u> <u>April 30,</u>	<u>Amount</u>
2017	\$ 8,008,524
2018	8,019,584
2019	4,018,841
2020	14,979
2021	21,997
	<u>\$ 20,083,925</u>

Loan origination fees and costs were \$961,329 and \$941,473 at April 30, 2016 and 2015, respectively, and accumulated amortization was \$32,044 and \$496,888 at April 30, 2016 and 2015, respectively. The costs and fees are amortized over the lives of the applicable debt securities. Total amortization expense for the years ended April 30, 2016 and 2015, was \$293,565 and \$313,824, respectively, and is included as part of interest expense.

The Cooperative entered into two interest rate swap agreements effective September 2013, that effectively fixed the interest rate on the \$20 million term note above from a variable interest rate note to a blended fixed rate of 2.12%. The interest rate swap agreements mature September 2018. The Cooperative's purpose in entering into the swap agreements was to hedge against the risk of interest rate increases on the related variable rate debt. The derivative financial instrument is reflected on the consolidated balance sheet at its settlement value which was insignificant as of April 30, 2016 and 2015. The cash flow effects of the swap agreements are included in interest expense on the consolidated statement of operations. The effect for the years ended April 30, 2016 and 2015, was to increase interest expense by \$186,010 and \$280,864, respectively.

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NOTE 11 - OPERATING LEASES

During the fiscal years ended April 30, 2016 and 2015, the Cooperative entered into year-to-year operating leases for purposes of operating tobacco marketing centers and office space for the 2015 and 2014 crop years. Total lease expense for the centers amounted to approximately \$990,000 and \$1,143,000 for the years ended April 30, 2016 and 2015, respectively.

The Cooperative has noncancelable operating leases, primarily for certain equipment and vehicles, that provide for renewal options for varying periods.

Commitments for minimum future lease payments, by year and in aggregate, to be paid under noncancelable operating leases with initial or remaining terms in excess of one year as of April 30, 2016, are as follows:

Year Ending April 30,	Amount
2017	\$ 1,210,203
2018	842,362
2019	372,200
2020	294,716
2021	149,739
	<u>\$ 2,869,220</u>

Total lease and rental expenses for operating leases amounted to \$1,348,783 and \$1,200,008 for the years ended April 30, 2016 and 2015, respectively, and are included as a component of selling, general and other administrative expenses in the accompanying consolidated statements of operations.

NOTE 12 - STOCK REDEMPTION PAYABLE

Cooperative membership requires participation in the crop year, which runs May 1 through April 30. Beginning in May 2004, the board of directors approved a plan to terminate stock ownership of members who did not enter into marketing agreements with the Cooperative for the subsequent year.

During the year ended April 30, 2016, the Cooperative offered an open call for redemption of the 1967 to 1973, capital equity credits, from December 1, 2015 through February 29, 2016.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 12 - STOCK REDEMPTION PAYABLE (continued)

The amounts of capital equity credits offered for redemption and called for redemption are as follows:

<u>Crop year</u>	<u>Offered for Redemption</u>	<u>Called for Redemption</u>
1967	\$ 4,296,250	\$ 127,825
1968	2,033,889	109,813
1969	2,832,496	186,948
1970	8,321,538	577,340
1971	3,318,711	255,287
1972	1,659,600	116,421
1973	818,201	64,591
	<u>\$ 23,280,685</u>	<u>\$ 1,438,225</u>

The balance of stock redemption payable comprises the following at April 30, 2016 and 2015:

	<u>2016</u>	<u>2015</u>
Terminated stock balances payable	\$ 4,024,090	\$ 4,023,580
Balance due on 1967 to 1973 capital credits called for redemption	38,578	1,114,381
	<u>\$ 4,062,668</u>	<u>\$ 5,137,961</u>

NOTE 13 - INCOME TAXES

The provision (credit) for income taxes consisted of the following for the years ended April 30, 2016 and 2015:

	<u>2016</u>		
	<u>Current</u>	<u>Deferred</u>	<u>Total</u>
Federal	\$ (19,413)	\$ (1,805,347)	\$ (1,824,760)
State	104,887	(369,133)	(264,246)
	<u>\$ 85,474</u>	<u>\$ (2,174,480)</u>	<u>\$ (2,089,006)</u>

	<u>2015</u>		
	<u>Current</u>	<u>Deferred</u>	<u>Total</u>
Federal	\$ 194,790	\$ (420,745)	\$ (225,955)
State	17,036	(82,254)	(65,218)
	<u>\$ 211,826</u>	<u>\$ (502,999)</u>	<u>\$ (291,173)</u>

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NOTE 13 - INCOME TAXES (continued)

The actual provision (credit) for income taxes for 2016 and 2015 differs from the "expected" taxes (computed by applying the U.S. federal corporate income tax rate of 34%) to the margin before income taxes as follows:

	<u>2016</u>	<u>2015</u>
Computed "expected" tax expense	\$ 2,526,900	\$ 3,828,733
Change in income tax expense (benefit) resulting from:		
State income taxes, net of federal income tax benefit	318,840	731,964
Patronage dividends	(3,178,100)	(4,101,020)
Nondeductible expenses	103,000	97,333
Valuation allowance	38,000	(305,600)
Other, net	(1,897,646)	(542,583)
	<u><u>\$ (2,089,006)</u></u>	<u><u>\$ (291,173)</u></u>

The tax effects of temporary differences that give rise to the net deferred tax liabilities at April 30, 2016 and 2015 are presented below:

	<u>2016</u>	<u>2015</u>
Deferred tax assets		
Recognition of certain retirement costs	\$ 2,901,326	\$ 2,210,525
Net operating losses	3,904,407	922,798
Master settlement agreement	593,495	295,836
Allowances and reserves	332,421	64,710
Inventories	2,643,040	2,040,380
Accrued expenses	1,411,678	554,997
Capital loss	83,411	24,157
Nonqualified equity credits	3,705,954	1,962,523
Less valuation allowance	(852,803)	(890,962)
	<u>14,722,929</u>	<u>7,184,964</u>
Deferred tax liabilities		
Property, plant, and equipment	3,185,980	2,178,970
Intangibles	15,269,676	11,866,355
	<u>18,455,656</u>	<u>14,045,325</u>
	<u><u>\$ (3,732,727)</u></u>	<u><u>\$ (6,860,361)</u></u>

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NOTE 13 - INCOME TAXES (continued)

As of April 30, 2016 and 2015, the Cooperative has \$4,716,746 and \$2,296,287, respectively, of federal net operating loss carry forwards, which expire in 2035 through 2036.

As of April 30, 2016 and 2015, the Cooperative had state net operating loss carryovers of \$26,501,024 and \$21,501,000, respectively, which expire in 2018 through 2036. A valuation allowance is required to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all the evidence, both positive and negative, management has determined that \$852,803 and \$890,962 valuation allowance at April 30, 2016 and 2015, respectively, is necessary to reduce the deferred tax asset related to the state net operating losses that will not be realized. The change in the valuation allowance for 2016 and 2015 was \$38,159 and (\$1,033,647), respectively. After taking into account the valuation allowance, the Cooperative has a net deferred tax asset relating to state net operating losses for the years ending April 30, 2016 and 2015 of \$284,091 and \$31,836, respectively.

NOTE 14 - RETIREMENT PLANS

Defined Benefit Pension Plan: The Cooperative sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Cooperative were eligible to participate after one year of service, which is the completion of 1,000 or more hours of service within a period in which the employee is employed for twelve consecutive months. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service. On May 31, 2010, the Cooperative's Board of Directors approved a Certificate of Resolution to freeze benefits after July 31, 2010.

The Cooperative's funding policy requires a contribution in the amount necessary to satisfy the minimum required contributions under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), subject to the Cooperative's long-term funding strategy. The Cooperative's funding policy is to contribute funds to the trust for the plan as necessary to provide for current service and for any unfunded projected benefit obligation over a reasonable period. To the extent that these requirements are fully covered by assets in the trust, the Cooperative may elect not to make a contribution in a particular year. The Cooperative made contributions of \$632,719 and \$341,764 to the plan for the years ended April 30, 2016 and 2015, respectively. The Cooperative anticipates making contributions of \$469,825 to the plan for the year ending April 30, 2017.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
April 30, 2016 and 2015

NOTE 14 - RETIREMENT PLANS (continued)

The following table sets forth the plan's funded status and amounts recognized in the Cooperative's consolidated balance sheets at April 30, 2016 and 2015, as follows:

	Pension Benefits	
	2016	2015
Change in projected benefit obligation:		
Projected benefit obligation - beginning of year	\$ 23,251,553	\$ 21,942,250
Interest cost	905,666	970,935
Actuarial loss	1,452,512	1,691,649
Benefit payment	<u>(1,414,465)</u>	<u>(1,353,281)</u>
Projected benefit obligation - end of year	<u>24,195,266</u>	<u>23,251,553</u>
Change in plan assets:		
Fair value of plan assets - beginning of year	17,478,442	17,373,713
Actual return on plan assets	(78,670)	1,116,246
Employer contributions	632,719	341,764
Benefit payments	<u>(1,414,465)</u>	<u>(1,353,281)</u>
Fair value of plan assets - end of year	<u>16,618,026</u>	<u>17,478,442</u>
Fund status - end of year, and noncurrent liability recognized in the consolidated balance sheets	<u>\$ (7,577,240)</u>	<u>\$ (5,773,111)</u>

The accumulated benefit obligation as of April 30, 2016 and 2015 was \$24,195,266 and \$23,251,553, respectively

Amounts recognized in accumulated other comprehensive loss as of April 30, 2016 and 2015, not yet reflected in net periodic benefit cost, consist of:

	Pension Benefits	
	2016	2015
Net loss	\$ 9,469,799	\$ 6,980,496
Less deferred tax benefit	<u>(3,801,891)</u>	<u>(2,738,415)</u>
	<u>\$ 5,667,908</u>	<u>\$ 4,242,081</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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April 30, 2016 and 2015

NOTE 14 - RETIREMENT PLANS (continued)

The net periodic cost (credit) of the plan was (\$52,455) and (\$86,765) for 2016 and 2015, respectively. These amounts included the following reclassification adjustments of other comprehensive income:

	<u>2016</u>	<u>2015</u>
Amortization of net gain	<u>\$ 396,206</u>	<u>\$ 281,494</u>

The estimated gain that will be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2017 is \$560,000.

The following table provides the weighted average actuarial assumptions at April 30, 2016 and 2015:

	<u>Pension Benefits</u>	
	<u>2016</u>	<u>2015</u>
Weighted-average assumptions used to determine benefit obligations as of April 30:		
Discount rate	4.0%	4.0%
Weighted-average assumptions used to determine Net periodic benefit cost for years ended April 30:		
Discount rate	4.0%	4.5%
Expected long-term return on plan assets	8.0%	8.0%

During 2016, the Cooperative changed from the RP-2000 Mortality Table to the RP-2014 Mortality Table, to better reflect current and expected future mortality improvements.

Management determines the expected return on plan assets based on historical performance of the plan's investments. Management compares their expected rate of return with other companies to ensure that it is in line with broad market expectations.

The plan holds investments in various equities and mutual funds covering a wide range of investment opportunities. The various mutual funds are valued at fair value based on quoted market prices.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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NOTE 14 - RETIREMENT PLANS (continued)

The fair values of the Cooperative's pension plan assets at April 30, 2016 and 2015, respectively, are as follows:

April 30, 2016				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$ 5,262,687	\$ 5,262,687	\$ -	\$ -
International equities	2,712,910	2,712,910	-	-
Real estate	343,233	343,233	-	-
Fixed income	6,568,244	6,568,244	-	-
Commodities	348,779	348,779	-	-
Hedge funds	917,770	917,770	-	-
Money market account	464,403	464,403	-	-
Total	\$ 16,618,026	\$ 16,618,026	\$ -	\$ -

April 30, 2015				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$ 5,720,552	\$ 5,720,552	\$ -	\$ -
International equities	3,034,833	3,034,833	-	-
Real estate	1,057,489	1,057,489	-	-
International fixed income	6,430,344	6,430,344	-	-
Common stock				
Domestic equities	1,076,005	1,076,005	-	-
International equities	26,620	26,620	-	-
Money market account	132,599	132,599	-	-
Total	\$ 17,478,442	\$ 17,478,442	\$ -	\$ -

The investment policy guidelines outline risk tolerance, goals, permissible and prohibited investments, and target investment allocations.

Risk tolerance as defined by the policy guidelines identify that historical capital market returns allow for the assumption of short run investment risks in favor of greater returns provided by capital markets over the longer term.

Permissible investments as defined by the policy guidelines are individual securities, separate accounts, mutual funds, trusts, private placements, partnerships, commingled funds, pooled funds, contracts and other legally constituted means of buying and selling investments including domestic equities, fixed income investments, cash equivalents, international equities, and real estate.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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NOTE 14 - RETIREMENT PLANS (continued)

Prohibited investments as defined by the policy guidelines are short sales, margin purchases, securities lending, borrowings of plan assets, purchase of letter stock (restricted stock), options, futures, loans, investments requiring pledging of plan assets as collateral and any other investment not outlined as a permissible investment under the policy guidelines unless authorized in writing by the committee.

The current investment policy target mix is as follows:

Domestic equities	32.0%
International equities	19.0%
Real assets	7.0%
Fixed income securities	42.0%

Benefits expected to be paid in each of the next five fiscal years, and in the aggregate for the five fiscal years thereafter, are as follows:

Year Ending April 30,	Amount
2017	\$ 1,500,801
2018	1,492,271
2019	1,509,231
2020	1,481,226
2021	1,510,569
2022-2026	7,601,132

Defined Contribution 401(k) Plan: The Cooperative maintains a 401(k) plan for all of its eligible employees. The plan year is January 1 to December 31, and allows eligible employees to defer a portion of their compensation up to the maximum allowed by law (\$18,000 in 2016 and 2015 with catch-up contributions of \$6,000 in 2016 and 2015 for age 50 and older). Effective January 1, 2014, the plan allows for a 100% match of the first 3% of an employee's elective contribution and a 50% match of an additional 2% of an employee's elective contribution. For the years ended April 30, 2016 and 2015, the employer contributions made to the plan were \$337,598 and \$387,859, respectively.

The Cooperative may make discretionary matching and profit sharing contributions to the plan. The board of directors did not elect to make either of these additional contributions for the years ended April 30, 2016 and 2015.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 15 - CONTINGENCIES

The Cooperative is currently engaged in several lawsuits.

In 2005, two civil, class-action lawsuits (*Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corp.* & *Fisher v. Flue-Cured Tobacco Cooperative Stabilization Corp.*) were filed against the Cooperative in North Carolina Superior Court in Wake County, North Carolina. Plaintiffs seek to dissolve the Cooperative and distribute its assets based on allegations that the Cooperative has no valid business purpose following the U.S. Congress's termination of the Federal Tobacco Loan Program. These lawsuits have since been consolidated into a single action, *Fisher*, in North Carolina, from which the claim for dissolution has been dropped. Plaintiffs are nonetheless still advancing claims seeking to force the Company to distribute a substantial portion of its reserves. In June 2013, the North Carolina Superior Court (state trial court) issued an order certifying named plaintiffs as class representatives for all former and present shareholders/members of the Cooperative from 1946 through 2004. The Cooperative denies all allegations in the complaint and has been vigorously defending the matter and has challenged class certification via an interlocutory appeal that the North Carolina Supreme Court specially elected to hear on April 20, 2015. The company is waiting for the Supreme Court's decision. To the extent this case returns to the trial court, the Company is prepared to continue vigorously defending. While we cannot predict how or when the merits will ultimately be resolved, we perceive a variety of grounds on which the Company may defend against the merits.

In October 2012, a civil, class-action lawsuit (*Speaks v. United States Tobacco Cooperative Inc.*) was filed against the Cooperative in the United States District Court for the Eastern District of North Carolina. Plaintiffs seek to dissolve the Cooperative and distribute its assets to the Cooperative's members based on allegations to the effect that the Cooperative no longer serves a valid business purpose following the U.S. Congress's termination of the Federal Tobacco Loan Program. The case is currently stayed by agreement pending the North Carolina Supreme Court's resolution of the *Fisher* appeal. The Company is again prepared to vigorously defend against this class action as to certification, the merits, and otherwise if and when it resumes in federal court.

In May 2007, certain individual plaintiffs represented by the same counsel filed a series of lawsuits (led by *Rigby v. Flue-Cured Tobacco Cooperative Stabilization Corp.*) against the Cooperative in the Superior Court of Georgia in Berrien County, Georgia. The Cooperative successfully dismissed all of the Plaintiffs' claims except for one that was reinstated on appeal, a claim for breach of fiduciary duty and corresponding attorney's fees. Following the partial reversal and remand back to the trial court, the trial afforded the Company discovery into the remaining claim as well as to seek summary judgment. The Company has since obtained that discovery, moved for summary judgment, and obtained summary judgment dismissal of plaintiff's remaining claim. Plaintiffs then appealed that summary ruling and the Georgia Court of Appeals has now received full briefing, hearing arguments on May 20, 2016. We cannot predict how or when the Georgia Court of Appeals will decide the appeal. Although we have identified multiple grounds for the Georgia Court of Appeals to affirm the summary judgment ruling, the Company is prepared to continue vigorously defending the case through trial to the extent this case and/or any of the parallel cases may proceed before the trial court.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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NOTE 15 - CONTINGENCIES (continued)

In July 2013, the Cooperative filed a lawsuit (*U.S. Tobacco Cooperative, et al v. Big South Wholesale Virginia, et. al.*,) in the United States District Court for the Eastern District of North Carolina. The Cooperative's lawsuit states claims for RICO violations breach of contract, unfair trade practices, fraud in the inducement, fraud and other legal violations. The defendants include the former Chairman of the Board, two former executives, a former consultant, and several entities that they owned or controlled and unnamed co-conspirators. Some of the defendants have filed counter claims against the plaintiffs. The parties have been engaged in discovery since approximately August 2015. The trial date is currently scheduled for August 2016.

California Board of Equalization (BOE) Dispute. During July 2009, the state of California performed a Cigarette and Tobacco Products tax audit of Franchise. During the audit period (June 2006 through June 2009), Franchise had been routinely selling both stamped and unstamped product into California. At the conclusion of the audit, Franchise was notified that California statutes preclude Franchise from shipping unstamped product into California, which was in contradiction of guidance the State of California had previously provided Franchise. The Cooperative has recorded an accrued expense for \$1,380,000 related to this ongoing dispute. This dispute occurred prior to the Cooperative's acquisition of Franchise, but was known and accounted for as part of that transaction.

The Cooperative is also party to legal actions arising in the ordinary course of its business. Management asserted that these cases are without merit and will be defended vigorously. While the results cannot be predicted with certainty, management believes it is not possible to form an assessment of potential outcome or an estimate of liability, if any, and that the final outcome of such legal actions will not have a material adverse effect on the Cooperative's financial position.

NOTE 16 - BUSINESS CONCENTRATIONS

Customer Concentrations

The Cooperative has one customer which accounts for over 10% of total sales and total accounts receivable. For the years ended April 30, 2016 and 2015, sales to this customer accounted for 27% and 30% of total sales, respectively. At April 30, 2016 and 2015, the customer's account balance accounted for 93% and 86% of total receivables, respectively.

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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NOTE 17 - CASH FLOW DISCLOSURES

Cash paid for interest and income taxes for the years ended April 30, 2016 and 2015 were as follows:

	2016	2015
Interest	\$ 1,744,450	\$ 1,424,777
Income taxes	421,446	508,925

Noncash investing and financing activities consisted of acquisition of property, plant, and equipment by notes payable of \$100,611 at April 30, 2016.

NOTE 18 - ACCUMULATED OTHER COMPREHENSIVE LOSS

Accumulated other comprehensive loss consisted of the following at April 30, 2016 and 2015:

April 30, 2016			
	Total	Unrealized Gains on Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$ (4,118,642)	\$ 123,439	\$ (4,242,081)
Other comprehensive income (loss)	(1,509,295)	143,471	(1,652,766)
Reclassification adjustments	231,379	4,440	226,939
Balance, end of year	\$ (5,396,558)	\$ 271,350	\$ (5,667,908)

April 30, 2015			
	Total	Unrealized Gains (Losses) on Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$ (2,941,592)	\$ 214,867	\$ (3,156,459)
Other comprehensive loss	(1,436,938)	(164,190)	(1,272,748)
Reclassification adjustments	259,888	72,762	187,126
Balance, end of year	\$ (4,118,642)	\$ 123,439	\$ (4,242,081)

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
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April 30, 2016 and 2015

NOTE 18 - ACCUMULATED OTHER COMPREHENSIVE LOSS (continued)

The allocation on income tax expense (benefit) for each component of other comprehensive income (loss) was as follows for the years ended April 30, 2016 and 2015:

April 30, 2016			
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding gains arising during the year	\$ 250,482	\$ (107,011)	\$ 143,471
Add reclassification adjustment for losses included in net margin - other revenue, net	7,751	(3,311)	4,440
Defined benefit pension plan			
Net loss arising during the year	(2,885,509)	1,232,743	(1,652,766)
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	396,206	(169,267)	226,939
	<u>\$ (2,231,070)</u>	<u>\$ 953,154</u>	<u>\$ (1,277,916)</u>
April 30, 2015			
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding losses arising during the year	\$ (246,991)	\$ 82,801	\$ (164,190)
Add reclassification adjustment for losses included in net margin - other revenue, net	109,456	(36,694)	72,762
Defined benefit pension plan			
Net loss arising during the year	(1,914,597)	641,849	(1,272,748)
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	281,494	(94,368)	187,126
	<u>\$ (1,770,638)</u>	<u>\$ 593,588</u>	<u>\$ (1,177,050)</u>

NOTE 19 - SUBSEQUENT EVENTS

Management evaluated and noted no additional subsequent events requiring recognition or disclosure through July 1, 2016, which is the date the consolidated financial statements were available to be issued.

This information is an integral part of the accompanying consolidated financial statements.

**INDEPENDENT AUDITORS' REPORT ON
SUPPLEMENTARY INFORMATION**

Board of Directors
U.S. Tobacco Cooperative Inc.
Raleigh, North Carolina

We have audited the consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries as of and for the years ended April 30, 2016 and 2015, and have issued our report thereon dated July 1, 2016, which contained an unmodified opinion on those financial statements. Our audits were performed for the purpose of forming an opinion on the financial statements as a whole. The supplementary information, as listed in the table of contents, is presented for the purposes of additional analysis and is not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

CliftonLarsonAllen LLP

CliftonLarsonAllen LLP

Stevens Point, Wisconsin
July 1, 2016

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATING BALANCE SHEETS
April 30, 2016
(With comparative totals for April 30, 2015)

	U.S. Tobacco Cooperative Inc.	U.S. Flue-Cured Tobacco Growers, Inc.	Premier Manufacturing, Inc.
ASSETS			
Current assets			
Cash and cash equivalents	\$ 2,461,944	\$ 5,655,259	\$ 2,543,133
Investment in interest-bearing obligations	21,095,615	-	-
Accounts receivable, net	55,991,776	303,731	1,230,046
Inventories, net	110,630,640	32,757,187	2,524,811
Prepaid expenses and other assets	890,353	3,009	332,839
Intercompany receivables	29,535,268	108,159	72,945,944
Income taxes receivable	363,772	-	-
Total current assets	<u>220,969,368</u>	<u>38,827,345</u>	<u>79,576,773</u>
Investment in interest-bearing obligations	106,633,925	-	-
Investment in subsidiaries	222,805,496	-	-
Property, plant, and equipment, net	3,988,938	24,954,378	224,092
Intangible assets, net	-	-	132,849,379
Other assets	489,606	-	-
TOTAL ASSETS	<u><u>\$ 554,887,333</u></u>	<u><u>\$ 63,781,723</u></u>	<u><u>\$ 212,650,244</u></u>
LIABILITIES AND STOCKHOLDERS' EQUITY			
Current liabilities			
Accounts payable	\$ 630,101	\$ 679,905	\$ 416,368
Accrued expenses	2,488,687	3,694,719	2,776,317
Current portion of long-term debt	8,000,000	-	5,224
Revolving line of credit	2,500,000	-	-
Patronage dividends payable in cash	4,486,543	-	-
Stock redemption payable	4,062,668	-	-
Intercompany payables	71,147,074	29,848,969	172,065
Customer deposits	827,226	1,121,475	-
Total current liabilities	<u>94,142,299</u>	<u>35,345,068</u>	<u>3,369,974</u>
Deferred income taxes	3,732,727	-	-
Pension benefits	7,577,240	-	-
Other	59,734	-	-
Revolving line of credit	95,000,000	-	-
Long-term debt, less current portion	11,070,715	-	9,816
Total liabilities	<u>211,582,715</u>	<u>35,345,068</u>	<u>3,379,790</u>
Stockholders' equity			
Common stock	3,695	100,000	3,100
Additional paid-in capital	110,753,161	25,700,000	-
Accumulated other comprehensive loss	(5,396,558)	-	-
Contributed capital	81,520,000	-	135,239,469
Capital equity credits:			
Qualified	34,895,751	-	-
Nonqualified	8,852,886	-	-
Retained earnings	112,675,683	2,636,655	74,027,885
Total stockholders' equity	<u>343,304,618</u>	<u>28,436,655</u>	<u>209,270,454</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u><u>\$ 554,887,333</u></u>	<u><u>\$ 63,781,723</u></u>	<u><u>\$ 212,650,244</u></u>

Franchise Wholesale Co., L.L.C.	Big South Distribution, LLC	Eliminations	2016 Consolidated	2015 Consolidated
\$ 787,119	\$ 1,262,660	\$ -	\$ 12,710,115	\$ 10,225,984
-	-	-	21,095,615	13,818,146
1,463,493	1,343,988	-	60,333,034	66,800,446
4,658,146	3,377,431	(4,756,124)	149,192,091	140,824,202
169,461	19,171	-	1,414,833	347,185
-	3,167,289	(105,756,660)	-	-
-	-	-	363,772	195,959
7,078,219	9,170,539	(110,512,784)	245,109,460	232,211,922
-	-	-	106,633,925	111,921,518
-	-	(222,805,496)	-	-
72,712	124,645	-	29,364,765	26,197,661
11,370	-	-	132,860,749	132,878,749
-	131,738	-	621,344	636,424
<u>\$ 7,162,301</u>	<u>\$ 9,426,922</u>	<u>\$ (333,318,280)</u>	<u>\$ 514,590,243</u>	<u>\$ 503,846,274</u>
\$ 179,265	\$ 36,837	\$ -	\$ 1,942,476	\$ 2,020,376
1,478,924	96,351	-	10,534,998	8,034,484
-	3,300	-	8,008,524	8,000,000
-	-	-	2,500,000	-
-	-	-	4,486,543	5,669,240
-	-	-	4,062,668	5,137,961
3,848,617	739,935	(105,756,660)	-	-
-	-	-	1,948,701	2,421,777
5,506,806	876,423	(105,756,660)	33,483,910	31,283,838
-	-	-	3,732,727	6,860,361
-	-	-	7,577,240	5,773,111
-	-	-	59,734	100,958
-	-	-	95,000,000	79,000,000
-	65,585	-	11,146,116	19,555,415
5,506,806	942,008	(105,756,660)	150,999,727	142,573,683
-	-	(103,100)	3,695	4,245
-	-	(25,700,000)	110,753,161	110,753,161
-	-	-	(5,396,558)	(4,118,642)
1,055,474	8,669,387	(144,964,330)	81,520,000	81,520,000
-	-	-	34,895,751	35,508,215
-	-	-	8,852,886	5,865,085
600,021	(184,473)	(56,794,190)	132,961,581	131,740,527
1,655,495	8,484,914	(227,561,620)	363,590,516	361,272,591
<u>\$ 7,162,301</u>	<u>\$ 9,426,922</u>	<u>\$ (333,318,280)</u>	<u>\$ 514,590,243</u>	<u>\$ 503,846,274</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
CONSOLIDATING STATEMENTS OF OPERATIONS
Year Ended April 30, 2016
(With comparative totals for the Year Ended April 30, 2015)

	U.S. Tobacco Cooperative Inc.	U.S. Flue-Cured Tobacco Growers, Inc.	Premier Manufacturing, Inc.
REVENUE			
Processed leaf	\$ 87,853,715	\$ -	\$ -
Green leaf	1,566,371	-	-
Tobacco products	-	31,737,620	92,084,241
Excise taxes	-	48,077,007	-
Other	104,421	10,816,118	1,288,632
Net revenue	<u>89,524,507</u>	<u>90,630,745</u>	<u>93,372,873</u>
COST OF SALES			
Cost of sales	92,402,229	34,464,257	67,442,458
Excise taxes	-	48,077,007	-
Total cost of sales	<u>92,402,229</u>	<u>82,541,264</u>	<u>67,442,458</u>
Gross margin (loss)	<u>(2,877,722)</u>	<u>8,089,481</u>	<u>25,930,415</u>
SELLING, GENERAL AND ADMINISTRATIVE EXPENSES			
Labor	4,055,640	1,409,636	2,727,757
Benefits	743,181	241,604	563,903
Facilities	714,858	595,629	434,558
Selling expenses	1,438,994	373,270	1,106,960
Travel and entertainment	325,147	14,204	447,196
Auto expense	108,848	19,384	285,444
Information technology	389,720	51,784	77,571
Professional fees	4,618,035	238,969	61,546
Depreciation and amortization	1,014,511	128,710	28,808
Commercial insurance	289,847	65,583	119,219
Other expenses	698,819	116,004	367,806
Total selling, general, and administrative expenses	<u>14,397,600</u>	<u>3,254,777</u>	<u>6,220,768</u>
Operating margin (loss)	<u>(17,275,322)</u>	<u>4,834,704</u>	<u>19,709,647</u>
OTHER INCOME (EXPENSE)			
Interest income	1,840,176	-	-
Interest expense	(2,196,771)	-	(205)
Other revenue (expense), net	1,386,042	252,326	144,000
Gain (loss) on disposal of assets	(85,510)	-	2,215
Total other income (expense)	<u>943,937</u>	<u>252,326</u>	<u>146,010</u>
Margin (loss) before income taxes	(16,331,385)	5,087,030	19,855,657
PROVISION (CREDIT) FOR INCOME TAXES	<u>(2,089,006)</u>	<u>-</u>	<u>-</u>
NET MARGIN (LOSS)	<u>\$ (14,242,379)</u>	<u>\$ 5,087,030</u>	<u>\$ 19,855,657</u>

Franchise Wholesale Co., L.L.C.	Big South Distribution, LLC	Eliminations	2016 Consolidated	2015 Consolidated
\$ -	\$ -	\$ (2,435,215)	\$ 85,418,500	\$ 104,302,771
-	-	-	1,566,371	2,933,180
55,012,040	29,628,466	(104,728,582)	103,733,785	111,803,565
1,768,468	4,304,226	-	54,149,701	55,853,347
369,090	788,863	(10,872,224)	2,494,900	1,260,271
<u>57,149,598</u>	<u>34,721,555</u>	<u>(118,036,021)</u>	<u>247,363,257</u>	<u>276,153,134</u>
51,692,651	28,840,133	(116,758,531)	158,083,197	181,082,922
1,768,468	4,304,226	-	54,149,701	55,853,347
<u>53,461,119</u>	<u>33,144,359</u>	<u>(116,758,531)</u>	<u>212,232,898</u>	<u>236,936,269</u>
3,688,479	1,577,196	(1,277,490)	35,130,359	39,216,865
1,415,584	596,315	-	10,204,932	9,678,226
482,785	183,834	-	2,215,307	2,929,620
217,060	229,740	-	2,191,845	2,199,239
123,006	30,859	-	3,073,089	3,514,346
38,153	20,768	-	845,468	742,004
180,339	43,795	-	637,810	609,626
23,001	6,582	-	548,658	563,940
179,168	6,370	-	5,104,088	5,855,782
66,854	98,814	-	1,337,697	1,186,225
62,630	46,671	-	583,950	487,005
252,104	735,822	-	2,170,555	1,509,711
<u>3,040,684</u>	<u>1,999,570</u>	<u>-</u>	<u>28,913,399</u>	<u>29,275,724</u>
647,795	(422,374)	(1,277,490)	6,216,960	9,941,141
-	-	-	1,840,176	1,574,731
-	(355)	-	(2,197,331)	(2,059,520)
(144,000)	14,000	-	1,652,368	1,712,716
-	3,275	-	(80,020)	91,911
<u>(144,000)</u>	<u>16,920</u>	<u>-</u>	<u>1,215,193</u>	<u>1,319,838</u>
503,795	(405,454)	(1,277,490)	7,432,153	11,260,979
-	-	-	(2,089,006)	(291,173)
<u>\$ 503,795</u>	<u>\$ (405,454)</u>	<u>\$ (1,277,490)</u>	<u>\$ 9,521,159</u>	<u>\$ 11,552,152</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
EARNINGS INFORMATION – PARENT COOPERATIVE
Years Ended April 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
REVENUE		
Processed leaf	\$ 87,853,715	\$ 104,302,771
Green leaf	1,566,371	2,933,180
Other	<u>104,421</u>	<u>1,457,691</u>
Net revenue	89,524,507	108,693,642
 COST OF SALES		
Cost of sales	<u>92,402,229</u>	<u>104,628,860</u>
 Gross margin (loss)	<u>(2,877,722)</u>	<u>4,064,782</u>
 SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES		
Labor	4,055,640	3,567,009
Benefits	743,181	1,133,940
Facilities	714,858	1,797,373
Selling expenses	1,438,994	2,147,429
Travel and entertainment	325,147	262,107
Auto expense	108,848	69,361
Information technology	389,720	334,464
Professional fees	4,618,035	5,379,306
Depreciation	1,014,511	823,086
Commercial insurance	289,847	268,750
Other expenses	<u>698,819</u>	<u>501,295</u>
Total selling, general, and administrative expenses	14,397,600	16,284,120
 Operating loss	<u>(17,275,322)</u>	<u>(12,219,338)</u>
 OTHER INCOME (EXPENSE)		
Interest income	1,840,176	1,574,731
Interest expense	(2,196,771)	(2,058,161)
Other revenue, net	1,386,042	1,375,938
Loss on disposal of assets	<u>(85,510)</u>	<u>(178,477)</u>
Total other income (expense)	943,937	714,031
 Loss before income taxes	(16,331,385)	(11,505,307)
 PROVISION (CREDIT) FOR INCOME TAXES	<u>(2,089,006)</u>	<u>(291,173)</u>
 NET LOSS	<u><u>\$ (14,242,379)</u></u>	<u><u>\$ (11,214,134)</u></u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
EARNINGS INFORMATION – U.S. FLUE-CURED TOBACCO GROWERS, INC.
Years Ended April 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
REVENUE		
Tobacco products	\$ 31,737,620	\$ 37,600,233
Excise taxes	48,077,007	47,281,858
Other	10,816,118	16,212,115
Net revenue	<u>90,630,745</u>	<u>101,094,206</u>
COST OF SALES		
Cost of sales	34,464,257	43,716,797
Excise taxes	48,077,007	47,281,858
Total cost of sales	<u>82,541,264</u>	<u>90,998,655</u>
Gross margin	<u>8,089,481</u>	<u>10,095,551</u>
SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES		
Labor	1,409,636	1,287,362
Benefits	241,604	205,190
Facilities	595,629	811,938
Selling expenses	373,270	379,324
Travel and entertainment	14,204	30,934
Auto expense	19,384	23,461
Information technology	51,784	98,679
Professional fees	238,969	213,869
Depreciation	128,710	134,633
Commercial insurance	65,583	66,066
Other expenses	116,004	118,910
Total selling, general, and administrative expenses	<u>3,254,777</u>	<u>3,370,366</u>
Operating margin	<u>4,834,704</u>	<u>6,725,185</u>
OTHER INCOME		
Other revenue, net	252,326	107,541
Gain on disposal of assets	-	222,098
Total other income	<u>252,326</u>	<u>329,639</u>
NET MARGIN	<u>\$ 5,087,030</u>	<u>\$ 7,054,824</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
EARNINGS INFORMATION – PREMIER MANUFACTURING, INC.
Years Ended April 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
REVENUE		
Tobacco products	\$ 92,084,241	\$ 80,779,384
Other	1,288,632	68,825
Net revenue	<u>93,372,873</u>	<u>80,848,209</u>
COST OF SALES		
Cost of sales	<u>67,442,458</u>	<u>57,745,101</u>
Gross margin	<u>25,930,415</u>	<u>23,103,108</u>
SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES		
Labor	2,727,757	2,652,203
Benefits	563,903	858,141
Facilities	434,558	442,604
Selling expenses	1,106,960	734,329
Travel and entertainment	447,196	366,750
Auto expense	285,444	239,191
Information technology	77,571	80,939
Professional fees	61,546	49,391
Depreciation	28,808	29,724
Commercial insurance	119,219	52,638
Other expenses	367,806	302,026
Total selling, general, and administrative expenses	<u>6,220,768</u>	<u>5,807,936</u>
Operating margin	<u>19,709,647</u>	<u>17,295,172</u>
OTHER INCOME		
Interest expense	(205)	-
Other revenue, net	144,000	348,277
Gain on disposal of assets	2,215	9,069
Total other income	<u>146,010</u>	<u>357,346</u>
NET MARGIN	<u>\$ 19,855,657</u>	<u>\$ 17,652,518</u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
EARNINGS INFORMATION – FRANCHISE WHOLESALE CO., L.L.C.
Years Ended April 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
REVENUE		
Tobacco products	\$ 55,012,040	\$ 57,412,912
Excise taxes	1,768,468	2,076,275
Other	369,090	355,492
Net revenue	<u>57,149,598</u>	<u>59,844,679</u>
COST OF SALES		
Cost of sales	51,692,651	53,921,752
Excise taxes	1,768,468	2,076,275
Net cost of sales	<u>53,461,119</u>	<u>55,998,027</u>
Gross margin	<u>3,688,479</u>	<u>3,846,652</u>
SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES		
Labor	1,415,584	1,462,046
Benefits	482,785	542,368
Facilities	217,060	213,290
Selling expenses	123,006	232,159
Travel and entertainment	38,153	58,668
Auto expense	180,339	188,423
Information technology	23,001	36,319
Professional fees	179,168	181,818
Depreciation and amortization	66,854	87,853
Commercial insurance	62,630	31,151
Other expenses	252,104	402,711
Total selling, general, and administrative expenses	<u>3,040,684</u>	<u>3,436,806</u>
Operating margin	<u>647,795</u>	<u>409,846</u>
OTHER INCOME (EXPENSE)		
Interest expense	-	(1,359)
Other expense, net	(144,000)	(165,197)
Gain on disposal of assets	-	2,024
Total other income (expense)	<u>(144,000)</u>	<u>(164,532)</u>
NET MARGIN	<u><u>\$ 503,795</u></u>	<u><u>\$ 245,314</u></u>

U.S. TOBACCO COOPERATIVE INC. AND SUBSIDIARIES
EARNINGS INFORMATION – BIG SOUTH DISTRIBUTION, LLC
Years Ended April 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
REVENUE		
Tobacco products	\$ 29,628,466	\$ 38,002,826
Excise taxes	4,304,226	6,495,214
Other	788,863	817,220
Net revenue	<u>34,721,555</u>	<u>45,315,260</u>
COST OF SALES		
Cost of sales	28,840,133	36,929,823
Excise taxes	4,304,226	6,495,214
Total cost of sales	<u>33,144,359</u>	<u>43,425,037</u>
Gross margin	<u>1,577,196</u>	<u>1,890,223</u>
SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES		
Labor	596,315	709,606
Benefits	183,834	189,981
Facilities	229,740	254,034
Selling expenses	30,859	21,105
Travel and entertainment	20,768	23,545
Auto expense	43,795	89,190
Information technology	6,582	13,539
Professional fees	6,370	31,398
Depreciation	98,814	110,929
Commercial insurance	46,671	68,400
Other expenses	735,822	184,769
Total selling, general, and administrative expenses	<u>1,999,570</u>	<u>1,696,496</u>
Operating margin (loss)	<u>(422,374)</u>	<u>193,727</u>
OTHER INCOME (EXPENSE)		
Interest expense	(355)	-
Other revenue, net	14,000	46,157
Gain on disposal of assets	3,275	37,197
Total other income (expense)	<u>16,920</u>	<u>83,354</u>
NET MARGIN (LOSS)	<u>\$ (405,454)</u>	<u>\$ 277,081</u>

EXHIBIT V





James T. Hill, Jr.
Chairman of the Board

Stuart D. Thompson
Chief Executive Officer

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Dear Members,

Last year we wrote to you about the significant initiatives and changes we are making in the Cooperative's culture, marketing efforts and operations. In this report you will find detailed information about the Cooperative and what we've accomplished. We encourage every member to take the time to read it. While our past performance is important, we want to make sure that our members understand the market challenges we face and our long-term strategic plan for success. Cooperatives generally either make short-term decisions and fail, or long-term decisions and thrive. We are interested in the latter. Our aim is clear—to be the premier U.S. leaf supplier, with the best growers and best tobacco in the world.

Cooperative Performance

For FY2016, the Cooperative's revenues were \$247 million with Net Income of \$9.5 million. In June 2016, the Board authorized a patronage dividend of \$8.3 million, of which \$4.4 million was distributed in cash. This brought the total patronage declared over the past five years to \$46.2 million. While both revenues and income declined in FY2016, we are pleased with the results given the lower demand for U.S. leaf, reduced prices and high litigation expenses. In addition to the patronage dividend, we also passed our \$7.6 million Section 199 Domestic Production Activity Deduction to our members and redeemed \$1.4 million in equity credits from the 1967 to 1973 crop years.

U.S. Leaf Market

There is an oversupply of U.S. flue-cured tobacco driven by low row crop prices, auction markets and crop insurance abuse. Global leaf inventories of flavored tobacco are high and the world markets are flooded with lugs and byproducts. These factors, plus a strong U.S. dollar, have created real headwinds in marketing our members' crop. In response to that, we have made a number of significant changes.

First, for the 2016 crop, we reduced our contracting to 45 million pounds based on detailed analysis of our customers' demands by blend. We refined our regrading practices to ensure that tobacco is purchased in accordance with our written grading standards. Unlike most leaf suppliers that change buying grades based on supply and demand, we have written grading standards. We want our leaf buying to be fair and consistent year in and year out, regardless of what other suppliers are doing. We also want to ensure that we do not buy tobacco that we cannot sell.

We have continued to make investments in our infrastructure with the goal of reducing our green conversion cost. This includes investing in our Smithfield, NC and La Crosse, VA marketing centers and building a \$13 million green storage facility at our plant in Timberlake, NC. The aim of these investments is to reduce overhead, personnel, freight, lease costs and handling so that we pack our growers' tobacco as efficiently as possible, making it more competitive in the global markets and maximizing our leaf profits.

Most global buyers readily acknowledge that top quality U.S. flue-cured tobacco is the best in the world. What they haven't given us credit for is the fact that the U.S. crop is the most sustainable, socially responsible tobacco crop as well. Over the last seven years, the multinational tobacco companies have made social responsibility a key factor in determining where to source their tobacco. This has been the driver behind the Cooperative's decision to voluntarily become SRTTP (Social Responsibility in Tobacco Production) certified and to conduct 100% independent audits. These manufacturers expect us to provide extremely detailed data on our growers, their operations and how the tobacco we sell is produced. At first, this seems invasive and just another burden on our growers. We understand that it takes time and it isn't easy. But long term, we believe that this will pay big dividends for our growers and the U.S. market. We know you produce the best tobacco in the world. We also need to be able to prove to the world markets that your crop is the most sustainable and compliant as well. This may well be the key to increasing the long-term demand for your crop. We believe that actively promoting the sustainability of the U.S. crop against other origins is key in gaining global market share for U.S. flue-cured tobacco.

Tariff Rate Quota

Most of our growers are not familiar with the Tariff Rate Quota (TRQ) and the negative impact it is having on the demand for U.S. flue-cured tobacco. In 1995, legislation was put in place in an effort to ensure that 75% of the tobacco used in U.S. manufactured cigarettes was grown in the U.S. Today the TRQ is allowing cheap imported tobacco to flood our market. Since its implementation, cigarette production for domestic and international markets has fallen 45% and 90% respectively, but the TRQ has remained unchanged, allowing up to 150,000 metric tons coming into the U.S. annually. What this means is that the percentage of imported tobacco used in the production of U.S. cigarettes has increased four times (from 13% to 55%) over the past 20 years. The TRQ needs to be reduced to maintain the 75% domestic content as was originally intended. While we are working diligently on addressing this, the fact is that many in the tobacco industry are enjoying the profits from selling and using cheap, imported tobacco. We encourage each of you to be vocal in the organizations you participate in to get the TRQ reduced. If we accomplish this, we estimate it would increase the domestic demand for U.S. flue-cured tobacco by over 100 million pounds green annually.

Consumer Products

We are continuing to move forward with revamping our consumer products divisions. The FDA has made it virtually impossible for large convenience store chains to have their own private label brands, making our six FDA predicate brands quite valuable. This year we had a big win when we entered into an exclusive agreement with Circle K to supply our Traffic® brand to their 4,700 stores throughout the U.S., giving us national distribution. Most of our growers now have access to our products. We will continue to look for sophisticated partners like Circle K and Cumberland

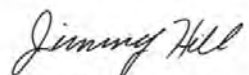
Farms that recognize the high quality of our products, the value proposition that we offer and the strength of our consumer products team. Our best partners are those that focus on using manufacturing rebates to educate and incentivize their retail employees. Consumer products will continue to be an outlet for growers' tobacco and a major source of patronage dividends.

Litigation

We need to make mention of our ongoing litigation. This continues to be an incredibly time-consuming and expensive, but necessary, endeavor. We are waiting on important court decisions from the North Carolina Supreme Court and the Georgia Court of Appeals. We are scheduled for trial in the Big South RICO litigation. The cost of this litigation has been, and will be, significant. In FY2016, the Cooperative spent over \$2.8 million on litigation. In addition to the monetary cost, litigation is a distraction that takes focus off of growing our business. We wish this were not the case, but it is critically important for our existence and our ability to operate as a financially strong, transparent company. We intend on defending the company vigorously and pursuing our rights aggressively.

The Cooperative is a much bigger, more complex organization than most people think. One of the comments that we consistently hear is that both members and customers do not realize how big the Cooperative is. We are a large, sophisticated company with more than 450 employees located in 16 states. Through the Cooperative, you have over \$500 million in assets working for your benefit. Our principal goals are simple. We want to contract as much tobacco as we can sell, positively influence the market so that you receive a fair price for your crop and maximize our patronage dividends. No other leaf supplier is working harder for its growers.

Thank you for your patronage and the confidence that you have placed in the Cooperative. We know that most of you are experiencing tough challenges in a difficult environment. Row crop prices are low, tobacco contracts have been cut and tobacco leaf prices are being undermined by overproduction. Hurricane Matthew has been devastating in some areas. As a Cooperative, we face big challenges with our leaf inventory, FDA regulations and high litigation costs. But we want you to know that we believe the future is bright for you, the best tobacco growers in the world, and for us as a Cooperative. We've taking advantage of a difficult economic cycle to build a stronger, more cost-efficient cooperative with a better culture, better people and better operations. You have a great story and we're doing our best to tell it. Keep reinvesting in your farms. Keep bringing us your best tobacco. We'll continue our deep commitment to excellence and maximizing our patronage dividends to you.



James T. Hill, Jr.
Chairman of the Board

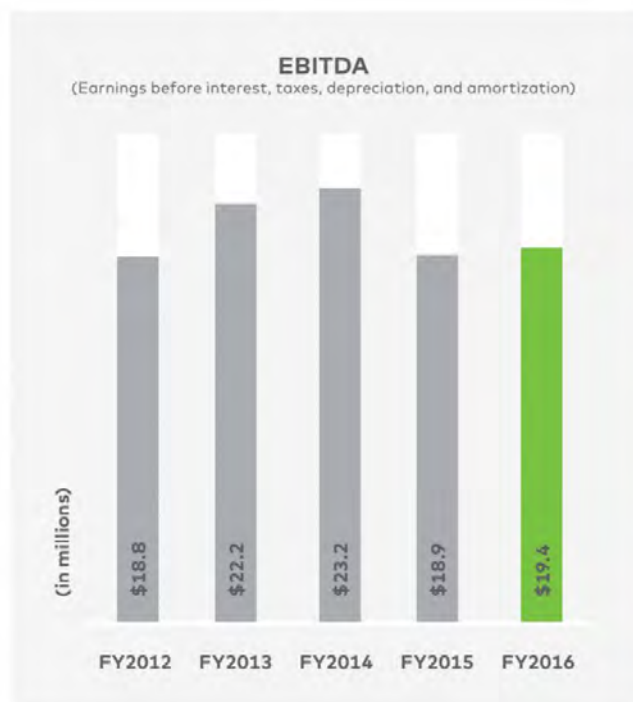
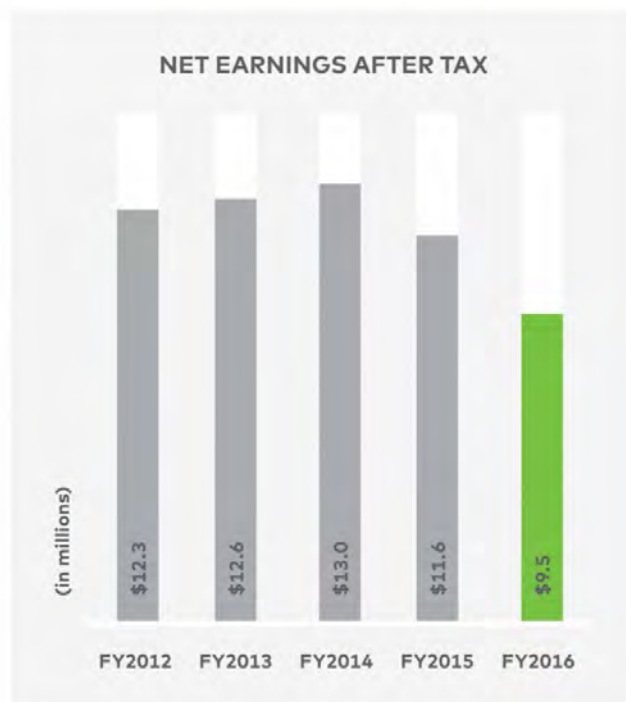


Stuart D. Thompson
Chief Executive Officer

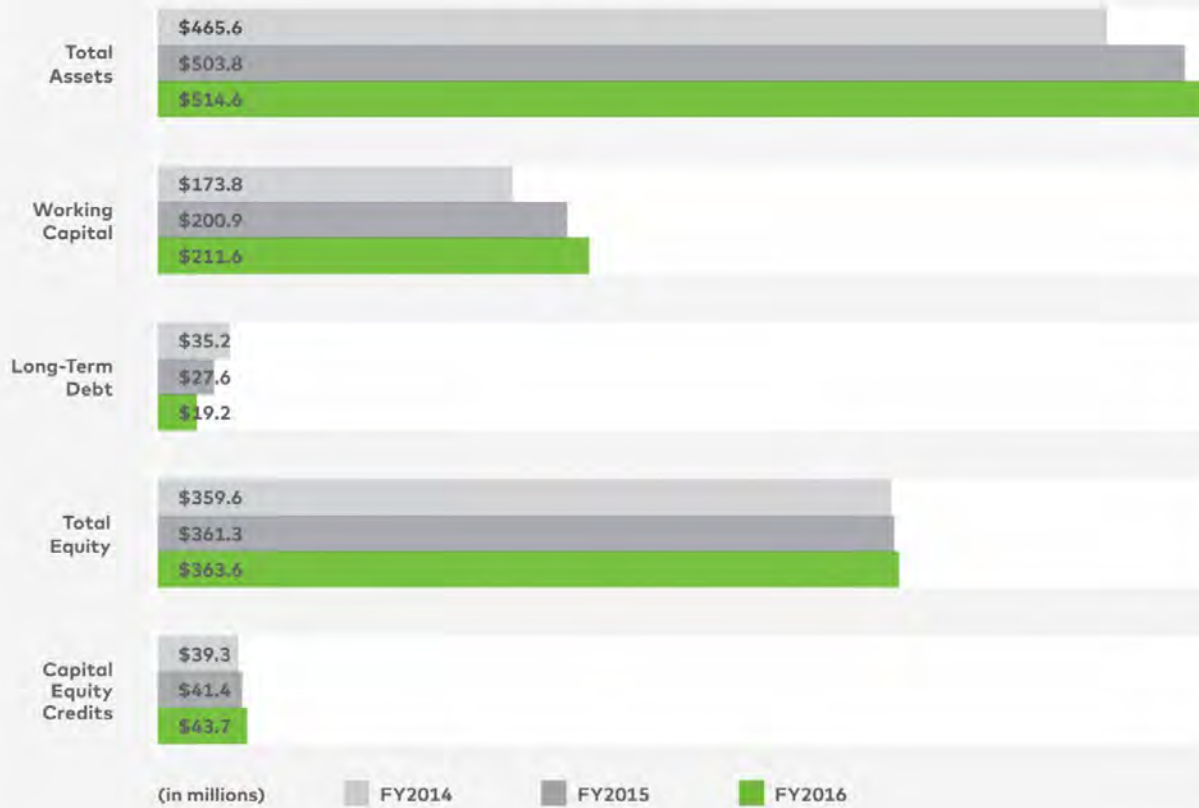




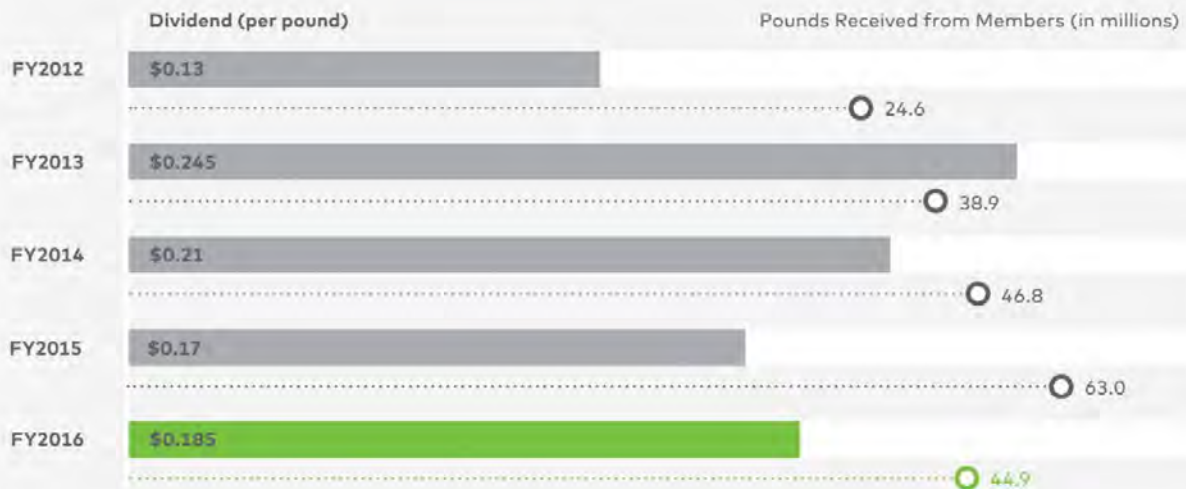
Financial Highlights



BALANCE SHEET



DIVIDEND PER POUND





Leaf Operations

The Cooperative's principal business is being a leaf supplier serving the global and domestic markets. We are the only supplier focused exclusively on the U.S. flue-cured crop and the only buyer that returns dividends to its growers. We continue to believe that this unique model will position USTC to be the premium supplier of U.S. flue-cured tobacco long term.

FY2016 (2015 Season) Leaf Operations Performance

In 2015, we contracted with our members for 51 million pounds of flue-cured tobacco and received 88% of contracted pounds at a cost of \$88 million. The 2015 crop was an average quality crop with some areas hurt by drought. The average price paid declined to \$1.96, principally due to lower overall quality.

FY2016 Revenue from Leaf Operations was \$89.5 million, down 18% from FY2015. Gross profits decreased as well, generating a loss of \$2.9 million. Revenue decreases were principally due to decreased strip sales and lower prices driven by high global inventories. Prices for lugs and stems have fallen significantly over the past 3 years, in some cases as much as 75%. The Cooperative elected to take \$4.1 million in inventory write-downs to sell approximately 5 million pounds of low nicotine lug inventory from the 2013 and 2015 crop years. We continue to hold a large quantity of high-quality 2014 strips. The combined effect was that our processed leaf inventory increased 15% to \$110 million.

Leaf Operations Facilities

The Cooperative's leaf operations are extensive with eight facilities in North Carolina, South Carolina, Georgia and Virginia. Operations include five marketing centers, a 340,000 square foot green storage facility, our 26,000-pound per hour stemmery, and 25 dry storage warehouses. In total we have over 1.6 million square feet of warehouse space dedicated to receiving, processing and storing our members' tobacco. During the marketing season, we employ over 100 full-time and 250 seasonal workers in our marketing centers and stemmery.

Investment

While the current leaf market conditions are challenging, we have continued to invest in our leaf operations with the goal of reducing our green conversion cost and improving our product quality. Green conversion costs include all of the costs we incur from operating our marketing centers,

holding tobacco in green storage, processing it at our factory, putting it into storage and transportation costs. Reducing those costs benefits both our growers and our customers. Our products are more competitively priced and we enjoy higher margins, generating higher patronage. To that end, we have committed over \$16 million in investments in leaf operations.

Our largest capital project has been to add 150,000 square feet of green storage space to our Timberlake, NC facility. The total cost of this project is \$13 million, including the purchase of 20 acres adjacent to our existing property. Construction is commencing in the fall of 2016 with an expected completion date of June 2017. Once completed, the facility will hold over 10 million pounds of green tobacco, utilizing a racking system. This addition has many benefits, including allowing us to close our 340,000 square foot green storage facility in Sanford, NC, eliminating the freight to and from Sanford, reducing personnel and most importantly, increasing leaf strip yields through better handling. We think our customers will like seeing tobacco on-site prior to processing at our stemmery.

We have also continued to invest in marketing centers in an effort to reduce cost. In 2015, we purchased our marketing center in Mullins, SC. In 2016, we purchased our marketing center in Smithfield, NC and opened a new marketing center in La Crosse, VA. The La Crosse facility is currently leased with a commitment to purchase it within five years. By buying these marketing centers, we have been able to close our Danville, VA and Oxford, NC marketing centers, eliminate lease payments with expensive operator agreements, reduce personnel and reduce freight costs. Equally important, these investments have demonstrated our long-term commitment to growers in those regions.

Social Responsibility & Sustainability

In marketing our growers' crop, social responsibility and sustainability have continued to take an increasing role. Those are words that can mean many things and are often misunderstood. For us, simply put, it means keeping farmers on the farm and encouraging the next generation of growers. Today our growers are the largest, most sophisticated commercial tobacco



farmers in the world. They grow the best tobacco, in the most sustainable and socially responsible way. They are the best source for a stable, secure supply of premium tobacco on the planet. However, the global markets have not given them credit for this. We have embarked on a journey to not only be able to say this, but to prove it.

In FY2016 we made the decision to join GAP Connections to conduct our grower training and randomly audit 15% of our grower base. We also voluntarily engaged AB Sustain to certify us in Social Responsibility in Tobacco Production (SRTP). This was a significant undertaking, but we felt it was an important one in order for us to open new markets with large multinational manufacturers that sponsor the SRTP program.

For the 2017 season, we elected to do a 100% independent audit of our growers. We are the only U.S. leaf supplier to do this. We based this decision on the requirements of SRTP and the belief that if we collected the data to prove

conclusively how good our growers are, we could leverage their commitment to excellence to open new markets. The facts are that important issues that plague other tobacco origins are virtually non-existent in the U.S. This includes migrant labor, child labor, forced labor, deforestation and poor agricultural practices. This is a long term project, but one that we believe will pay increasing dividends to our growers. Unfortunately, there is much market resistance. Other global leaf suppliers and some manufacturers are reaping large profits from the sale and use of cheap imported tobacco, produced through unsustainable growing models. Our aim is to highlight all of the intrinsic value in the U.S. flue-cured crop and encourage manufacturers that USTC is their best source for premium tobacco in the U.S. market.

Intrinsic Value of the U.S. Flue-Cured Crop

Beyond being the most compliant, sustainable and secure tobacco origin in the world for premium tobacco, the U.S. flue-cured crop also has imbedded in it a significant



TODAY OUR GROWERS ARE THE LARGEST, MOST SOPHISTICATED COMMERCIAL TOBACCO FARMERS IN THE WORLD.



Leaf Operations Continued

amount of intrinsic value that our growers are not getting credit for today. Neither manufacturers nor leaf suppliers have to finance the crop nor bear the costs of bad debt. They do not have the overhead associated with staffing the teams of agronomists and field technicians found in other origins. All of these costs are born by U.S. growers and imbedded in the green price of tobacco. In addition, being U.S. dollar-based, most manufacturers do not incur the cost of currency risk associated with many competing origins. The Cooperative is actively highlighting this intrinsic value to the world markets. We see an increasing trend for buyers to reduce their sourcing footprint, recognizing that it makes little sense to source tobacco from 30+ different origins.

Grower Audits

A challenge with grower audits is that many companies have decided to deviate from the industry standard and conduct their own. Growers, big and small, are being inundated with audits, auditors and new requirements. We are strong advocates of a single, rigorous audit standard. What is required of growers needs to be well-documented and communicated. Auditors need to be certified and audits need to be efficient without being duplicative to state inspections. One audit each season by a certified auditor should be sufficient for all suppliers and manufacturers. This is an unresolved industry issue that the Cooperative is actively trying to resolve for its growers.

Crop Overproduction

In addition to high global tobacco inventories, U.S. growers continued to overplant tobacco, many without leaf supplier contracts. Low row crop prices (corn, soybeans & cotton) have made tobacco one of the few sustainable crops that growers can rely on. That, combined with changes in crop insurance, encouraged overplanting. The effect in 2015 was that crop insurance abuse became rampant and newly formed tobacco auctions flourished. Many, if not all, of our competitors, took advantage of buying cheap tobacco at auction or allowing their growers to fulfill contracts with auction-bought tobacco. Our Cooperative has not done that. We believe that it is vital to our growers' long-term survivability that the U.S. supply is brought in line with demand. Any claims that auction-bought tobacco is traceable are at best highly suspect and most likely false. As part of our core values, we want our growers, our employees and our customers to know that they can trust us, that our products have integrity and that we will

not take economic advantage of growers even though it might result in higher short-term profits. In addition to encouraging overplanting and oversupply, the tobacco auctions further hurt our growers' long-term viability because legitimate markets are forced to compete with auction-bought tobacco which can trade as much as 70% below contract prices.

2016 Crop

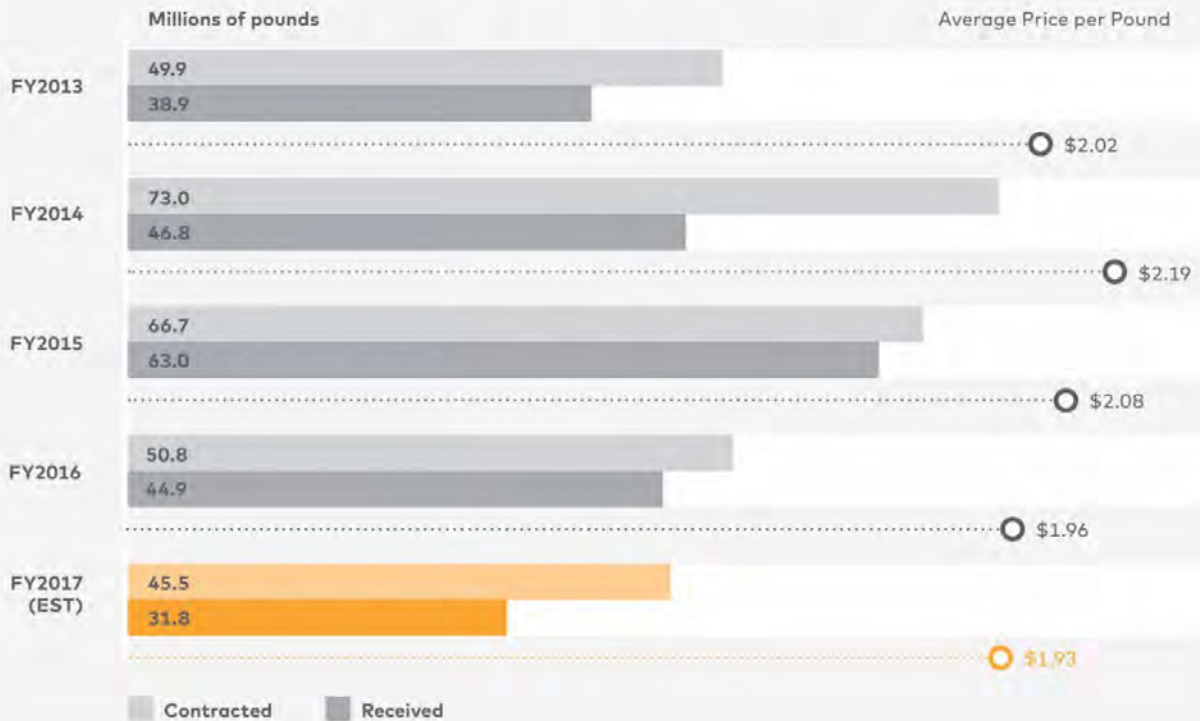
With higher processed leaf inventories and the negative market impact from crop insurance abuse and auction markets, we made significant changes in estimating how much to contract with our growers. We reduced our 2016 contract pounds to 45 million and expect that we will receive 70% of what we contract for this season. Contracts were not renewed with growers who had low quality or low delivery averages, reducing the number of contracts in 2016 from 850 to 750. No cuts were made to our top tier growers that met their 2015 contract obligations.

The 2016 growing season has been extremely difficult due to excessive rains in May and June, followed by drought and excessive heat during July and August. In many regions, the tobacco is sunbaked and light. Because of the skill of our growers, their loyalty to the Cooperative and the patronage we pay, we expect that we will receive the best tobacco in the crop and that we will experience a high delivery percentage of top quality tobacco.

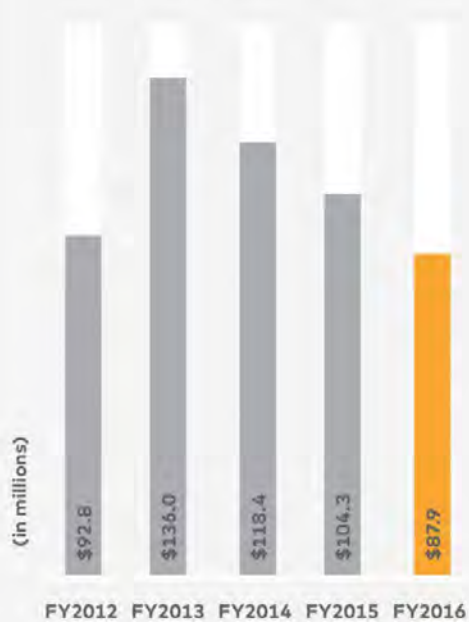
The Future of U.S. Flue-Cured Tobacco

Despite challenging times short-term, we continue to see a very bright long-term future for our growers. We believe that there is annual global demand for 425 to 450 million pounds of premium U.S. flue-cured tobacco. We will continue to be conservative in our contracting until we are able to reduce our inventory of processed leaf tobacco. We are being vocal on the negative impacts of overproduction caused by auctions and crop insurance fraud. Oversupply will continue to be the greatest risk to our growers and their sustainability. We continue to highlight all of the intrinsic value of the U.S. crop, of which we have the best growers and best tobacco.

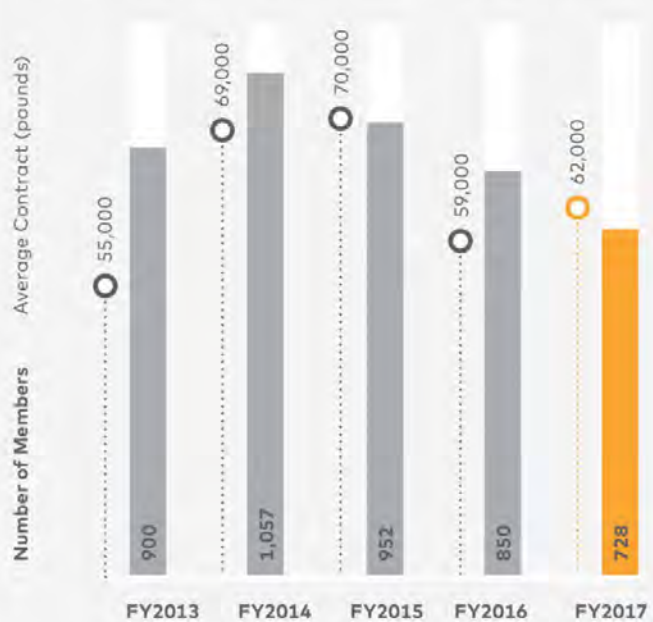
CONTRACTED VS. RECEIVED TOBACCO



LEAF REVENUE



MEMBERS AND AVERAGE CONTRACT SIZE





Consumer Products

Consumer Products' sales and distribution continue to be a significant portion of the Cooperative's business and the main driver behind our patronage dividends. In FY2016 we made many changes in the division including personnel and consolidating our brands at our sales and marketing subsidiary Premier Manufacturing.

This segment of our business includes three of our subsidiaries – Premier Manufacturing (St. Louis, MO), Big South Distribution (Bristol, VA and Atlanta, GA) and Franchise Wholesale d/b/a Wildhorse Distributing (Omaha, NE and Las Vegas, NV). Collectively, the companies market, sell and distribute all six of the Cooperative's brands – Wildhorse®, Shield®, Traffic®, 1839®, Ultra Buy® and 1st Class®. These brands are focused on the value-oriented customer who wants a quality product with exceptional flavor at an extremely competitive price. The products are produced at the Cooperative's manufacturing company, U.S. Flue-Cured Tobacco Growers in Timberlake, NC. All of our brands rely on our growers' flue-cured tobacco as the main ingredient. Big South Distribution and Wildhorse Distributing stock more than 30 brands of discount tobacco products and include tax stamping operations for more than 40 states, providing one-stop shopping for retailers. We have strong relationships with national, regional and local distributors such as McLane, Core-Mark and Eby Brown, as well as large independent retail chains such as Cumberland Farms and Stewarts Shop.

For FY2016, Consumer Product revenues were \$160.4 million, down 5.0% from FY2015. The largest component of consumer product revenues is derived from the sale of the Cooperative's six brands of cigarettes. During FY2016, we sold 3.9 million cartons of USTC cigarettes in addition to 1.0 million cartons of third party brands.

There continue to be many challenges for the Cooperative in the U.S. market. Total cigarette consumption has declined 11% since 2014 to approximately 14.9% of the U.S. adult population. Despite this, the Cooperative was able to increase its volume by 3% in FY2016 for a total volume of 3.9 million sticks. Large manufacturers have put in highly effective rebate programs that incentivize distributors and retailers to discontinue other brands in order for them to enjoy higher rebates levels. The addition of Newport to Reynold's Every Day Low Price (EDLP) program has resulted in many customers switching to EDLP and dropping our brands. While traditionally we have marketed

our products through exclusive distributor relationships, we see our best strategy going forward as developing controlled brand relationships with large and regional convenience store chains. Under the FDA's oversight, it is cost prohibitive and virtually impossible for these chains to develop their own private labels. The Cooperative has been successful at entering into agreements with sophisticated c-store chains, giving them brand exclusivity within a region and essentially their own private label. In April of 2016, Premier Manufacturing signed a long-term deal with Circle K, the nation's largest convenience store chain with more than 4,700 locations, to be the exclusive retailer of Traffic® cigarettes. The product introduction of Traffic® has gone extremely well and reorders are ahead of plan.

The FDA has continued to use new product approval as its most effective tobacco control tool. We believe that it has overreached its legal mandate, suppressing most new product applications. The FDA appears to be demanding identical equivalence in new tobacco products to predicate tobacco products instead of substantial equivalence as stated in their own guidelines. Most recently the FDA has deemed that filtered cigars and pipe tobacco are tobacco products subject to FDA oversight. While we were not surprised by this, this will potentially affect our sales of these products after 2018 because of the excessive costs associated with meeting FDA requirements. The Cooperative's sales of these products are minimal and these regulations should not negatively affect the Cooperative's long-term business strategy. In the meantime, many tobacco manufacturers are exploring legal avenues against the FDA. The Cooperative has chosen not to do so.

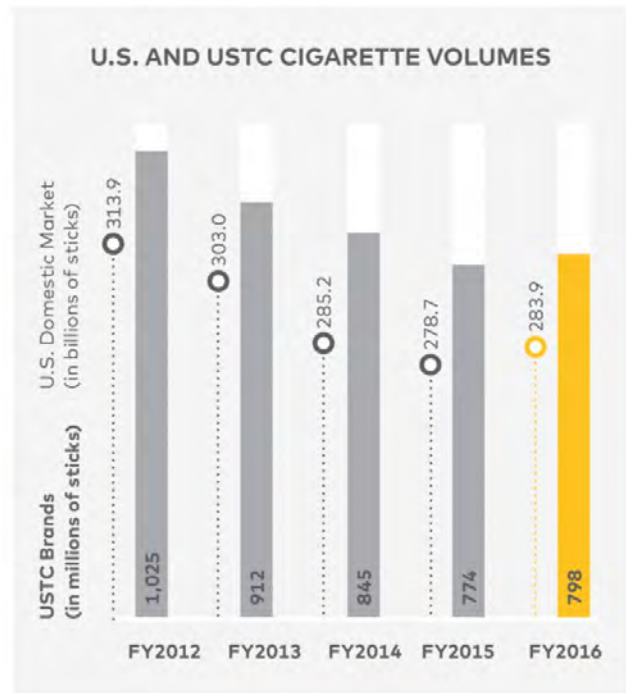
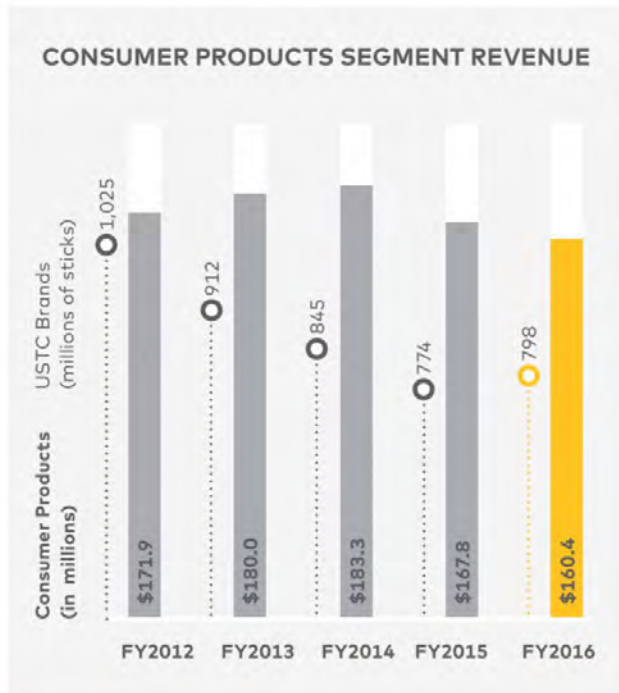
USTC has invested approximately \$13 million over the past 2 years in consumer product manufacturing to insure consistent top-quality products and outstanding service. Major investments have been made in the cigarette and cut rag manufacturing areas to upgrade cigarette making/packing lines and filter-making lines at a cost of \$7.2 million. The cigarette making and packing lines are now all standardized and have laser perforation capability. In addition, the company has added quality testing stations in the cigarette manufacturing



area to facilitate real-time monitoring of the cigarette manufacturing process and ensure that finished products consistently meet product specifications.

Investments have also been made in the primary processing area. Optical sorters have been added to remove foreign

materials from the tobacco flow, resulting in cut rag quality improvements for that product either sold externally or used in-house for cigarette or pipe tobacco production. Consistently providing top-quality cut rag is a major objective, as we continue to focus on exceeding our customers' expectations.



IN APRIL OF 2016, PREMIER MANUFACTURING SIGNED A LONG-TERM DEAL WITH CIRCLE K, THE NATION'S LARGEST CONVENIENCE STORE CHAIN WITH OVER 4,700 LOCATIONS, TO BE THE EXCLUSIVE RETAILER OF TRAFFIC® CIGARETTES.



Contract Manufacturing

U.S. Flue-Cured Tobacco Growers, Inc. ("USFC"), our manufacturing subsidiary, produces high-quality tobacco products for the domestic and global markets. The 340,000 square foot manufacturing facility located in Timberlake, NC includes green leaf tobacco processing, primary processing, and cigarette manufacturing capabilities.

USFC can provide customer-specific blends and unique tobacco products for domestic and export using the world's best flue-cured tobacco received from our contracted growers and blended with some of the best available oriental and burley tobaccos. Experienced plant personnel coordinate the shipment of export cut rag tobacco and cigarette shipments, as well as compliance with the domestic regulatory requirements associated with manufacturing and shipping of tobacco products within the borders of the U.S.

USFC has the technical capability and knowledge to develop and produce high-quality tobacco products that meet customer expectations. Working closely with experienced in-house personnel, customers will receive specialized blends or finished products designed to satisfy cost and sensory requirements for their designated markets. Blend development, blend matching, cigarette development and packaging development are customer-specific and are accomplished by working closely with each individual customer.



Once the tobacco blend has been developed and accepted, cut rag for cigarettes, pipe tobacco and RYO tobacco products are manufactured in-house. Cut rag can be used in-house to manufacture high-quality cigarettes or pouch products for RYO products. In addition, cut rag can also be packaged in large containers and shipped to customer locations for final assembly before being sold either domestically or internationally. USFC also has expanded stem processing, providing additional flexibility for the development of diverse blends. Investments have been made in the primary production area to provide the latest technology to insure quality, cost and performance requirements are met. The company uses a sophisticated optical system to remove any non-tobacco material from the process and in-line quality systems to consistently provide high-quality cut rag.

The cigarette making and packing area, with an annual capability of producing 8 billion cigarettes, can convert the cut rag into king size and 100mm crushproof box products. Utilizing industry-leading making and packing equipment, equipped with laser perforation capability, inked code dating and the latest technological advancements, high-quality finished cigarette products can be manufactured for the domestic and international markets. The plant has extensive experience in contract manufacturing and export shipments. More than 50% of the plant's cigarette production is shipped outside of the U.S. domestic market. Knowledgeable and dedicated personnel are capable of consistently producing the highest quality tobacco products for domestic and international customers.

Our goal is to consistently provide products meeting specifications and to show continuous improvement in our ability to satisfy our customers. The implementation of quality control procedures and the use of statistical process control insure USFC's ability to consistently provide top-rated quality products. Service, quality and customer satisfaction are incredibly important to us. USFC's goal is to improve every day.





USFC CAN PROVIDE CUSTOMER-SPECIFIC BLENDS AND
UNIQUE TOBACCO PRODUCTS FOR DOMESTIC AND EXPORT
USING THE WORLD'S BEST FLUE-CURED TOBACCO





Patronage

One of our main goals continues to be maximizing patronage dividends to our growers. Much like public companies that declare dividends to their shareholders, we return eligible profits back to our growers.

Since 2010, we have declared \$46.2 million in dividends and paid out \$24.3 million in cash. No other leaf buyer in the U.S. has returned those kinds of profits to its growers. The impact on total profitability for growers can be profound. We estimate that because of our patronage dividends, growers earn 25% or more in profit for each pound they sell to the Cooperative. In an age where social responsibility has become increasingly important to customers and consumers, we can think of no better testimony to our commitment to sustainability than sending profits back to our growers. It is a major factor in helping us secure the best leaf in the market at a fair price. Our unique grower-focused model is what has made us the preferred grower contract in the market.

For FY2016, the Board of Directors declared a 18.5-cents-per-pound dividend to members that delivered tobacco to the Cooperative during the 2015 season, totaling \$8.3

million. The board authorized a Qualified Dividend of \$0.10 per pound that was distributed in July 2016 and a Non-Qualified Dividend of \$0.085 per pound, which was allocated to each member's account on the Cooperative's books. FY2016 was the sixth consecutive year that the Cooperative has paid its members a patronage dividend. This year's patronage dividend notices included an equity statement for growers summarizing all equity credits issued since 2010.

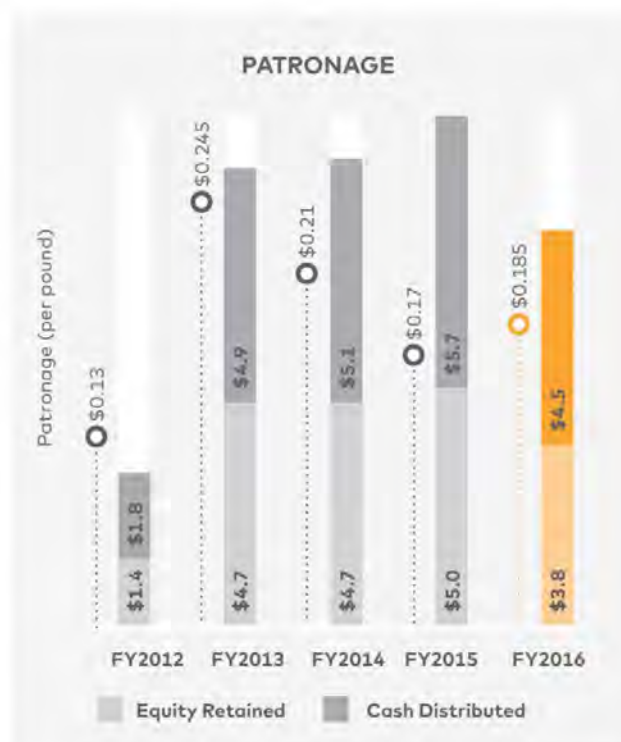
Tax Benefit to Members

In addition to the patronage dividend, the Cooperative also elected to pass its \$7.6 million Section 199 deduction for Domestic Production Activity to its members. This is a significant benefit and we encourage all members to seek professional tax advice to see if they can benefit from this tax deduction. Most growers will not owe any federal taxes on the cash they received from Cooperative's FY2016 dividend payment.

What is Patronage?

Patronage is very similar to the dividends paid by public companies to their shareholders with a few key differences. Patronage dividends are limited to profits derived from our growers' crop and products where it is the main ingredient. Unlike normal corporate dividends, the Cooperative can deduct patronage dividends from its state and federal tax returns. We'd prefer to send the money to our growers and help them reinvest in their farming operations versus paying taxes and letting the government decide how to help.

The process for determining the amount of patronage dividend each year is complex. Not all income is eligible for patronage dividends, only profits from member activity can be considered. Qualified member activities include profits from leaf sales and consumer products where member tobacco is the main ingredient. Profits from rental income or non-Cooperative tobacco products are excluded. The profits for the fiscal year are then divided by the total pounds of tobacco purchased from members during the fiscal year.







Board of Directors



James T. Hill, Jr.

Chairman
Public Director
Kinston, NC
North Carolina



2 | Kenneth D. Dasher

Vice Chairman
Live Oak, FL
Florida & Georgia



3 | Johnny M. Shelley

Nichols, SC
South Carolina



4 | Danny P. Watkins, Jr.

Angier, NC
NC Counties:
Anson, Bladen,
Brunswick, Chatham,
Columbus, Cumberland,
Harnett, Hoke, Lee,
Montgomery, Moore,
New Hanover, Randolph,
Richmond, Robeson,
Stanly, Scotland, Union,
Wake



5 | Keith R. Beavers

Mount Olive, NC
NC Counties:
Carteret, Duplin,
Onslow, Pender,
Sampson, Wayne



6 | Blythe H. Casey

Kinston, NC
NC Counties:
Beaufort, Bertie,
Camden, Chowan,
Craven, Currituck,
Dare, Gates,
Greene, Hertford,
Hyde, Jones, Lenoir,
Martin, Pamlico,
Pasquotank,
Perquimans, Pitt,
Tyrrell, Washington



7 | Charlie S. Batten

Four Oaks, NC
NC Counties:
Edgecombe,
Johnston, Nash,
Wilson



8 | Tommy S. Kimbro

Reidsville, NC
NC Counties:
Alamance,
Alexander, Alleghany,
Cabarrus, Caldwell,
Caswell, Catawba,
Cleveland, Davidson,
Davie, Durham,
Forsyth, Franklin,
Gaston, Granville,
Guilford, Halifax,
Iredell, Lincoln,
Mecklenburg,
Northampton,
Orange, Person,
Rockingham, Rowan,
Stokes, Surry, Vance,
Warren, Wilkes,
Yadkin



10 | Andrew Q. Shepherd

Vice Chairman
Blackstone, VA
Virginia



Senior Management



Stuart D. Thompson
Chief Executive Officer



J. Thomas Bunn
President & Secretary



Edward W. Kacsuta
Chief Financial Officer
& Treasurer



Ronald H. Morgan
President U.S. Flue-Cured
Tobacco Growers, Inc.



L. Wayne Crawford
Senior Vice President
Leaf Acquisitions



W. Michael Lynch
Senior Vice President
Leaf Sales



James M. Schneeberger
Vice President
Business Development



Russell G. Mancuso
Vice President
Consumer Products



Fred C. McClintock
Vice President
Information Technology



Financials



The following data was derived from the audited financial statements. The cooperative engaged CliftonLarsonAllen LLP as its independent outside auditor and received an opinion that the consolidated financial statements fairly

presented in all materials respects the financial position of the U.S. Tobacco Cooperative Inc. and its Subsidiaries as of April 30, 2016.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Balance Sheets | Assets

April 30, 2016 and 2015

	2016	2015
Current assets		
Cash and cash equivalents	\$12,710,115	\$10,225,984
Investment in interest-bearing obligations	21,095,615	13,818,146
Accounts receivable, net	60,333,034	66,800,446
Inventories, net	149,192,091	140,824,202
Prepaid expenses and other assets	1,414,833	347,185
Income taxes receivable	363,772	195,959
Total current assets	\$245,109,460	\$232,211,922
Investment in interest-bearing obligations	106,633,925	111,921,518
Property, plant, and equipment, net	29,364,765	26,197,661
Intangible assets, net	132,860,749	132,878,749
Other assets	621,344	636,424
Total assets	\$514,590,243	\$503,846,274

Consolidated Balance Sheets | Liabilities and Stockholders' Equity

April 30, 2016 and 2015

	2016	2015
Current liabilities		
Accounts payable	\$1,942,476	\$2,020,376
Accrued expenses	10,534,998	8,034,484
Current portion of long-term debt	8,008,524	8,000,000
Revolving line of credit	2,500,000	-
Patronage dividends payable in cash	4,486,543	5,669,240
Stock redemption payable	4,062,668	5,137,961
Customer deposits	1,948,701	2,421,777
Total current liabilities	\$33,483,910	\$31,283,838
Deferred income taxes	3,732,727	6,860,361
Pension benefits	7,577,240	5,773,111
Other	59,734	100,958
Revolving line of credit	95,000,000	79,000,000
Long-term debt, less current portion	11,146,116	19,555,415
Total liabilities	\$150,999,727	\$142,573,683
Stockholders' equity		
Common stock	3,695	4,245
Additional paid-in capital	110,753,161	110,753,161
Accumulated other comprehensive loss	(5,396,558)	(4,118,642)
Contributed capital	81,520,000	81,520,000
Capital equity credits:		
Qualified	34,895,751	35,508,215
Nonqualified	8,852,886	5,865,085
Retained earnings	132,961,581	131,740,527
Total stockholders' equity	\$363,590,516	\$361,272,591
Total liabilities and stockholders' equity	\$514,590,243	\$503,846,274



Consolidated Statements of Operations

Years Ended April 30, 2016 and 2015

	2016	2015
Revenue	\$247,363,257	\$276,153,134
Cost of sales	212,232,898	236,936,269
Gross margin	\$35,130,359	\$39,216,865
Selling, general, and administrative expenses	28,913,399	29,275,724
Operating margin	\$6,216,960	\$9,941,141
Other income (expense)		
Interest income	1,840,176	1,574,731
Interest expense	(2,197,331)	(2,059,520)
Other revenue, net	1,652,368	1,712,716
Gain (loss) on disposal of assets	(80,020)	91,911
Total other income (expense)	1,215,193	1,319,838
Margin before income taxes	\$7,432,153	\$11,260,979
Provision (credit) for income taxes	(2,089,006)	(291,173)
Net margin	\$9,521,159	\$11,552,152
Distribution of net margin:		
Patronage dividends payable in cash	4,486,543	5,669,240
Issuance of nonqualified equity credits	3,813,562	5,039,324
Total allocated net margin for members	8,300,105	10,708,564
Unallocated margin and income taxes retained	1,221,054	843,588
	\$9,521,159	\$11,552,152

Consolidated Statements of Stockholders' Equity

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss
	Shares	Amount		
Balance April 30, 2014	952	\$4,760	\$110,753,161	\$(2,941,592)
Net margin	-	-	-	-
Net loss on pension plan	-	-	-	(1,085,622)
Unrealized loss on investments	-	-	-	(91,428)
Patronage declared on 2015 net margin:				
Issuance of capital equity credits	-	-	-	-
Payable in cash	-	-	-	-
Capital equity credits called for redemption				
Membership stock issued and cancelled, net	(103)	(515)	-	-
Balance April 30, 2015	849	\$4,245	\$110,753,161	\$(4,118,642)
Net margin	-	-	-	-
Net loss on pension plan	-	-	-	(1,425,827)
Unrealized gain on investments	-	-	-	147,911
Patronage declared on 2016 net margin:				
Issuance of capital equity credits	-	-	-	-
Payable in cash	-	-	-	-
Capital equity credits called for redemption	-	-	-	-
Transfers	-	-	-	-
Membership stock issued and cancelled, net	(110)	(550)	-	-
Balance April 30, 2016	739	\$3,695	\$110,753,161	\$(5,396,558)

Consolidated Statements of Comprehensive Income

Years Ended April 30, 2016 and 2015

	2016	2015
Net margin	\$9,521,159	\$11,552,152
Other comprehensive income (loss), net of taxes		
Available-for-sale investments		
Unrealized holding gains (losses) arising during the year	143,471	(164,190)
Add reclassification adjustment for losses included in net margin	4,440	72,762
Total	\$147,911	\$(91,428)
Defined benefit pension plan		
Net gain (loss) arising during the year	(1,652,766)	(1,272,748)
Add reclassification adjustment for amortization of net gain on pension included in net margin	226,939	187,126
Total	\$(1,425,827)	\$(1,085,622)
Other comprehensive income (loss), net of taxes	(1,277,916)	(1,177,050)
Comprehensive income	\$8,243,243	\$10,375,102

Years Ended April 30, 2016 and 2015

Contributed Capital	Capital Equity Credits		Retained Earnings	Total
	Qualified	Non-Qualified		
\$81,520,000	\$38,513,321	\$825,761	\$130,896,535	\$359,571,946
-	-	-	11,552,152	11,552,152
-	-	-	-	(1,085,622)
-	-	-	-	(91,428)
-	-	5,039,324	(5,039,324)	-
-	-	-	(5,669,240)	(5,669,240)
-	(3,005,106)	-	404	(3,004,702)
-	-	-	-	(515)
\$81,520,000	\$35,508,215	\$5,865,085	\$131,740,527	\$361,272,591
-	-	-	9,521,159	9,521,159
-	-	-	-	(1,425,827)
-	-	-	-	147,911
-	-	3,813,562	(3,813,562)	-
-	-	-	(4,486,543)	(4,486,543)
-	(1,438,225)	-	-	(1,438,225)
-	825,761	(825,761)	-	-
-	-	-	-	(550)
\$81,520,000	\$34,895,751	\$8,852,886	\$132,961,581	\$363,590,516



Consolidated Statements of Cash Flows

Years Ended April 30, 2016 and 2015

	2016	2015
Cash flows from operating activities		
Net margin	\$9,521,159	\$11,552,152
Adjustments to reconcile net margin to net cash provided by (used in) operating activities:		
Depreciation and amortization	4,231,345	3,957,433
Amortization of premiums on investments	1,385,239	1,204,289
Provision for obsolete inventory	3,515,760	4,093,627
Provision for doubtful accounts	699,165	155,000
Impairment of trademark	-	130,000
Realized loss on sale of investments	89,690	66,750
Gain on disposal of assets	(9,670)	(158,661)
Net periodic benefit costs (benefit)	(52,455)	(86,765)
Employer contribution to the pension plan	(632,719)	(341,764)
Deferred income taxes	(2,174,480)	(502,999)
Cash provided by (used in) changes in:		
Receivables	5,768,247	3,864,503
Income taxes receivable	(167,813)	48,037
Inventories	(11,883,649)	(50,292,353)
Prepaid expenses and other assets	(1,052,568)	630,458
Accounts payable	(77,900)	(8,649)
Accrued expenses and other liabilities	2,459,290	(2,093,478)
Customer deposits	(473,076)	461,333
Net cash provided by (used in) operating activities	\$11,145,565	\$(27,321,087)
Cash flows from investing activities		
Purchase of property, plant, and equipment	(6,994,672)	(5,199,839)
Proceeds on disposal of assets	18,069	121,218
Purchase of interest-bearing obligations	(51,999,686)	(66,170,131)
Maturities and calls of interest-bearing obligations	48,793,114	63,478,098
Net cash used in investing activities	\$(10,183,175)	\$(7,770,654)
Cash flows from financing activities		
Net borrowings on revolving line of credit	18,500,000	44,100,000
Payments on note payable	(8,016,686)	(8,000,000)
Payment of loan origination costs	(778,265)	-
Net payments on common stock	(550)	(515)
Redemption of stockholders' equity credits	(2,513,518)	(1,889,836)
Patronage distribution	(5,669,240)	(5,142,568)
Net cash provided by financing activities	\$1,521,741	\$29,067,081
Increase (decrease) in cash and cash equivalents	\$2,484,131	\$(6,024,660)
Cash and cash equivalents, beginning of year	\$10,225,984	\$16,250,644
Cash and cash equivalents, end of year	\$12,710,115	\$10,225,984



Financial Footnotes

1 | Organization Data and Significant Policies

Organization Data: U.S. Tobacco Cooperative Inc. (USTC) was incorporated on June 1, 1946, under the provisions of the Cooperative Marketing Act of the State of North Carolina as a cooperative operating on a cooperative basis, with capital stock. USTC and its subsidiaries (collectively the Cooperative) have four primary business activities; 1) as a global leaf supplier, 2) as a manufacturer and distributor of six consumer tobacco product brands within the United States of America, 3) as a contract manufacturer of consumer products, principally internationally, and 4) as a producer of cut rag and pipe tobacco. The Cooperative purchases the majority of its leaf tobacco from member growers. The leaf tobacco is processed, stored, and shipped internationally, domestically, and for use in the Cooperative's own brands of consumer products.

The authorized capital stock of USTC consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who patronize USTC. At all meetings of the members, each member is entitled to only one vote. No dividends are payable on the common stock. USTC has adopted a bylaw consent form in which each member agrees to take into taxable gross income patronage refunds allocated to them.



USTC is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members. The capital equity credits are used to accumulate capital as considered necessary by the Board of Directors. Capital equity credits bear no interest, have no due date, and may only be redeemed or retired at the discretion of the Board of Directors in order of issuance by years.

A summary of the Cooperative's significant accounting policies follows:

Consolidation Policy: The accompanying consolidated financial statements include the accounts of USTC and its wholly owned subsidiaries, Tobacco Grower Services, Inc. (TGS), U.S. Flue-Cured Tobacco Growers, Inc. (USFC), Premier Manufacturing, Inc. (Premier), Franchise Wholesale Co., L.L.C. (Franchise), and Big South Distribution, LLC (Big South). TGS was merged into USTC effective May 1, 2015. All material intercompany balances and transactions have been eliminated.

Revenue Recognition: Revenues are generated primarily from leaf tobacco and tobacco consumer products sales. Sales are recognized upon shipment of goods to the customer at which time there is transfer of the title and risk of loss to the customer.

The Cooperative's accounting policy is to include federal and state excise taxes in revenues and cost of sales. Such revenues and cost of sales totaled \$54,149,701 and \$55,853,347 for the years ended April 30, 2016 and 2015, respectively.

Shipping and Handling Costs: Shipping and handling costs are included in cost of sales.

Cash and Cash Equivalents: For purposes of the statements of cash flows, the Cooperative considers money market funds and all other short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents. The Cooperative places its cash and cash equivalents with high credit-quality institutions.

The Cooperative maintains cash balances that from time to time may exceed the federally insured limits. The Cooperative has not experienced any losses on such accounts and management believes the Cooperative is not exposed to any significant credit risk on these accounts.

Interest-Bearing Obligations: The Cooperative's interest-bearing obligations consist of debt securities, which are classified as available for sale. Investments in debt securities are stated at fair values as adjusted for amortization of premium or discount, if applicable, and unrealized holding gains and losses are reported as accumulated other comprehensive income. Amortized discounts and premiums are included in net interest income. Interest on investments

1 | Organization Data and Significant Policies (Continued)

in debt securities is credited to income as it accrues on the principal amount outstanding adjusted for amortization of premiums and discounts computed by the effective interest method. Realized gains and losses on disposition of investments are included in net interest income in the accompanying consolidated statements of operations. The cost of investments sold is determined on the specific identification method.

Fair Value Measurements: The estimated fair value of the Cooperative's short-term financial instruments, including cash and cash equivalents, accounts receivable, income taxes receivable, accounts payable, accrued expenses, stock redemption and patronage payable, and customer deposits approximates their individual carrying amounts due to the relatively short period of time between their origination and expected realization. The fair value of the line of credit is estimated based on current rates offered to the Cooperative for similar debt of the same remaining maturities. The carrying value of the fixed rate long-term debt approximates fair value due to its proximity to current market rates for similar debt issues.

Accounts Receivable: Accounts receivable are recorded at net realizable value. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history, and current economic conditions. The allowance is reviewed periodically and adjusted for accounts deemed uncollectible by management. After all attempts to collect have failed, the receivable is written off against the allowance. The allowance for doubtful accounts totaled \$868,165 and \$169,000 as of April 30, 2016 and 2015, respectively.

Inventories: Inventories are priced at the lower of average cost (which approximates the first-in, first-out method) or market.

The Cooperative evaluates its inventory value at the end of each year to ensure that it is carried at the lower of cost or market. This evaluation includes a review of potential obsolete and slow-moving stock, based on historical product sales and forecasted sales, and an overall consolidated analysis of potential excess inventories. Events which could affect the amount of reserves for obsolete or slow moving inventories include a decrease in demand for the products due to economic conditions, price decreases by competitors on specific products or systems, or the discontinuance by a vendor. To the extent historical physical inventory results are not indicative of future results and if future events impact, either favorably or unfavorably, the salability of the Cooperative's products or its relationship with certain key vendors, the Cooperative's inventory reserves could differ significantly, resulting in either higher or lower future inventory provisions.

Property, Plant, and Equipment: Property, plant, and equipment are stated at cost and depreciated over their estimated useful lives using the declining balance or the straight-line method. Routine maintenance and repairs are charged to expense when incurred. When an asset is disposed of, the asset and related accumulated depreciation are written off and any gain or loss on the disposal is recognized. Major replacements and

improvements are capitalized and depreciated over their estimated useful lives.

Accounting for Impairment of Long-Lived Assets: Long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate that an asset may not be recoverable and are grouped with other assets to the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. If the sum of the projected undiscounted cash flows is less than the carrying value of the assets, the assets are written down to the estimated fair value. Assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell.

No impairment of long-lived assets was recognized during the years ended April 30, 2016 and 2015.

Income Taxes: Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and net operating loss carryforwards. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The Cooperative recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Cooperative's policy is to recognize interest and penalties related to income taxes in its income tax provision. The Cooperative has not accrued or paid interest or penalties which were material to its results of operations for the years ended April 30, 2016 and 2015. As of April 30, 2016 and 2015, the Cooperative had no material unrecognized tax benefits. The Cooperative files in the U.S. and various state jurisdictions.

Pension Plan: The Cooperative has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan was frozen effective July 31, 2010. The plan provides benefits through mutual funds invested in common stocks and bonds. The Cooperative is required to recognize in its consolidated balance sheet the funded status of a benefit plan measured as the difference between the fair value of plan assets and benefit obligations, net of tax.

Self-Insurance: The Company maintains a self-insured employee benefit plan which covers health care costs. Benefit costs are accrued based on the aggregate of the liability for reported claims and an estimated liability for claims incurred but not reported. The accompanying consolidated statements of operations include expenses relating to self-insured plans.

Advertising Costs: Advertising costs are expensed as incurred. Advertising expenses of \$291,138 and \$701,595 for the years ended April 30, 2016 and 2015, respectively, are included in selling, general, and administrative expenses in the accompanying consolidated statements of operations.

Use of Estimates: The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates include the valuation of accounts receivable, inventories, trademarks, and the master settlement agreement grandfather exemption. Estimates also include the useful lives of property, plant, and equipment and are used in determining the master settlement agreement obligation, pension benefit obligations, accrued and deferred income taxes, and litigation contingencies.

Recent Accounting Pronouncements: Effective May 1, 2014, the Cooperative changed its method of accounting for its existing interest rate swaps to the simplified hedge accounting approach, under which interest rate swaps are

accounted for at settlement value. Previously, these interest rate swaps were accounted for at fair value. The effect of the change was not material.

Effective May 1, 2014, the Cooperative adopted the Accounting Standards Update 2015-03 - Simplifying the Presentation of Debt Issuance Costs which provides for the balance sheet classification of debt issuance costs as a direct deduction from the face amount of that note.

Effective May 1, 2015, the Cooperative adopted the Accounting Standards Update 2015-17, Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes, which simplifies the presentation of deferred income taxes. ASU 2015-17 requires that deferred tax assets and liabilities be classified as noncurrent in a classified balance sheet, instead of separating deferred taxes into current and noncurrent amounts. The Cooperative elected to retrospectively adopt ASU 2015-17, resulting in a reclassification reducing both deferred tax assets and deferred tax liabilities by \$2,955,923 on the balance sheet at April 30, 2015.

Reclassifications: Certain amounts in these 2015 consolidated financial statements have been reclassified from where they were previously reported in order to conform to the 2016 presentation. These reclassifications did not affect the previously reported net margin.



2 | Fair Value Measurements

Under the accounting standards authoritative guidance on fair value measurements, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value, the Cooperative uses various methods including market, income, and cost approaches. Based on these approaches, the Cooperative often uses certain assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and/or the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated, or generally unobservable inputs. The Cooperative uses valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs.

Based on the observability of the inputs used in the valuation techniques the Cooperative is required to provide the following information according to the fair value hierarchy. The fair value hierarchy ranks the quality and reliability of the information used to determine fair values. Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

- Level 1 - Quoted prices for identical assets and liabilities traded in active exchange markets, such as the New York Stock Exchange.
- Level 2 - Observable inputs other than Level 1 including quoted prices for similar assets or liabilities, quoted prices in less active markets, or other observable inputs that can be corroborated by observable market data. Level 2 also includes derivative contracts whose value is determined using a pricing model with observable market inputs or can be derived principally from or corroborated by observable market data.
- Level 3 - Unobservable inputs supported by little or no market activity for financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation, also includes observable inputs for nonbinding single dealer quotes not corroborated by observable market data.

The following tables summarize fair value measurements by level as of April 30, 2016 and 2015, for assets measured at fair value on a recurring basis:

April 30, 2016				
	Total	Level 1	Level 2	Level 3
Available for sale securities				
Money market funds	\$401,569	\$401,569	\$-	\$-
Debt securities:				
Government agency (state taxable)	16,974,256	-	16,974,256	-
Agency mortgage-backed securities	38,829,748	-	38,829,748	-
Corporate bonds	71,523,967	-	71,523,967	-
Total available for sale securities	\$127,729,540	\$401,569	\$127,327,971	\$-

April 30, 2015				
	Total	Level 1	Level 2	Level 3
Available for sale securities				
Money market funds	\$923,137	\$923,137	\$-	\$-
Debt securities:				
Government agency (state taxable)	14,009,452	-	14,009,452	-
Agency mortgage-backed securities	38,355,743	-	38,355,743	-
Corporate bonds	72,451,332	-	72,451,332	-
Total available for sale securities	\$125,739,664	\$923,137	\$124,816,527	\$-

3 | Investments

Investments in interest-bearing obligations at April 30, 2016 and 2015 were as follows:

2016				
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term	\$20,949,910	\$145,945	\$(240)	\$21,095,615
Long-term	105,774,274	950,310	(90,659)	106,633,925
	\$126,724,184	\$1,096,255	\$(90,899)	\$127,729,540

2015				
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term	\$13,799,455	\$20,157	\$(1,466)	\$13,818,146
Long-term	111,693,218	319,234	(90,934)	111,921,518
	\$125,492,673	\$339,391	\$(92,400)	\$125,739,664

The unrealized gains and losses on debt securities were primarily due to changes in interest rates. There were 39 and 37 debt securities in loss positions as of April 30, 2016 and 2015, respectively. The increase or decline in market values of these securities is attributable to changes in interest rates and not credit quality.

Because it is unlikely that the Cooperative will be required to sell the investment before recovery of its amortized cost basis, which may be maturity, it does not consider the investment in debt securities to be other-than-temporarily impaired at April 30, 2016.

Contractual maturities of interest-bearing obligations as of April 30, 2016, are summarized below.

	Amortized Cost	Estimated Fair Value
Due in one year or less	\$20,949,910	\$21,095,615
Due after one year through five years	89,546,524	90,324,745
Due after five years through ten years	7,853,067	7,934,741
Due after ten years	8,374,683	8,374,439
	\$126,724,184	\$127,729,540



4 | Inventories

Inventories consisted of the following at April 30, 2016 and 2015:

	2016	2015
Processed tobacco	\$135,947,430	\$128,779,145
Materials and work in process	4,519,108	3,674,793
Tobacco products	10,777,799	11,003,163
	\$151,244,337	\$143,457,101
Reserve for obsolete and slow moving inventory	(2,052,246)	(2,632,899)
	\$149,192,091	\$140,824,202

During the years ended April 30, 2016 and 2015, the Cooperative determined that the market value of various tobacco products had permanently declined in value. In response, the Cooperative recorded an inventory allowance of \$2,052,246 and \$2,632,899 as of April 30, 2016 and 2015, respectively.

The Cooperative determined that various tobacco products were obsolete, slow moving, or may need to be discounted which resulted in a write-down of \$4,096,413 and \$2,142,130 for the years ended April 30, 2016 and 2015, respectively. These inventory write-downs were charged to the reserve for obsolete and slow moving inventory.

5 | Property, Plant, and Equipment

Property, plant, and equipment, their estimated useful lives, and related accumulated depreciation at April 30, 2016 and 2015, are summarized as follows:

	Estimated Useful Lives In Years	2016	2015
Land	-	\$1,265,977	\$936,589
Buildings	5-20	14,388,917	13,056,828
Machinery and equipment	3-15	49,165,318	49,507,451
Furniture and fixtures	3-10	1,821,241	1,688,514
Automobiles and trucks	3-5	643,433	583,761
Construction in progress	-	2,691,055	932,839
		\$69,975,941	\$66,705,982
Less accumulated depreciation		(40,611,176)	(40,508,321)
		\$29,364,765	\$26,197,661

For the years ended April 30, 2016 and 2015, depreciation expense amounted to \$3,919,780 and \$3,606,659, respectively, and of which \$2,600,083 and \$2,457,384 are included in cost of sales, and \$1,319,697 and \$1,149,275 are included in selling, general, and administrative expenses, respectively, in the accompanying consolidated statements of operations.

The Company entered into various contracts during 2016 for the acquisition of property, equipment and facility upgrades. The acquisitions and upgrades are expected to be completed at various dates through January 2017. Costs totaling \$2,691,055 have been incurred and are included above as construction in progress at April 30, 2016. No interest has been capitalized in association with these contracts, and the total additional cost upon completion is estimated to be approximately \$16,550,000.





6 | Intangible Assets

Intangible assets consisted of the following at April 30, 2016 and 2015:

	Estimated Lives	2016	2015
Master Settlement Agreement (MSA) - grandfather exemption	Indefinite	\$127,785,379	\$127,785,379
Trademarks	Indefinite	5,064,000	5,064,000
Customer list and non-compete	5 years	180,000	180,000
		\$133,029,379	\$133,029,379
Less accumulated amortization		(168,630)	(150,630)
		\$132,860,749	\$132,878,749

Generally accepted accounting principles require that the unamortized value of indefinite lived intangible assets be evaluated annually to determine whether the amount reflected above has been impaired. During 2016, no amounts were determined to be impaired. During 2015, the Cooperative's management determined that \$130,000 of the trademarks owned by Franchise were impaired, and accordingly, were written off.

The customer list and noncompete agreement are amortized over five years on a straight-line basis, with final amortization of \$11,370 recorded in 2017.

As part of the acquisition of Premier, the Cooperative acquired the Wildhorse, First Class, Ultra Buy, and Shield trademarks. These trademarks were available commercially prior to February 15, 2007, the effective date of the FDA's Substantial Equivalence requirements.

The Cooperative also owns the 1839 and Traffic brands, which have no costs associated with them. These two brands were transferred to Premier during 2015, so that all six brands are owned by Premier.

In 1998, the major United States cigarette manufacturers entered into the MSA with attorneys general representing 46 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas. The MSA became effective on November 23, 1998, when final approval was achieved in 80% of the settling jurisdictions. The MSA settled all health care cost recovery actions brought by settling jurisdictions and contains releases of various additional present and future claims. To entice other cigarette manufacturers into joining the MSA, the agreement provided that if a subsequent participating manufacturer (SPM) joined within ninety days following the MSA's "Execution Date," that SPM is exempt from making annual payments to the settling states unless their share of the national cigarette market exceeds its 1998 market share or 125% of its 1997 market share.

Premier became a signatory to the MSA in February 1999, and was granted an exemption in perpetuity from payment obligations under the MSA except to the extent that its market share exceeds approximately 0.25% of the total cigarettes sold in the United States

7 | Master Settlement Agreement Obligation

As a party to the MSA, Premier and USFC are required to make certain payments to the extent cigarettes sold exceed a specified level. The payment amounts are based generally on Premier's and USFC's relative market share and are subject to several adjustments, including inflation, United States cigarette volume, and certain other factors. At April 30, 2016 and 2015, the Cooperative's management estimated the liability to be \$1,553,150 and

\$774,374, respectively. The balances accrued at April 30, 2016, are expected to be paid in April 2017, along with the accumulated obligation from April 30, 2016, through the end of the 2016 calendar year. The balance accrued at April 30, 2015, was paid in April 2016, along with the accumulated obligation from April 30, 2015, through the end of the 2015 calendar year.

8 | Accrued Expenses

The components of accrued expenses at April 30, 2016 and 2015 are summarized as follows:

	2016	2015
Accrued tobacco product related taxes	\$4,225,628	\$3,669,710
Other accrued expenses	2,959,507	2,390,298
Accrued master settlement agreement obligation	1,553,150	774,374
Accrued insurance	167,356	300,000
Accrued salaries and related benefits	1,569,357	840,102
Accrued interest	60,000	60,000
	\$10,534,998	\$8,034,484

9 | Revolving Lines of Credit

On March 24, 2016, the Cooperative entered into an amended and restated syndicated loan (Loan Agreement) with six financial institutions which consists of a term loan (Term Loan) and a revolving credit facility (Revolving Credit Facility). The Loan Agreement is collateralized by all assets of the Cooperative. The Cooperative is required to maintain a minimum tangible net worth and fixed charge coverage ratio under the conditions of the Loan Agreement.

The Revolving Credit Facility provides for up to \$205,000,000 in funding through the use of two separate tranches (Tranche A and Tranche B) and a swing line (Swing Line), all of which mature on March 24, 2021. Tranche A provides up to \$95,000,000 in funding, subject to a borrowing base limitation as defined in the Loan Agreement. Interest-only payments are due monthly at the one-month London

Interbank Offered Rate (LIBOR) rate plus 1.00% (1.434% at April 30, 2016). Tranche B provides up to \$100,000,000 in funding, subject to a borrowing base limitation as defined in the Agreement, and requires a zero balance for sixty consecutive days within each fiscal year. Interest-only payments are due monthly at the one-month LIBOR rate plus 1.50% (1.934% at April 30, 2016). The Swing Line provides up to \$10,000,000 in funding. Interest-only payments are due monthly at the prime rate plus 1.00% (4.50% at April 30, 2016). At April 30, 2016 and 2015, Tranche A had an outstanding balance of \$95,000,000 and \$79,000,000, respectively. Tranche B had an outstanding balance of \$2,500,000 as of April 30, 2016. There was no balance outstanding on Tranche B at April 30, 2015. There was no balance outstanding on the Swing Line at April 30, 2016 or 2015.

10 | Long-term Debt

Long-term debt consisted of the following as of April 30, 2016 and 2015:

	2016	2015
Note payable to financial institutions, payable in monthly interest payments and quarterly principal payments of \$2,000,000 at a variable interest rate equal to the one-month LIBOR rate plus 1.00% (1.434% at April 30, 2016), maturing on September 27, 2018	\$20,000,000	\$28,000,000
Equipment financing contracts payable in various monthly payments including interest, through 2021	83,925	-
Loan origination fees and costs	(929,285)	(444,585)
	\$19,154,640	\$27,555,415
Less current portion of long-term debt	(8,008,524)	(8,000,000)
	\$11,146,116	\$19,555,415

Remaining maturities of long-term debt subsequent to April 30, 2016 are as follows:

Year Ending April 30	Amount
2017	\$8,008,524
2018	8,019,584
2019	4,018,841
2020	14,979
2021	21,997
	\$20,083,925

Loan origination fees and costs were \$961,329 and \$941,473 at April 30, 2016 and 2015, respectively, and accumulated amortization was \$32,044 and \$496,888 at April 30, 2016 and 2015, respectively. The costs and fees are amortized over the lives of the applicable debt securities. Total amortization expense for the years ended April 30, 2016 and 2015, was \$293,565 and \$313,824, respectively, and is included as part of interest expense.

The Cooperative entered into two interest rate swap agreements effective September 2013, that effectively fixed the interest rate on the \$20 million term note above from a variable interest rate note to a blended fixed rate

of 2.12%. The interest rate swap agreements mature September 2018. The Cooperative's purpose in entering into the swap agreements was to hedge against the risk of interest rate increases on the related variable rate debt. The derivative financial instrument is reflected on the consolidated balance sheet at its settlement value which was insignificant as of April 30, 2016 and 2015. The cash flow effects of the swap agreements are included in interest expense on the consolidated statement of operations. The effect for the years ended April 30, 2016 and 2015, was to increase interest expense by \$186,010 and \$280,864, respectively.

11 | Operating Leases

During the fiscal years ended April 30, 2016 and 2015, the Cooperative entered into year-to-year operating leases for purposes of operating tobacco marketing centers and office space for the 2015 and 2014 crop years. Total lease expense for the centers amounted to approximately \$990,000 and \$1,143,000 for the years ended April 30, 2016 and 2015, respectively.

The Cooperative has noncancelable operating leases, primarily for certain equipment and vehicles, that provide for renewal options for varying periods.

Commitments for minimum future lease payments, by year and in aggregate, to be paid under noncancelable operating leases with initial or remaining terms in excess of one year as of April 30, 2016, are as follows:

Year Ending April 30	Amount
2017	\$1,210,203
2018	842,362
2019	372,200
2020	294,716
2021	149,739
	\$2,869,220

Total lease and rental expenses for operating leases amounted to \$1,348,783 and \$1,200,008 for the years ended April 30, 2016 and 2015, respectively, and are

included as a component of selling, general and other administrative expenses in the accompanying consolidated statements of operations.

12 | Stock Redemption Payable

Cooperative membership requires participation in the crop year, which runs May 1 through April 30. Beginning in May 2004, the board of directors approved a plan to terminate stock ownership of members who did not enter into marketing agreements with the Cooperative for the subsequent year.

During the year ended April 30, 2016, the Cooperative offered an open call for redemption of the 1967 to 1973, capital equity credits, from December 1, 2015 through February 29, 2016.

The amounts of capital equity credits offered for redemption and called for redemption are as follows:

Crop Year	Offered for Redemption	Called for Redemption
1967	\$4,296,250	\$127,825
1968	2,033,889	109,813
1969	2,832,496	186,948
1970	8,321,538	577,340
1971	3,318,711	255,287
1972	1,659,600	116,421
1973	818,201	64,591
	\$23,280,685	\$1,438,225

The balance of stock redemption payable comprises the following at April 30, 2016 and 2015:

	2016	2015
Terminated stock balances payable	\$4,024,090	\$4,023,580
Balance due on 1967 to 1973 capital credits called for redemption	38,578	1,114,381
	\$4,062,668	\$5,137,961

13 | Income Taxes

The provision (credit) for income taxes consisted of the following for the years ended April 30, 2016 and 2015:

2016			
	Current	Deferred	Total
Federal	\$(19,413)	\$(1,805,347)	\$(1,824,760)
State	104,887	(369,133)	(264,246)
	\$85,474	\$(2,174,480)	\$(2,089,006)

2015			
	Current	Deferred	Total
Federal	\$194,790	\$(420,745)	\$(225,955)
State	17,036	(82,254)	(65,218)
	\$211,826	\$(502,999)	\$(291,173)

The actual provision (credit) for income taxes for 2016 and 2015 differs from the "expected" taxes (computed by applying the U.S. federal corporate income tax rate of 34%) to the margin before income taxes as follows:

	2016	2015
Computed "expected" tax expense	\$2,526,900	\$3,828,733
Change in income tax expense (benefit) resulting from:		
State income taxes, net of federal income tax benefit	318,840	731,964
Patronage dividends	(3,178,100)	(4,101,020)
Nondeductible expenses	103,000	97,333
Valuation allowance	38,000	(305,600)
Other, net	(1,897,646)	(542,583)
	\$ (2,089,006)	\$ (291,173)

The tax effects of temporary differences that give rise to the net deferred tax liabilities at April 30, 2016 and 2015 are presented below:

	2016	2015
Deferred tax assets		
Recognition of certain retirement costs	\$2,901,326	\$2,210,525
Net operating losses	3,904,407	922,798
Master settlement agreement	593,495	295,836
Allowances and reserves	332,421	64,710
Inventories	2,643,040	2,040,380
Accrued expenses	1,411,678	554,997
Capital loss	83,411	24,157
Nonqualified equity credits	3,705,954	1,962,523
Less valuation allowance	(852,803)	(890,962)
	\$14,722,929	\$7,184,964
Deferred tax liabilities		
Property, plant, and equipment	3,185,980	2,178,970
Intangibles	15,269,676	11,866,355
	\$18,455,656	\$14,045,325
	\$ (3,732,727)	\$ (6,860,361)

As of April 30, 2016 and 2015, the Cooperative has \$4,716,746 and \$2,296,287, respectively, of federal net operating loss carry forwards, which expire in 2035 through 2036.

As of April 30, 2016 and 2015, the Cooperative had state net operating loss carryovers of \$26,501,024 and \$21,501,000, respectively, which expire in 2018 through 2036. A valuation allowance is required to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all

the evidence, both positive and negative, management has determined that \$852,803 and \$890,962 valuation allowance at April 30, 2016 and 2015, respectively, is necessary to reduce the deferred tax asset related to the state net operating losses that will not be realized. The change in the valuation allowance for 2016 and 2015 was \$38,159 and (\$1,033,647), respectively. After taking into account the valuation allowance, the Cooperative has a net deferred tax asset relating to state net operating losses for the years ending April 30, 2016 and 2015 of \$284,091 and \$31,836, respectively.

14 | Retirement Plans

Defined Benefit Pension Plan: The Cooperative sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Cooperative were eligible to participate after one year of service, which is the completion of 1,000 or more hours of service within a period in which the employee is employed for twelve consecutive months. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service. On May 31, 2010, the Cooperative's Board of Directors approved a Certificate of Resolution to freeze benefits after July 31, 2010.

The Cooperative's funding policy requires a contribution in the amount necessary to satisfy the minimum required

contributions under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), subject to the Cooperative's long-term funding strategy. The Cooperative's funding policy is to contribute funds to the trust for the plan as necessary to provide for current service and for any unfunded projected benefit obligation over a reasonable period. To the extent that these requirements are fully covered by assets in the trust, the Cooperative may elect not to make a contribution in a particular year. The Cooperative made contributions of \$632,719 and \$341,764 to the plan for the years ended April 30, 2016 and 2015, respectively. The Cooperative anticipates making contributions of \$469,825 to the plan for the year ending April 30, 2017.

The following table sets forth the plan's funded status and amounts recognized in the Cooperative's consolidated balance sheets at April 30, 2016 and 2015, as follows:

Pension Benefits	2016	2015
Change in projected benefit obligation:		
Projected benefit obligation - beginning of year	\$23,251,553	\$21,942,250
Interest cost	905,666	970,935
Actuarial loss	1,452,512	1,691,649
Benefit payment	(1,414,465)	(1,353,281)
Projected benefit obligation - end of year	\$24,195,266	\$23,251,553
Change in plan assets:		
Fair value of plan assets - beginning of year	17,478,442	17,373,713
Actual return on plan assets	(78,670)	1,116,246
Employer contributions	632,719	341,764
Benefit payments	(1,414,465)	(1,353,281)
Fair value of plan assets - end of year	\$16,618,026	\$17,478,442
Fund status - end of year, and noncurrent liability recognized in the consolidated balance sheets	\$(7,577,240)	\$(5,773,111)

The accumulated benefit obligation as of April 30, 2016 and 2015 was \$24,195,266 and \$23,251,553, respectively.

Amounts recognized in accumulated other comprehensive loss as of April 30, 2016 and 2015, not yet reflected in net periodic benefit cost, consist of:

Pension Benefits	2016	2015
Net loss	\$9,469,799	\$6,980,496
Less deferred tax benefit	(3,801,891)	(2,738,415)
	\$5,667,908	\$4,242,081

The net periodic cost (credit) of the plan was (\$52,455) and (\$86,765) for 2016 and 2015, respectively. These amounts included the following reclassification adjustments of other comprehensive income:

	2016	2015
Amortization of net gain	\$396,206	\$281,494

The estimated gain that will be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2017 is \$560,000.

The following table provides the weighted average actuarial assumptions at April 30, 2016 and 2015:

Pension Benefits	2016	2015
Weighted-average assumptions used to determine benefit obligations as of April 30:		
Discount rate	4.0%	4.0%
Weighted-average assumptions used to determine Net periodic benefit cost for years ended April 30:		
Discount rate	4.0%	4.5%
Expected long-term return on plan assets	8.0%	8.0%

During 2016, the Cooperative changed from the RP-2000 Mortality Table to the RP-2014 Mortality Table, to better reflect current and expected future mortality improvements.

Management determines the expected return on plan assets based on historical performance of the plan's investments. Management compares their expected rate of

return with other companies to ensure that it is in line with broad market expectations.

The plan holds investments in various equities and mutual funds covering a wide range of investment opportunities. The various mutual funds are valued at fair value based on quoted market prices.

The fair values of the Cooperative's pension plan assets at April 30, 2016 and 2015, respectively, are as follows:

April 30, 2016				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$5,262,687	\$5,262,687	\$-	\$-
International equities	2,712,910	2,712,910	-	-
Real estate	343,233	343,233	-	-
Fixed income	6,568,244	6,568,244	-	-
Commodities	348,779	348,779	-	-
Hedge funds	917,770	917,770	-	-
Money market account	464,403	464,403	-	-
Total	\$16,618,026	\$16,618,026	\$-	\$-

April 30, 2015				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$5,720,552	\$5,720,552	-	-
International equities	3,034,833	3,034,833	-	-
Real estate	1,057,489	1,057,489	-	-
International fixed income	6,430,344	6,430,344	-	-
Common stock				
Domestic equities	1,076,005	1,076,005	-	-
International equities	26,620	26,620	-	-
Money market account	132,599	132,599	-	-
Total	\$17,478,442	\$17,478,442	\$-	\$-

14 | Retirement Plans (Continued)

The investment policy guidelines outline risk tolerance, goals, permissible and prohibited investments, and target investment allocations.

Risk tolerance as defined by the policy guidelines identify that historical capital market returns allow for the assumption of short run investment risks in favor of greater returns provided by capital markets over the longer term.

Permissible investments as defined by the policy guidelines are individual securities, separate accounts, mutual funds, trusts, private placements, partnerships, commingled funds, pooled funds, contracts and other legally constituted means of buying and selling investments including domestic equities, fixed income investments, cash equivalents, international equities, and real estate.

Prohibited investments as defined by the policy guidelines are short sales, margin purchases, securities lending, borrowings of plan assets, purchase of letter stock (restricted stock), options, futures, loans, investments requiring pledging of plan assets as collateral and any other investment not outlined as a permissible investment under the policy guidelines unless authorized in writing by the committee.

The current investment policy target mix is as follows:

Domestic equities	32.0%
International equities	19.0%
Real assets	7.0%
Fixed income securities	42.0%

15 | Contingencies

The Cooperative is currently engaged in several lawsuits.

In 2005, two civil, class-action lawsuits (Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corp. & Fisher v. Flue-Cured Tobacco Cooperative Stabilization Corp.) were filed against the Cooperative in North Carolina Superior Court in Wake County, North Carolina. Plaintiffs seek to dissolve the Cooperative and distribute its assets based on allegations that the Cooperative has no valid business purpose following the U.S. Congress's termination of the Federal Tobacco Loan Program. These lawsuits have since been consolidated into a single action, Fisher, in North Carolina, from which the claim for dissolution has been dropped. Plaintiffs are nonetheless still advancing claims seeking to force the Company to distribute a substantial portion of its reserves. In June 2013, the North Carolina Superior Court (state trial court) issued an order certifying named plaintiffs as class representatives for all former and present shareholders/members of the Cooperative from 1946 through 2004. The Cooperative denies all allegations in the complaint and has been vigorously defending the matter and has challenged class certification via an interlocutory appeal that the North Carolina Supreme Court specially elected to hear on April 20, 2015. The company is waiting for the Supreme Court's decision. To the extent this case returns to the trial court, the Company is prepared to continue vigorously

Benefits expected to be paid in each of the next five fiscal years, and in the aggregate for the five fiscal years thereafter, are as follows:

Year Ending April 30	Amount
2017	\$1,500,801
2018	1,492,271
2019	1,509,231
2020	1,481,226
2021	1,510,569
2022-2026	7,601,132

Defined Contribution 401(k) Plan: The Cooperative maintains a 401(k) plan for all of its eligible employees. The plan year is January 1 to December 31, and allows eligible employees to defer a portion of their compensation up to the maximum allowed by law (\$18,000 in 2016 and 2015 with catch-up contributions of \$6,000 in 2016 and 2015 for age 50 and older). Effective January 1, 2014, the plan allows for a 100% match of the first 3% of an employee's elective contribution and a 50% match of an additional 2% of an employee's elective contribution. For the years ended April 30, 2016 and 2015, the employer contributions made to the plan were \$337,598 and \$387,859, respectively.

The Cooperative may make discretionary matching and profit sharing contributions to the plan. The board of directors did not elect to make either of these additional contributions for the years ended April 30, 2016 and 2015.

defending. While we cannot predict how or when the merits will ultimately be resolved, we perceive a variety of grounds on which the Company may defend against the merits.

In October 2012, a civil, class-action lawsuit (Speaks v. United States Tobacco Cooperative Inc.) was filed against the Cooperative in the United States District Court for the Eastern District of North Carolina. Plaintiffs seek to dissolve the Cooperative and distribute its assets to the Cooperative's members based on allegations to the effect that the Cooperative no longer serves a valid business purpose following the U.S. Congress's termination of the Federal Tobacco Loan Program. The case is currently stayed by agreement pending the North Carolina Supreme Court's resolution of the Fisher appeal. The Company is again prepared to vigorously defend against this class action as to certification, the merits, and otherwise if and when it resumes in federal court.

In May 2007, certain individual plaintiffs represented by the same counsel filed a series of lawsuits (led by Rigby v. Flue-Cured Tobacco Cooperative Stabilization Corp.) against the Cooperative in the Superior Court of Georgia in Berrien County, Georgia. The Cooperative successfully dismissed all of the Plaintiffs' claims except for one that was reinstated on appeal, a claim for breach of fiduciary

duty and corresponding attorney's fees. Following the partial reversal and remand back to the trial court, the trial afforded the Company discovery into the remaining claim as well as to seek summary judgment. The Company has since obtained that discovery, moved for summary judgment, and obtained summary judgment dismissal of plaintiff's remaining claim. Plaintiffs then appealed that summary ruling and the Georgia Court of Appeals has now received full briefing, hearing arguments on May 20, 2016. We cannot predict how or when the Georgia Court of Appeals will decide the appeal. Although we have identified multiple grounds for the Georgia Court of Appeals to affirm the summary judgment ruling, the Company is prepared to continue vigorously defending the case through trial to the extent this case and/or any of the parallel cases may proceed before the trial court.

In July 2013, the Cooperative filed a lawsuit (U.S. Tobacco Cooperative, et al v. Big South Wholesale Virginia, et. al.) in the United States District Court for the Eastern District of North Carolina. The Cooperative's lawsuit states claims for RICO violations breach of contract, unfair trade practices, fraud in the inducement, fraud and other legal violations. The defendants include the former Chairman of the Board, two former executives, a former consultant, and several entities that they owned or controlled and unnamed co-conspirators. Some of the defendants have filed counter claims against the plaintiffs. The parties have been engaged

in discovery since approximately August 2015. The trial date is currently scheduled for August 2016.

California Board of Equalization (BOE) Dispute. During July 2009, the state of California performed a Cigarette and Tobacco Products tax audit of Franchise. During the audit period (June 2006 through June 2009), Franchise had been routinely selling both stamped and unstamped product into California. At the conclusion of the audit, Franchise was notified that California statutes preclude Franchise from shipping unstamped product into California, which was in contradiction of guidance the State of California had previously provided Franchise. The Cooperative has recorded an accrued expense for \$1,380,000 related to this ongoing dispute. This dispute occurred prior to the Cooperative's acquisition of Franchise, but was known and accounted for as part of that transaction.

The Cooperative is also party to legal actions arising in the ordinary course of its business. Management asserted that these cases are without merit and will be defended vigorously. While the results cannot be predicted with certainty, management believes it is not possible to form an assessment of potential outcome or an estimate of liability, if any, and that the final outcome of such legal actions will not have a material adverse effect on the Cooperative's financial position.

16 | Business Concentrations

Customer Concentrations: The Cooperative has one customer which accounts for over 10% of total sales and total accounts receivable. For the years ended April 30, 2016 and 2015, sales to this customer accounted for 27%

and 30% of total sales, respectively. At April 30, 2016 and 2015, the customer's account balance accounted for 93% and 86% of total receivables, respectively.

17 | Cash Flow Disclosures

Cash paid for interest and income taxes for the years ended April 30, 2016 and 2015 were as follows:

	2016	2015
Interest	\$1,744,450	\$1,424,777
Income taxes	421,446	508,925

Noncash investing and financing activities consisted of acquisition of property, plant, and equipment by notes payable of \$100,611 at April 30, 2016.

18 | Accumulated Other Comprehensive Loss

Accumulated other comprehensive loss consisted of the following at April 30, 2016 and 2015:

April 30, 2016			
	Total	Unrealized Gains on Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$(4,118,642)	\$123,439	\$(4,242,081)
Other comprehensive income (loss)	(1,509,295)	143,471	(1,652,766)
Reclassification adjustments	231,379	4,440	226,939
Balance, end of year	\$(5,396,558)	\$271,350	\$(5,667,908)

Continued on next page



18 | Accumulated Other Comprehensive Loss (Continued)

April 30, 2015			
	Total	Unrealized Gains (losses) on Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$(2,941,592)	\$214,867	\$(3,156,459)
Other comprehensive loss	(1,436,938)	(164,190)	(1,272,748)
Reclassification adjustments	259,888	72,762	187,126
Balance, end of year	\$(4,118,642)	\$123,439	\$(4,242,081)

The allocation on income tax expense (benefit) for each component of other comprehensive income (loss) was as follows for the years ended April 30, 2016 and 2015:

April 30, 2016			
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding losses arising during the year	\$250,482	\$(107,011)	\$143,471
Add reclassification adjustment for losses included in net margin - other revenue, net	7,751	(3,311)	4,440
Defined benefit pension plan			
Net loss arising during the year	(2,885,509)	1,232,743	(1,652,766)
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	396,206	(169,267)	226,939
	\$(2,231,070)	\$953,154	\$(1,277,916)

April 30, 2015			
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding losses arising during the year	\$(246,991)	\$82,801	\$(164,190)
Add reclassification adjustment for losses included in net margin - other revenue, net	109,456	(36,694)	72,762
Defined benefit pension plan			
Net loss arising during the year	(1,914,597)	641,849	(1,272,748)
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	281,494	(94,368)	187,126
	\$(1,770,638)	\$593,588	\$(1,177,050)

19 | Subsequent Events

Management evaluated and noted no additional subsequent events requiring recognition or disclosure through July 1, 2016, which is the date the consolidated financial statements were available to be issued.



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INDEPENDENT AUDITORS' REPORT

Board of Directors
U.S. Tobacco Cooperative Inc.
Raleigh, North Carolina

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries, which comprise the consolidated balance sheets as of April 30, 2016 and 2015, and the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for the years then ended, and the related notes to consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of U.S. Tobacco Cooperative Inc. and Subsidiaries as of April 30, 2016 and 2015, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

CliftonLarsonAllen LLP

CliftonLarsonAllen LLP

Stevens Point, Wisconsin
July 1, 2016





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EXHIBIT W

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Financial Report
April 30, 2013



Assurance ■ Tax ■ Consulting

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Independent Auditor's Report

To the Board of Directors
U.S. Tobacco Cooperative Inc.
Raleigh, North Carolina

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries as of April 30, 2013 and 2012, which comprise the consolidated balance sheets as of April 30, 2013 and 2012, and the related consolidated statements of operations, comprehensive income, changes in stockholders' equity and cash flows for the years then ended and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of U.S. Tobacco Cooperative Inc. and Subsidiaries as of April 30, 2013 and 2012, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

McGladrey LLP

Orlando, Florida
July 11, 2013

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Balance Sheets
April 30, 2013 and 2012

Assets	2013	2012
Current Assets		
Cash and cash equivalents	\$ 3,694,675	\$ 6,749,053
Investment in interest-bearing obligations	85,007,954	63,870,054
Investment in preferred stock	4,999,020	4,999,020
Accounts receivable, net	80,161,477	53,852,227
Accrued interest receivable	275,170	789,830
Inventories, net	81,986,663	81,497,610
Prepaid expenses and other assets	803,701	1,163,264
Income taxes receivable	997,899	-
Deferred tax assets	1,601,609	1,156,623
Total current assets	259,528,168	214,077,681
Investment in Interest-Bearing Obligations	14,125,000	113,425,377
Property, Plant, and Equipment, net	24,947,967	27,134,893
Intangible Assets	132,849,379	132,849,379
Total assets	\$ 431,450,514	\$ 487,487,330

(Continued)

Liabilities and Stockholders' Equity	2013	2012
Current Liabilities		
Accounts payable	\$ 6,285,561	\$ 6,392,937
Accrued expenses	8,253,305	10,502,161
Current portion of note payable	6,031,023	5,739,251
Redeemable stockholders' equity credits	450,387	7,218,730
Revolving line of credit	-	61,329,675
Income taxes payable	-	1,310,999
Stock redemption payable	8,887,728	5,502,717
Customer deposits	2,246,166	1,064,648
Total current liabilities	32,154,170	99,061,118
Deferred Income Taxes	6,621,991	3,592,774
Pension Benefits	6,010,502	6,437,070
Note Payable, less current portion	36,087,918	42,084,177
Total liabilities	80,874,581	151,175,139
Commitments and Contingencies		
Stockholders' Equity		
Common stock	4,515	4,535
Additional paid-in capital	110,753,161	110,753,161
Accumulated other comprehensive loss	(4,031,740)	(4,219,094)
Contributed capital	81,520,000	81,520,000
Capital equity credits:		
Qualified	33,838,260	22,336,142
Non-qualified	825,761	549,957
Retained earnings	127,665,976	125,367,490
Total stockholders' equity	350,575,933	336,312,191
Total liabilities and stockholders' equity	\$ 431,450,514	\$ 487,487,330

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Statements of Operations Years Ended April 30, 2013 and 2012

	2013	2012
Revenue	\$ 300,259,360	\$ 282,739,240
Cost of sales	257,659,756	252,996,131
Gross margin	42,599,604	29,743,109
Expenses:		
Selling, general and administrative expenses	29,579,132	20,097,302
Operating margin	13,020,472	9,645,807
Other income (expense):		
Other revenue, net	2,388,112	1,207,715
Interest expense	(2,887,060)	(2,296,781)
Interest income	2,161,495	3,687,746
Gain on sale of assets	224,154	1,781
	1,886,701	2,600,461
Margin before income taxes	14,907,173	12,246,268
Income tax benefit (expense)	(2,334,338)	101,016
Net margin	\$ 12,572,835	\$ 12,347,284
Distribution of net margin:		
Paid or payable in cash	\$ 5,234,460	\$ 3,795,151
Issuance of qualified capital equity credits	5,039,889	3,301,975
Unallocated margin retained	2,298,486	5,250,158
	\$ 12,572,835	\$ 12,347,284

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Statements of Comprehensive Income
Years Ended April 30, 2013 and 2012

	2013	2012
Net margin	<u>\$ 12,572,835</u>	<u>\$ 12,347,284</u>
Loss on pension	(42,518)	(5,357,785)
Amortization of net loss	<u>353,221</u>	-
	<u>310,703</u>	(5,357,785)
Less: deferred taxes	<u>(123,349)</u>	2,127,041
Net gain (loss) on defined benefit pension plan	<u>187,354</u>	<u>(3,230,744)</u>
Comprehensive income	<u><u>\$ 12,760,189</u></u>	<u><u>\$ 9,116,540</u></u>

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Consolidated Statements of Stockholders' Equity
Years Ended April 30, 2013 and 2012**

	Common Stock Issued		Additional Paid-In Capital	Accumulated Other Comprehensive (Loss)	Contributed Capital	Capital Equity Credits		Retained Earnings	Total
	Shares	Amount				Qualified	Non-qualified		
Balances, April 30, 2011	940	\$ 4,700	\$ 110,753,161	\$ (988,350)	\$ 81,520,000	\$ 25,977,095	\$ 825,759	\$ 120,117,332	\$ 338,209,697
Net margin	-	-	-	-	-	-	-	12,347,284	12,347,284
Net loss on pension plan	-	-	-	(3,230,744)	-	-	-	-	(3,230,744)
Patronage paid on 2011 earnings (see Note 14):									
Issuance of qualified capital equity credits	-	-	-	-	-	2,315,623	-	(2,315,623)	-
Distributed in cash	-	-	-	-	-	-	-	(2,315,624)	(2,315,624)
Patronage declared on 2012 earnings (see Note 14):									
Issuance of qualified capital equity credits	-	-	-	-	-	986,352	-	(986,352)	-
Distributed in cash	-	-	-	-	-	-	-	(1,479,527)	(1,479,527)
1967 and 1968 capital equity credits offered for redemption	-	-	-	-	-	(6,942,928)	(275,802)	-	(7,218,730)
Membership stock issued and cancelled, net	(33)	(165)	-	-	-	-	-	-	(165)
Balances, April 30, 2012	907	4,535	110,753,161	(4,219,094)	81,520,000	22,336,142	549,957	125,367,490	336,312,191
Net margin	-	-	-	-	-	-	-	12,572,835	12,572,835
Net income on pension plan	-	-	-	187,354	-	-	-	-	187,354
Additional patronage paid on 2012 earnings (see Note 14):									
Issuance of qualified capital equity credits	-	-	-	-	-	369,882	-	(369,882)	-
Distributed in cash	-	-	-	-	-	-	-	(369,870)	(369,870)
Patronage declared on 2013 earnings (see Note 14):									
Issuance of qualified capital equity credits	-	-	-	-	-	4,670,007	-	(4,670,007)	-
Distributable in cash	-	-	-	-	-	-	-	(4,864,590)	(4,864,590)
1967 and 1968 capital equity credits available for redemption, not redeemed by stockholders during 2012 (see Note 14):	-	-	-	-	-	6,912,616	275,804	-	7,188,420
1967 to 1972, omitting 1970, capital equity credits offered for redemption (see Note 14):	-	-	-	-	-	(450,387)	-	-	(450,387)
Membership stock issued and cancelled, net	(4)	(20)	-	-	-	-	-	-	(20)
Balances, April 30, 2013	903	\$ 4,515	\$ 110,753,161	\$ (4,031,740)	\$ 81,520,000	\$ 33,838,260	\$ 825,761	\$ 127,665,976	\$ 350,575,933

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Statements of Cash Flows
Years Ended April 30, 2013 and 2012

	2013	2012
Cash Flows From Operating Activities		
Net margin	\$ 12,572,835	\$ 12,347,284
Adjustments to reconcile net margin to net cash provided by (used in) operating activities:		
Depreciation	4,432,648	4,241,447
Amortization of (discounts) and premiums on interest-bearing obligations, net	5,684	(4,543)
Provision for obsolete inventory	488,643	179,116
Loss on write-down of inventory	1,040,431	2,354,000
Gain on sale of assets	(224,154)	(1,781)
Net periodic benefit costs (benefit)	29,155	(354,147)
Employer contribution to the pension plan	(147,020)	-
Deferred income taxes	2,462,882	78,296
Cash provided by (used in) changes in:		
Accrued interest receivable	514,660	331,746
Accounts receivable	(26,309,250)	13,501,388
Income taxes receivable/payable	(2,308,898)	(179,315)
Inventories	(2,018,127)	7,835,276
Prepaid expenses and other assets	359,563	(197,304)
Accounts payable	(107,376)	(4,718,959)
Accrued expenses	(2,248,836)	(3,397,777)
Customer deposits	1,181,518	(78,228)
Net cash (used in) provided by operating activities	(10,275,642)	31,936,499
Cash Flows From Investing Activities		
Purchase of property, plant and equipment	(2,559,832)	(3,300,647)
Proceeds on disposal of assets	538,264	27,840
Purchases of interest-bearing obligations	(165,643,207)	(245,336,894)
Maturities and calls of interest-bearing obligations	243,800,000	346,475,000
Acquisition of Premier and Franchise, net of cash acquired	-	(61,731,391)
Payment of seller debt at closing of The Premier Acquisition	-	(20,655,903)
Acquisition of Big South Wholesale, LLC and Big South Wholesale of Virginia, LLC	-	(8,668,397)
Net cash provided by investing activities	76,135,225	6,809,608

(Continued)

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Statements of Cash Flows (Continued)
Years Ended April 30, 2013 and 2012

	2013	2012
Cash Flows From Financing Activities		
Payments on revolving line of credit	(121,176,777)	(57,031,884)
Draws on revolving line of credit	59,847,102	13,463,255
Payments on note payable	(5,704,487)	(2,820,572)
Net payments on redemption of common stock	(20)	(165)
Redemption of stockholders' equity credits	(1,509,909)	-
Patronage distribution	(369,870)	(2,315,624)
Net cash used in financing activities	(68,913,961)	(48,704,990)
 Net decrease in cash and cash equivalents	 (3,054,378)	 (9,958,883)
Cash and cash equivalents:		
Beginning	6,749,053	16,707,936
Ending	<u>\$ 3,694,675</u>	<u>\$ 6,749,053</u>
Supplemental Disclosure of Cash Flow Information		
Cash paid for income taxes	<u>\$ 2,276,423</u>	<u>\$ -</u>
Cash paid for interest	<u>\$ 2,140,247</u>	<u>\$ 2,140,247</u>
Supplemental Schedule of Noncash Investing and Financing Activities		
Issuance of Qualified Capital Equity Credits	<u>\$ 5,039,889</u>	<u>\$ 3,301,975</u>
Patronage payable	<u>\$ 5,234,460</u>	<u>\$ 1,479,527</u>
1967 to 1972, omitting 1970, Capital Equity Credits offered for Redemption	<u>\$ 450,387</u>	<u>\$ 7,218,730</u>
Note payable issued in connection with The Premier Acquisition	<u>\$ -</u>	<u>\$ 50,644,000</u>

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies

Organization data: U.S. Tobacco Cooperative Inc. (USTC) was incorporated on June 1, 1946, under the provisions of the Cooperative Marketing Act of the State of North Carolina as a cooperative operating on a cooperative basis, with capital stock. The primary business activities of USTC and its subsidiaries (collectively, the Cooperative) consist of purchasing, processing, storing, manufacturing and selling tobacco products of its members.

The authorized capital stock of USTC consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who shall patronize USTC. At all meetings of the stockholders, each stockholder is entitled to only one vote. No dividends are payable on the common stock. USTC has adopted a bylaw consent form in which each member agrees to take into taxable gross income patronage refunds allocated to them.

USTC is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members and patrons. The capital equity credits are used to accumulate capital as considered necessary by the Board of Directors. Capital equity credits bear no interest, have no due date, and may only be redeemed or retired at the discretion of the Board of Directors in order of issuance by years.

A summary of the Cooperative's significant accounting policies follows:

Consolidation policy: The accompanying consolidated financial statements include the accounts of USTC and its wholly-owned subsidiaries, Tobacco Growers Services, Inc. (TGS), U.S. Flue-Cured Tobacco Growers, Inc. (USFC), Premier Manufacturing, Inc. (Premier), Franchise Wholesale Co., L.L.C. (Franchise), and Big South Distribution, LLC (Big South) (collectively, the Cooperative). The results of operations of companies acquired during a year are included in the consolidated financial statements from the effective dates of the respective acquisitions. All material intercompany balances and transactions have been eliminated.

Revenue recognition: Revenues are generated primarily from leaf tobacco and tobacco products sales. Sales are recognized upon shipment of goods to the customer at which time there is transfer of the title and risk of loss to the customer.

The Cooperative's accounting policy is to include federal excise taxes in revenues and cost of sales. Such revenues and cost of sales totaled \$115,205,637 and \$109,550,597 for the years ended April 30, 2013 and 2012, respectively.

Shipping and handling costs: Shipping and handling costs are included in cost of sales.

Cash and cash equivalents: For purposes of the statement of cash flows, the Cooperative considers money market funds and all other short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents.

The Cooperative maintains cash and cash equivalents in accounts with federally insured financial institutions. At times, these balances may exceed the federally insured limits. The Federal Deposit Insurance Corporation (FDIC) provides for all deposits at FDIC insured institutions to be insured up to \$250,000 and also provided temporary full guarantee of funds held in non-interest bearing transaction accounts above the existing deposit insured limit through December 31, 2012. As of year ended April 30, 2013, some cash deposits were in excess of federally insured limits. All accounts were fully guaranteed by the FDIC at April 30, 2012. The Cooperative has not experienced any credit losses in such accounts.

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Interest-bearing obligations: Interest-bearing obligations are stated at amortized cost.

As of April 30, 2013 and 2012, all of the Cooperative's debt securities are classified as held to maturity as the Cooperative has the ability and the positive intent to hold its debt securities until maturity. No securities are classified as either available for sale or held for trading purposes. Debt securities intended to be held to maturity are stated at cost adjusted for amortization of premium and accretion of discount. Accreted discounts and amortized premiums are included in interest income.

Investment in preferred stock: The Cooperative has an investment in the preferred stock of a financial institution. The investment is recorded at cost.

Accounts receivable: Accounts receivable are recorded at net realizable value. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history, and current economic conditions. The allowance is reviewed periodically and adjusted for accounts deemed uncollectible by management. After all attempts to collect have failed, the receivable is written off against the allowance.

Inventories: Raw materials, work in process and tobacco products inventories are priced at the lower of average cost (which approximates the first-in, first-out method) or market. Leaf tobacco purchased from members under marketing agreements is stated at cost.

The Cooperative evaluates its inventory value at the end of each year to ensure that it is carried at the lower of cost or market. This evaluation includes a review of potential obsolete and slow-moving stock, based on historical product sales and forecasted sales, and an overall consolidated analysis of potential excess inventories. Events which could affect the amount of reserves for obsolete or slow moving inventories include a decrease in demand for the products due to economic conditions, price decreases by competitors on specific products or systems, or the discontinuance by a vendor. To the extent historical physical inventory results are not indicative of future results and if future events impact, either favorably or unfavorably, the salability of the Cooperative's products or its relationship with certain key vendors, the Cooperative's inventory reserves could differ significantly, resulting in either higher or lower future inventory provisions.

Property, plant, and equipment: Property, plant, and equipment are stated at cost and depreciated over their estimated useful lives using the declining balance or the straight-line method. Routine maintenance and repairs are charged to expense when incurred. When an asset is disposed of, the asset and related accumulated depreciation are written off and any gain or loss on the disposal is recognized. Major replacements and improvements are capitalized and depreciated over their estimated useful lives.

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Accounting for impairment of long-lived assets: Management periodically reviews long-lived assets to be held and used in operations for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. An impairment loss is recognized when the estimated undiscounted future cash flows from the assets are less than the carrying value of the assets. Assets to be disposed of are reported at the lower of their carrying amount or fair value less cost to sell. Management is of the opinion that the carrying amounts of its long-lived assets and identifiable intangibles do not exceed their estimated recoverable amounts.

Income taxes: Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis and net operating loss carryforwards. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The Cooperative recognizes the tax benefit from an uncertain tax position only if it is more-likely-than-not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Cooperative's policy is to recognize interest and penalties related to income taxes in its income tax provision. The Cooperative has not accrued or paid interest or penalties which were material to its results of operations for the years ended April 30, 2013 and 2012. As of April 30, 2013 and 2012, the Cooperative had no material unrecognized tax benefits and does not expect the unrecognized tax benefit to significantly change within the next 12 months. The Cooperative files in the U.S. and various state jurisdictions. With few exceptions, the Cooperative is no longer subject to income tax examinations by the U.S. federal, state or local tax authorities for years before 2009.

Pension plan: The Cooperative has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan provides benefits through mutual funds invested in common stocks and bonds. This plan was frozen effective July 31, 2010 (see Note 17).

The Cooperative is required to recognize in its balance sheet the funded status of a benefit plan measured as the difference between the fair value of plan assets and benefit obligations, recognize net of tax, the gains or losses and prior service costs or credits that arise during the period but are not recognized as components of net periodic benefit cost and measure defined benefit plan assets and obligations as of the date of the employer's balance sheet.

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Advertising costs: Advertising costs are expensed as incurred. Advertising expenses of \$1,005,670 and \$770,252 for the years ended April 30, 2013 and 2012, respectively, are included in selling, general and administrative expenses in the accompanying consolidated statements of operations.

Use of estimates: The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates include those effecting the valuation and useful lives of accounts receivable, inventory, property, plant, and equipment, those effecting the valuation of the trademarks, the valuation of the master settlement agreement grandfather exemption, and are used in determining the master settlement agreement obligation, pension benefit obligations, accrued and deferred income taxes, and litigation contingencies.

Reclassifications: Certain amounts in the 2012 consolidated financial statements have been reclassified for comparative purposes to conform with the presentation in the 2013 consolidated financial statements. The results of these reclassifications had no effect on net margin or stockholders' equity.

Recent accounting pronouncements: The FASB and other entities issued new or modifications to, or interpretations of, existing accounting guidance during the year ended April 30, 2013. The Cooperative has considered the new pronouncements that altered accounting principles generally accepted in the United States of America, and other than as disclosed in these notes to the financial statements, does not believe that any other new or modified principles will have a material impact on the Cooperative's reported financial position or operations in the near term.

Note 2. Acquisition of Premier and Franchise

During the fiscal year ended 2012, the Board of Directors of USTC approved the plan to purchase 100% of Premier and Franchise (collectively, The Premier Acquisition). The Premier Acquisition closed on October 11, 2011.

Premier was principally a sales and marketing organization selling its four proprietary brands of tobacco products throughout the United States. Premier is a Subsequent Participating Member (SPM) of the Master Settlement Agreement (MSA) and its four proprietary brands are registered with the Food and Drug Administration (FDA). Premier has a significant intangible asset, which exempts it in perpetuity from payment obligations under the MSA, except to the extent that its market share exceeds approximately 0.25% of the total number of cigarettes sold in the United States. The annual value of this MSA exemption is approximately \$20,800,000 per year in perpetuity. This intangible asset is commonly referred to in the industry as a MSA Grandfather Exemption. Franchise is an Omaha, Nebraska based captive distribution company, which serves wholesale and retail customers primarily west of the Mississippi River. Franchise also has an operation based in Las Vegas, Nevada. The Premier Acquisition substantially increased the Cooperative's presence in the United States, provided an increased sales force, and created the seventh largest MSA member tobacco products company.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 2. Acquisition of Premier and Franchise (Continued)

The authoritative guidance for business combinations requires that all business combinations be accounted for using the purchase method of accounting. The Premier Acquisition has been accounted for in accordance with FASB authoritative guidance for business combinations.

Consideration for The Premier Acquisition consisted of:

Cash	\$ 64,998,141
Note payable	50,644,000
Payoff of seller debt at closing	20,655,903
Total consideration	<u>\$ 136,298,044</u>

Note 3. Acquisition of Big South Distribution

On March 25, 2011, USFC filed with the Secretary of State of North Carolina the articles of incorporation for a new subsidiary entity, Big South. On May 1, 2011, Big South acquired the assets of Big South Wholesale, LLC (BSW) and Big South Wholesale of Virginia, LLC (BSWVA) (collectively, The Big South Distribution Acquisition).

BSW and BSWVA served wholesale and retail customers located in Georgia, Tennessee, Virginia, and South Carolina. The acquisition of BSW and BSWVA substantially expanded the Cooperative's exposure to retail customers and diversified consumer products to maximize gross profit.

The Big South Distribution Acquisition has been accounted for in accordance with the FASB authoritative guidance for business combinations.

Consideration for The Big South Distribution Acquisition consisted of:

Cash	<u>\$ 8,668,397</u>
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Note 4. Investments

The Cooperative invests in various government-guaranteed, interest-bearing obligations. As the investments are held to maturity, the Cooperative carries these investments at amortized cost. These investments are scheduled to mature at various times ranging from one week to ten years from the balance sheet date. The policy of the management of the Cooperative is to hold the investments until maturity, at which time the proceeds will be reinvested in similar securities or used to fund working capital needs or other initiatives approved by the board of directors.

The investments are classified by maturity, with short-term investments being those scheduled to mature within the next fiscal year and long-term investments being those with a scheduled maturity between one and ten years. In some instances, actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without prepayment penalties.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 4. Investments (Continued)

Investments in interest-bearing obligations at April 30, 2013 and 2012, were as follows:

		2013			
		Amortized	Gross	Gross	
		Cost	Unrealized	Unrealized	Market
			Gain	Loss	
Short-term		\$ 85,007,954	\$ 213,589	\$ (91)	\$ 85,221,452
Long-term		14,125,000	25,425	(4,400)	14,146,025
		<u>\$ 99,132,954</u>	<u>\$ 239,014</u>	<u>\$ (4,491)</u>	<u>\$ 99,367,477</u>
		2012			
		Amortized	Gross	Gross	
		Cost	Unrealized	Unrealized	Market
			Gain	Loss	
Short-term		\$ 63,870,054	\$ 482,427	\$ (1,232)	\$ 64,351,249
Long-term		113,425,377	1,388,368	(9,621)	114,804,124
		<u>\$ 177,295,431</u>	<u>\$ 1,870,795</u>	<u>\$ (10,853)</u>	<u>\$ 179,155,373</u>

The unrealized gains and losses on debt securities were primarily due to changes in interest rates. Because the increase or decline in market values of these securities is attributable to changes in interest rates and not credit quality and because the Cooperative has the ability to hold these investments until a recovery of fair value, which may not be until maturity, the Cooperative does not believe any of the unrealized losses represent other than temporary impairment based on evaluations of available evidence as of April 30, 2013.

Contractual maturities of interest-bearing obligations as of April 30, 2013, are summarized below.

	Amortized	Estimated
	Cost	Fair Value
Due in one year or less	\$ 85,007,954	\$ 85,221,452
Due after one year through five years	14,125,000	14,146,025
	<u>\$ 99,132,954</u>	<u>\$ 99,367,477</u>

As of April 30, 2013 and 2012, investments totaling \$83,440,000 and \$111,345,000 are held as collateral for the Cooperative's outstanding line of credit, respectively.

As of April 30, 2013 and 2012, investment in preferred stock consists of 999,804 shares of preferred stock in AgCarolina. Shares of preferred stock are valued at \$5 par by AgCarolina, with quarterly dividends of up to 8% in preferred stock shares, which are converted to cash and distributed to the Cooperative. These dividends are included as part of interest income on the accompanying consolidated statements of operations. Preferred stock in AgCarolina is non-voting in nature, and can be withdrawn daily, with dividends available for withdrawal upon declaration. The Cooperative records the investment on the cost method.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 5. Inventories

Inventories consisted of the following at April 30, 2013 and 2012:

	2013	2012
Ceded tobacco	\$ -	\$ 659,647
Purchased tobacco	63,390,784	59,211,683
Materials and work in process	3,232,935	4,168,535
Tobacco products	16,537,438	18,143,596
	83,161,157	82,183,461
Reserve for obsolete and slow moving inventory	(1,174,494)	(685,851)
	<u>\$ 81,986,663</u>	<u>\$ 81,497,610</u>

During the years ended April 30, 2013 and 2012, the Cooperative determined that the market value of various tobacco products had permanently declined due to obsolescence. In response, the Cooperative recorded an inventory allowance of approximately \$1,174,000 and \$686,000 as of April 30, 2013 and 2012, respectively.

As a result of the American Jobs Creation Act of 2004, ending the federal tobacco program, 83,705,300 pounds of re-dried tobacco with an estimated net realizable value of \$81,520,000 was "ceded" to the Cooperative during the fiscal year ended April 30, 2005. All of this ceded tobacco has been liquidated as of April 30, 2013.

At April 30, 2013, the Cooperative determined that the tobacco consumer products inventories were recorded at a cost greater than market value, which resulted in a write-down of approximately \$1,040,000 related to Big South. No such write-down of tobacco products inventory was necessary for the year ended April 30, 2012.

At April 30, 2012, the Cooperative determined that the purchased leaf tobacco inventories were recorded at a cost greater than market value, which resulted in a write-down of approximately \$2,354,000. No such write-down was necessary for purchased leaf tobacco inventories for the year ended April 30, 2013. Inventory write-downs are included as part of cost of sales in the accompanying consolidated statements of operations.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 6. Property, Plant, and Equipment

Property, plant, and equipment, their estimated useful lives, and related accumulated depreciation at April 30, 2013 and 2012, are summarized as follows:

	Estimated Useful Lives in Years	2013	2012
Land	-	\$ 936,589	\$ 936,589
Buildings	5 – 40	12,947,902	12,198,354
Furniture and fixtures	3 – 10	2,296,597	2,165,759
Machinery and equipment	3 – 15	42,214,792	40,358,345
Automobiles and trucks	3 – 5	998,049	945,260
Construction in progress	-	333,639	1,072,522
		59,727,568	57,676,829
Less: accumulated depreciation		(34,779,601)	(30,541,936)
		<u>\$ 24,947,967</u>	<u>\$ 27,134,893</u>

For the years ended April 30, 2013 and 2012, depreciation expense amounted to \$4,432,648 and \$4,241,447, respectively.

Note 7. Intangible Assets

Intangible assets consisted of the following as of April 30, 2013 and 2012:

	2013	2012
Trademarks	\$ 5,064,000	\$ 5,064,000
Master Settlement Agreement (MSA) – Grandfather Exemption	127,785,379	127,785,379
	<u>\$ 132,849,379</u>	<u>\$ 132,849,379</u>

By acquiring Premier and Franchise, the Cooperative is now able to produce, market, and distribute under the Shield, First Class, Ultra Buy, and Wildhorse brands. The trademarks are protected by registration with the United States Patent and Trademark Office.

In 1998, the major United States cigarette manufacturers entered into the MSA with attorneys general representing 46 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa and the Northern Marianas. The MSA became effective on November 23, 1998, when final approval was achieved in 80% of the settling jurisdictions. The MSA settled all health care cost recovery actions brought by settling jurisdictions and contains releases of various additional present and future claims. To entice other cigarette manufacturers into joining the MSA, the agreement provided that if a subsequent participating manufacturer (SPM) joined within ninety days following the MSA's "Execution Date," that SPM is exempt from making annual payments to the settling states unless their share of the national cigarette market exceeds its 1998 market share or 125% of its 1997 market share.

Premier became a signatory to the MSA in February 1999, and was granted an exemption in perpetuity from payment obligations under the MSA except to the extent that its market share exceeds approximately 0.25% of the total cigarettes sold in the United States.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 8. Accrued Expenses

The components of accrued expenses at April 30, 2013 and 2012, are summarized as follows:

	2013	2012
Accrued tobacco product related taxes	\$ 5,300,092	\$ 7,717,653
Accrued accounts payable	1,628,944	596,476
Accrued insurance	478,249	290,035
Accrued legal and regulatory fees	21,580	287,997
Accrued interest	235,487	319,118
Accrued salaries and related benefits	173,953	349,882
Accrued master settlement agreement obligation (Note 9)	415,000	941,000
	<u>\$ 8,253,305</u>	<u>\$ 10,502,161</u>

Note 9. Master Settlement Agreement Obligation

As a party to the MSA, Premier and USFC are required to make certain payments to the extent that cases of cigarettes sold exceed a specified level. The payment amounts are based generally on Premier's and USFC's relative market share and is subject to several adjustments, including inflation, United States cigarette volume, and certain other factors. At April 30, 2013 and 2012, Premier's management estimated the liability to be approximately \$415,000 and \$941,000, respectively. At April 30, 2013 and 2012, USFC's management estimated the liability to be approximately \$498,000 and \$1,631,000, respectively. The balances accrued at April 30, 2013, are expected to be paid in April 2014, along with the accumulated obligation from April 30, 2013, through the end of the 2013 calendar year. The balance accrued at April 30, 2012, was paid in April 2013, along with the accumulated obligation from April 30, 2012, through the end of the 2012 calendar year.

Note 10. Stock Redemption Payable

Cooperative membership requires participation in the crop year, which runs May 1 through April 30. Beginning in May 2004, the Board of Directors approved a plan to terminate stock ownership of members who did not enter into marketing agreements with the Cooperative for the subsequent year. The amounts are payable on demand and are classified as a current liability in the accompanying consolidated balance sheets.

Note 11. Revolving Line of Credit

The Cooperative has a \$75,000,000 line of credit that matures July 27, 2013. Interest-only payments are due monthly at the LIBOR rate plus 0.90% (1.15% as of April 30, 2013). There was no outstanding balance at April 30, 2013. The line of credit is collateralized by pledged investment securities which are required to be greater than 111.11% of the commitment amount.

During the year ended April 30, 2012, the Cooperative had a \$100,000,000 line of credit that matured on July 27, 2012. The outstanding balance was \$61,329,675 as of April 30, 2012.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 12. Note Payable

On October 11, 2011, the Cooperative entered into a \$50,644,000 promissory note payable to the Mark James Dunham Revocable Trust in connection with the acquisition of Premier and Franchise. The note is collateralized by the common stock of Premier.

Long-term debt consisted of the following as of April 30, 2013 and 2012:

	2013	2012
Note payable to Mark James Dunham Revocable Trust, payments of \$666,667 including interest at 5% are due monthly, maturing on October 11, 2016.	\$ 42,118,941	\$ 47,823,428
Less: current portion of long-term debt	(6,031,023)	(5,739,251)
	<u>\$ 36,087,918</u>	<u>\$ 42,084,177</u>

Remaining maturities of long-term debt subsequent to April 30, 2013 are as follows:

Year Ending April 30,	Amount
2014	\$ 6,031,023
2015	6,339,581
2016	6,663,926
2017	23,084,411
	<u>\$ 42,118,941</u>

Note 13. Operating Leases

During the fiscal years ended April 30, 2013 and 2012, the Cooperative entered into year-to-year operating leases, for purposes of operating tobacco marketing centers for the 2012 and 2011 crop years. Total lease expense for the centers amounted to approximately \$341,000 and \$305,000 for the years ended April 30, 2013 and 2012, respectively.

The Cooperative has noncancelable operating leases, primarily for certain equipment and vehicles, that provide for renewal options for varying periods. Commitments for minimum future lease payments, by year and in aggregate, to be paid under noncancelable operating leases with initial or remaining terms in excess of one year as of April 30, 2013, are as follows:

Year Ending April 30,	Minimum Lease Payments
2014	\$ 393,641
2015	245,744
2016	214,742
2017	101,343
	<u>\$ 955,470</u>

Total lease and rental expenses for operating leases amounted to approximately \$1,204,000 and \$1,025,000 for the years ended April 30, 2013 and 2012, respectively, and are included as a component of selling, general and other administrative expenses in the accompanying consolidated statements of operations.

Notes to Consolidated Financial Statements

Note 14. Capital Equity Credits

At April 30, 2013 and 2012, capital equity credits are comprised of \$33,838,260 and \$22,336,142 qualified certificates, respectively, and \$825,761 and \$549,957 non-qualified certificates, respectively. The patrons have consented to take into their income that portion of the gain, which is allocated and distributed as a qualified certificate as provided for in the Internal Revenue Code. Non-qualified certificates represent allocations of capital reserve net of income taxes paid by the Cooperative for crop pool settlements prior to the adoption of the by-law consent provisions in 1980. Capital equity credits are redeemable at the discretion of the board of directors.

During the year ended April 30, 2012, the Cooperative declared a patronage allocation of 2011 earnings in the amount of \$4,631,247, of which \$2,315,624 was redeemed in cash, and qualified capital equity credits were issued for \$2,315,623.

During the year ended April 30, 2012, based upon preliminary earnings and patronage information, the Cooperative declared a patronage allocation of 2012 earnings in the amount of \$2,465,879, of which \$1,479,527 was redeemed in cash, and qualified capital equity credits were issued for \$986,352.

During the year ended April 30, 2013, based upon final earnings and patronage information, the Cooperative declared an additional patronage allocation of 2012 earnings in the amount of \$739,752, of which, \$369,870 was redeemed in cash, and qualified capital equity credit certificates were issued for \$369,882.

During the year ended April 30, 2012, the Cooperative offered for redemption \$4,902,301 and \$2,316,429 of the capital equity credits from the 1967 and 1968 crop years, respectively. At April 30, 2012, the redeemable balance was included in the redeemable stockholders' equity credit balance on the accompanying consolidated balance sheet. The redeemable balance reported at the time represented all capital equity credits offered for redemption, as the redemption period had not yet closed at year-end. At the close of the redemption period, \$19,538 and \$10,772 of the capital equity credits offered from the 1967 and 1968 crop years, respectively, were actually redeemed. The remaining capital equity credits of \$4,882,763 and \$2,305,657 from the 1967 and 1968 crop years, respectively, were reclassified to capital equity credits on the accompanying consolidated statement of stockholders' equity.

During the year ended April 30, 2013, the Cooperative declared a patronage allocation of 2013 earnings in the amount of \$9,534,597, of which qualified capital equity credit certificates were issued for \$4,670,007 and \$4,864,590 is included as a stock redemption payable at year-end.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 14. Capital Equity Credits (Continued)

During the year ended April 30, 2013, the Cooperative offered an open call for redemption of the 1967 to 1972, omitting 1970, capital equity credits, with the call period closing March 29, 2013. The amounts of capital equity credits offered for redemption and called for redemption are as follows:

Crop year	Offered for redemption	Called for redemption
1967	\$ 4,882,763	\$ 102,086
1968	2,305,657	57,800
1969	3,264,470	98,888
1971	3,982,282	125,363
1972	1,922,457	66,250
	<u>\$ 16,357,629</u>	<u>\$ 450,387</u>

At April 30, 2013, the redeemable balance of equity credits, amounting to \$450,387, is included in the redeemable stockholders' equity credits balance on the consolidated balance sheets.

Note 15. Other Revenue, Net

Other revenue, net, consisted of the following for the years ended April 30, 2013 and 2012:

	2013	2012
Importer revenue	\$ 1,257,197	\$ 863,573
Rental income	83,553	81,754
Miscellaneous, net	1,047,362	262,388
	<u>\$ 2,388,112</u>	<u>\$ 1,207,715</u>

Note 16. Income Taxes

Income tax (expense) benefit consisted of the following for the years ended April 30, 2013 and 2012:

	2013		
	Current	Deferred	Total
Federal	\$ 434,369	\$ (2,231,071)	\$ (1,796,702)
State	(305,825)	(231,811)	(537,636)
	<u>\$ 128,544</u>	<u>\$ (2,462,882)</u>	<u>\$ (2,334,338)</u>
	2012		
	Current	Deferred	Total
Federal	\$ 256,836	\$ (62,004)	\$ 194,832
State	(77,524)	(16,292)	(93,816)
	<u>\$ 179,312</u>	<u>\$ (78,296)</u>	<u>\$ 101,016</u>

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 16. Income Taxes (Continued)

The actual income tax (expense) benefit for 2013 and 2012 differs from the "expected" tax (expense) benefit (computed by applying the U.S. federal corporate income tax rate of 35%) to the income before income taxes as follows:

	2013	2012
Computed "expected" tax expense	\$ (5,218,000)	\$ (4,286,000)
Change in income tax (expense) benefit resulting from:		
State income taxes, net of federal income tax benefit	(191,610)	(168,183)
State tax rate change	-	156,166
Patronage dividends	3,337,109	2,766,649
Domestic manufacturing deduction	-	1,899,356
Non-deductible expenses	(122,740)	(93,455)
Valuation allowance	5,390	(222,032)
Other, net	(144,487)	48,515
	<u>\$ (2,334,338)</u>	<u>\$ 101,016</u>

The tax effects of temporary differences that give rise to the net deferred tax liabilities at April 30, 2013 and 2012 are presented below:

	2013	2012
Deferred tax assets:		
Recognition of certain retirement costs	\$ 2,392,574	\$ 2,560,697
Net operating losses	1,887,623	2,134,327
Master settlement agreement	160,356	363,602
Allowances and reserves	189,432	114,002
Inventories	446,050	231,551
Accrued expenses	805,886	447,467
Less: valuation allowance	(1,520,642)	(1,526,032)
	<u>4,361,279</u>	<u>4,325,614</u>
Deferred tax liabilities:		
Property, plant and equipment, primarily due to differences in depreciation	4,081,893	4,677,019
Intangibles	5,299,768	2,084,746
	<u>9,381,661</u>	<u>6,761,765</u>
Net deferred tax liability	<u>\$ (5,020,382)</u>	<u>\$ (2,436,151)</u>

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 16. Income Taxes (Continued)

At April 30, 2013 and 2012, the deferred income taxes are reflected in the accompanying consolidated balance sheets as follows:

	2013	2012
Deferred income tax asset – current	<u>\$ 1,601,609</u>	<u>\$ 1,156,623</u>
Deferred income tax liability – noncurrent	<u>\$ (6,621,991)</u>	<u>\$ (3,592,774)</u>

As of April 30, 2013 and 2012, the Cooperative had North Carolina state net operating loss carryovers of approximately \$28,985,000 and \$29,439,000, respectively. The losses originate from the operations of USFC. The state net operating loss carryovers begin to expire in 2024. A valuation allowance is required to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all the evidence, both positive and negative, management has determined that a \$1,520,642 and \$1,526,032 valuation allowance at April 30, 2013 and 2012, respectively, is necessary to reduce the deferred tax asset related to the state net operating losses that will not be realized. The change in the valuation allowance for 2013 and 2012 was \$(5,390) and \$222,032, respectively.

Note 17. Retirement Plans

Defined Benefit Pension Plan: The Cooperative sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Cooperative were eligible to participate after one year of service, which is the completion of 1,000 or more hours of service within a period in which the employee is employed for twelve consecutive months. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service. On May 31, 2010, the Cooperative's Board of Directors approved a Certificate of Resolution to freeze benefits after July 31, 2010.

The Cooperative's funding policy requires a contribution in the amount necessary to satisfy the minimum required contributions under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), subject to the Cooperative's long-term funding strategy. The Cooperative's funding policy is to contribute funds to the trust for the plan as necessary to provide for current service and for any unfunded projected benefit obligation over a reasonable period. To the extent that these requirements are fully covered by assets in the trust, the Cooperative may elect not to make a contribution in a particular year. The Cooperative made a contribution of \$145,020 to the plan for the year ended April 30, 2013. The Cooperative did not make any contributions to the plan for the year ended April 30, 2012. The Cooperative anticipates making contributions of \$89,391 to the plan for the year ended April 30, 2014.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Retirement Plans (Continued)

The following table sets forth the plan's funded status and amounts recognized in the Cooperative's consolidated balance sheets at April 30, 2013 and 2012, as follows:

	Pension Benefits	
	2013	2012
Change in projected benefit obligation:		
Projected benefit obligation – beginning of year	\$ 22,735,536	\$ 19,775,497
Service cost	-	-
Interest cost	938,189	1,055,997
Actuarial loss	783,863	3,168,791
Curtailments	-	-
Benefit payments	(1,276,811)	(1,264,749)
Projected benefit obligation – end of year	23,180,777	22,735,536
Change in plan assets:		
Fair value of plan assets – beginning of year	16,298,466	18,342,065
Actual return on plan assets	2,003,600	(778,850)
Employer contributions	145,020	-
Participant contributions	-	-
Benefit payments	(1,276,811)	(1,264,749)
Fair value of plan assets – end of year	17,170,275	16,298,466
Funded status – end of year, and noncurrent liability recognized in the consolidated balance sheets	\$ (6,010,502)	\$ (6,437,070)

The accumulated benefit obligation as of April 30, 2013 and 2012 was \$23,180,777 and \$22,735,536, respectively.

Amounts recognized in accumulated other comprehensive loss as of April 30, 2013 and 2012, not yet reflected in net periodic benefit cost, consist of:

	Pension Benefits	
	2013	2012
Net loss	\$ 6,686,136	\$ 6,996,839
Less: deferred tax benefit	(2,654,396)	(2,775,745)
	\$ 4,031,740	\$ 4,219,094

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Retirement Plans (Continued)

The net periodic (benefit) cost of the plan was \$29,447 and (\$354,147) for 2013 and 2012, respectively. These amounts included the following reclassification adjustments of other comprehensive income:

	2013	2012
Amortization of net loss	\$ 353,221	\$ -

The estimated actuarial gains and losses that will be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2014 is \$330,000.

The following table provides the weighted average actuarial assumptions at April 30, 2013 and 2012:

	Pension Benefits	
	2013	2012
Weighted-average assumptions used to determine benefit obligations as of April 30:		
Discount rate	4.00%	4.25%
Weighted-average assumptions used to determine net periodic benefit cost for years ended April 30:		
Discount rate	4.25%	5.50%
Expected long-term return on plan assets	8.00%	8.00%

Management determines the expected return on plan assets based on historical performance of the plan's investments. Management compares their expected rate of return with other companies to ensure that it is in line with broad market expectations.

At April 30, 2013, the plan held investments in fourteen mutual funds, administered by six fund families. At April 30, 2012, the plan held investments in fourteen mutual funds, administered by five fund families. The various mutual funds invest in publicly traded securities covering a wide range of investment opportunities. The various mutual funds are valued at fair market value based on quoted market prices.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Retirement Plans (Continued)

The fair values of the Cooperative's pension plan assets at April 30, 2013 and 2012, respectively, are as follows:

2013				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurement 4/30/2013
Shares of registered investment companies (mutual funds)				
Large cap equities	\$ 5,306,610	\$ -	\$ -	\$ 5,306,610
Mid-cap equities	1,495,409	-	-	1,495,409
Small cap equities	638,352	-	-	638,352
International equities	4,032,986	-	-	4,032,986
Fixed income securities	5,580,051	-	-	5,580,051
Money market account	-	116,867	-	116,867
Total	\$ 17,053,408	\$ 116,867	\$ -	\$ 17,170,275
2012				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurement 4/30/2012
Shares of registered investment companies (mutual funds)				
Large cap equities	\$ 6,495,395	\$ -	\$ -	\$ 6,495,395
Mid-cap equities	1,269,142	-	-	1,269,142
Small cap equities	537,807	-	-	537,807
International equities	2,305,762	-	-	2,305,762
Fixed income securities	5,678,750	-	-	5,678,750
Money market account	-	11,610	-	11,610
Total	\$ 16,286,856	\$ 11,610	\$ -	\$ 16,298,466

The investment policy guidelines outline risk tolerance, goals, permissible and prohibited investments, and target investment allocations.

Risk tolerance as defined by the policy guidelines identify that historical capital market returns allow for the assumption of short run investment risks in favor of greater returns provided by capital markets over the longer term.

Permissible investments as defined by the policy guidelines are individual securities, separate accounts, mutual funds, trusts, private placements, partnerships, commingled funds, pooled funds, contracts and other legally constituted means of buying and selling investments including domestic equities, fixed income investments, cash equivalents, international equities, and real estate.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Retirement Plans (Continued)

Prohibited investments as defined by the policy guidelines are short sales, margin purchases, securities lending, borrowings of plan assets, purchase of letter stock (restricted stock), options, futures, loans, investments requiring pledging of plan assets as collateral and any other investment not outlined as a permissible investment under the policy guidelines unless authorized in writing by the committee.

The current investment policy target mix is as follows:

Large Cap Equities	31%
Mid-Cap Equities	9%
Small Cap Equities	4%
International Equities	23%
Fixed Income Securities	33%

Schedule of benefits expected to be paid in each of the next five fiscal years, and in the aggregate for the five fiscal years thereafter:

Year Ending April 30,	Amount
2014	\$ 1,299,371
2015	1,342,484
2016	1,348,306
2017	1,360,854
2018	1,392,342
5 years thereafter	6,841,645

Defined Contribution 401(k) Plan: The Cooperative had two 401(k) plans. One plan included employees of USTC, TGS, USFC and Big South (the USTC plan). The other plan included employees of Premier and Franchise (the Premier plan). The Premier plan was acquired in conjunction with The Premier Acquisition. During the 2012 plan year, the Premier plan was merged into the USTC plan.

The plan allows eligible employees to defer a portion of their compensation up to the maximum dollar amount which is set by law (\$17,000 in 2012 with catch-up contributions of \$5,500 for age 50 or older). The plan also provides a safe harbor nonelective contribution of 3% to eligible employees. The nonelective safe harbor contributions made to the plan during the years ended April 30, 2013 and 2012, were \$265,242 and \$238,115, respectively.

The Cooperative may make discretionary matching contributions to the plans equal to a percentage of the elective contributions made by the participants to the plans. The Cooperative may also make discretionary profit-sharing contributions to the plans at the end of each respective plan year. The Board of Directors of the Cooperative determines both the discretionary matching and profit-sharing contributions. The Cooperative made no discretionary matching or profit-sharing contributions to the plan for the years ended April 30, 2013 and 2012.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 18. Market Centers

The Cooperative provided four market facilities, one in Virginia, North Carolina, South Carolina, and Georgia. The cost of these market facilities was approximately \$2,600,000 annually, all of which was capitalized into the 2012 and 2011 crop inventory.

Note 19. Fair Value Measurements

The carrying value of cash and cash equivalents, accounts receivable, accrued interest receivable, income taxes receivable, accounts payable, accrued expenses, redeemable stockholders' equity credits, stock redemption payable, revolving line of credit, income taxes payable, and customer deposits approximates fair value due to the short-term maturity of these financial instruments. The fair value of the investment in interest-bearing obligations exceeded the carrying value by approximately \$235,000 and \$1,860,000 at April 30, 2013 and 2012, respectively. The fair value of the investment in preferred stock was not estimated by management, as there were no identified events or changes in circumstances identified by management that may have a significant adverse effect on the fair value of the investment, and it was not practicable to estimate the fair value.

Management performed a present value analysis of the note payable by discounting the future cash flows at April 30, 2013, and determined the difference between the book value of the note payable and the fair value was deemed immaterial due to the fact that the interest rate on the Cooperative's note payable approximated the market rate on debt with similar risk and maturities. Based upon the analysis, management concluded that the carrying value of the Cooperative's fixed rate note payable approximates fair value.

Nonfinancial instruments, such as inventories and property and equipment, are excluded from the fair value disclosures.

Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Fair value measurements are not adjusted for transaction costs. There is a three-level valuation hierarchy for disclosure of fair value measurements. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs. The three levels are defined as follows:

Level Input	Input Definition
Level I	Quoted prices in active markets for identical assets or liabilities.
Level II	Observable market-based inputs or unobservable inputs that are corroborated by market data.
Level III	Unobservable inputs are not corroborated by market data.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 20. Contingencies

Litigation

The Cooperative is currently engaged in several lawsuits.

Lewis vs. Flue-Cured Tobacco, filed in 2005, alleges the fundamental purpose for which the Cooperative was formed, marketing of members' tobacco under the federal tobacco loan program, is no longer valid since the U.S. Congress terminated the Tobacco Loan Program. The suit alleges that since the fundamental purpose is no longer being served, the Cooperative should be judicially dissolved and the assets of the Cooperative distributed to all members. As part of the suit, plaintiffs allege the Cooperative improperly cancelled their stock in the Cooperative.

Fisher vs. Flue-Cured Tobacco, filed in 2005, seeks to have a court imposed "constructive trust" on the assets of the Cooperative for the benefit of the owners. The suit alleges various improprieties by the Board of Directors in its handling of producer and purchaser assessments held by the Commodity Credit Corporation in conjunction with the Tobacco Loan Program, the disenfranchisement of members, and the reduction of the number of members in the Cooperative illegally.

On May 4, 2009, the plaintiffs in the Lewis case and Fisher case filed a motion for leave to be allowed to file a second amended and consolidated complaint. The consolidated complaint seeks certification of a class of all present and former shareholders/members of the Cooperative from 1946 through 2004, imposition of a constructive trust, declaration of membership rights, appointment of a receiver, dissolution of the Cooperative and the distribution of assets, and compensatory, special, treble and punitive damages, amongst other claims.

On June 21, 2013, the court granted class certification. The Cooperative is considering its options for an immediate appeal.

California Board of Equalization (BOE) Dispute, during July 2009, the state of California performed a Cigarette and Tobacco Products Tax audit of Franchise. During the audit period (June 2006 through June 2009), Franchise had been routinely selling both stamped and unstamped product into California. At the conclusion of the audit, Franchise was notified that California statutes preclude Franchise from shipping unstamped product into California which was in contradiction of guidance the State of California had previously provided Franchise.

Teresa M. Speaks, et al vs. United States Tobacco Cooperative Inc., on June 20, 2012, the Cooperative received a demand letter on behalf of various alleged members of the Cooperative demanding that the Cooperative allocate assets and distribute assets "beyond those funds that are reasonably necessary to fund the current or projected continued business activities of Stabilization" or, alternatively, that the Cooperative "dissolve and distribute all of its assets to the members according to the year they were earned and the patronage during that year." The Cooperative responded and rejected plaintiffs' demand.

On October 31, 2012, these same members filed a Complaint in the United States District Court for the Eastern District of North Carolina, Civil Action No., 7:23-CV-00315, styled Teresa M Speaks, et al. v. United States Tobacco Cooperative Inc., attempting to assert a class action on behalf of all members or shareholders of the Cooperative.

The Cooperative is also party to legal actions arising in the ordinary course of its business. Management asserted that these cases are without merit and will be defended vigorously. While the results cannot be predicted with certainty, management believes it is not possible to form an assessment of potential outcome or an estimate of liability, if any, and that the final outcome of such legal actions will not have a material adverse effect on the Cooperative's financial position.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 21. Business Concentrations

At April 30, 2013 and 2012, 85% of accounts receivable represents open credit shipments with a buyer in mainland China.

For the year ended April 30, 2013, a major customer exceeding 10% of net sales accounted for approximately 23% of net sales.

Customer	Net Sales	Percentage of Net Sales
A	\$ 68,767,876	23%

For the year ended April 30, 2012, a major customer exceeding 10% of net sales accounted for approximately 16% of net sales.

Customer	Net Sales	Percentage of Net Sales
A	\$ 45,580,079	16%

Note 22. Subsequent Events

Management evaluated and noted no additional subsequent events requiring recognition or disclosure through July 11, 2013, which is the date the financial statements were available to be issued.



**Independent Auditor's Report
on the Supplementary Information**

To the Board of Directors
U.S. Tobacco Cooperative Inc.
Raleigh, North Carolina

We have audited the consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries as of and for the years ended April 30, 2013 and 2012, and have issued our report thereon which contains an unmodified opinion on those consolidated financial statements. See page 1. Our audits were conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The supplementary information is presented for purposes of additional analysis and is not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audits of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

McGladrey LLP

Orlando, Florida
July 11, 2013

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidating Balance Sheet Information

April 30, 2013

Assets	U.S. Tobacco Cooperative Inc.	Tobacco Growers Services, Inc.	U.S. Flue- Cured Tobacco Growers, Inc.	Premier Manufacturing, Inc.	Franchise Wholesale Co., L.L.C.	Big South Distribution, LLC	Eliminations	Consolidated
Current Assets								
Cash and cash equivalents	\$ 1,183,769	\$ 200	\$ (64,566)	\$ 1,486,942	\$ 1,082,828	\$ 5,502	\$ -	\$ 3,694,675
Investment in interest-bearing obligations	85,007,954	-	-	-	-	-	-	85,007,954
Investment in preferred stock	4,999,020	-	-	-	-	-	-	4,999,020
Accounts receivable, net	74,300,251	52,504	2,988,958	6,942,767	1,625,318	1,452,224	(7,200,545)	80,161,477
Accrued interest receivable	275,170	-	-	-	-	-	-	275,170
Inventories, net	21,799,722	-	46,967,409	2,353,340	4,531,175	7,871,329	(1,536,312)	81,986,663
Prepaid expenses and other assets	112,864	-	63,068	175,428	407,578	44,763	-	803,701
Income taxes receivable	997,899	-	-	-	-	-	-	997,899
Deferred tax assets	579,716	-	842,999	174,117	36,317	(31,540)	-	1,601,609
Due to/from intercompany	36,164,307	1,780,567	(54,915,526)	17,089,156	393,725	(512,229)	-	-
Total current assets	225,420,672	1,833,271	(4,117,658)	28,221,750	8,076,941	8,830,049	(8,736,857)	259,528,168
Investment in Interest-Bearing Obligations	14,125,000	-	-	-	-	-	-	14,125,000
Investment in Subsidiaries	172,280,865	-	8,753,181	-	-	-	(181,034,046)	-
Property, Plant, and Equipment, net	1,733,852	464,413	22,035,540	146,942	208,032	359,188	-	24,947,967
Intangible Assets	-	-	-	132,849,379	-	-	-	132,849,379
Total assets	\$ 413,560,389	\$ 2,297,684	\$ 26,671,063	\$ 161,218,071	\$ 8,284,973	\$ 9,189,237	\$ (189,770,903)	\$ 431,450,514
Liabilities and Stockholders' Equity								
Current Liabilities								
Accounts payable	\$ 5,728,266	\$ 340	\$ 237,635	\$ 973,563	\$ 6,033,272	\$ 513,030	\$ (7,200,545)	\$ 6,285,561
Accrued expenses	658,856	-	5,174,322	790,256	1,604,105	25,766	-	8,253,305
Current portion of note payable	6,031,023	-	-	-	-	-	-	6,031,023
Redeemable stockholders' equity credits	450,387	-	-	-	-	-	-	450,387
Stock redemption payable	8,887,728	-	-	-	-	-	-	8,887,728
Customer deposits	-	-	2,246,166	-	-	-	-	2,246,166
Total current liabilities	21,756,260	340	7,658,123	1,763,819	7,637,377	538,796	(7,200,545)	32,154,170
Deferred Income Taxes	(1,540,882)	13,616	3,008,188	5,251,149	(7,340)	(102,740)	-	6,621,991
Pension Benefits	5,144,848	-	865,654	-	-	-	-	6,010,502
Note Payable, less current portion	36,087,918	-	-	-	-	-	-	36,087,918
Total liabilities	61,448,144	13,956	11,531,965	7,014,968	7,630,037	436,056	(7,200,545)	80,874,581
Commitments and Contingencies								
Stockholders' Equity								
Common stock	4,515	250,000	100,000	-	-	-	(350,000)	4,515
Additional paid-in capital	110,753,161	-	25,700,000	-	-	-	(25,700,000)	110,753,161
Accumulated other comprehensive loss	(4,031,740)	-	-	-	-	-	-	(4,031,740)
Contributed capital	81,520,000	-	-	135,242,569	1,055,474	8,668,397	(144,966,440)	81,520,000
Capital equity credits:								
Qualified	33,838,260	-	-	-	-	-	-	33,838,260
Non-qualified	825,761	-	-	-	-	-	-	825,761
Retained earnings	129,202,288	2,033,728	(10,660,902)	18,960,534	(400,538)	84,784	(11,553,918)	127,665,976
Total stockholders' equity	352,112,245	2,283,728	15,139,098	154,203,103	654,936	8,753,181	(182,570,358)	350,575,933
Total liabilities and stockholders' equity	\$ 413,560,389	\$ 2,297,684	\$ 26,671,063	\$ 161,218,071	\$ 8,284,973	\$ 9,189,237	\$ (189,770,903)	\$ 431,450,514

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidating Statement of Operations Information
Year Ended April 30, 2013

	U.S. Tobacco Cooperative Inc.	Tobacco Growers Services, Inc.	U.S. Flue- Cured Tobacco Growers, Inc.	Premier Manufacturing, Inc.	Franchise Wholesale Co., L.L.C.	Big South Distribution, LLC	Eliminations	Consolidated
Revenue	\$ 136,046,316	\$ 1,013,116	\$ 112,838,458	\$ 78,298,883	\$ 58,034,530	\$ 59,252,193	\$ (145,224,136)	\$ 300,259,360
Cost of sales	123,394,239	1,194,641	108,065,043	55,950,360	55,206,429	57,719,868	(143,870,824)	257,659,756
Gross margin	12,652,077	(181,525)	4,773,415	22,348,523	2,828,101	1,532,325	(1,353,312)	42,599,604
Expenses:								
Selling, general and administrative expenses	14,206,262	-	4,539,183	5,222,233	3,389,446	2,438,008	(216,000)	29,579,132
Operating margin	(1,554,185)	(181,525)	234,232	17,126,290	(561,345)	(905,683)	(1,137,312)	13,020,472
Other income (expenses):								
Other revenue, net	2,371,052	20,080	129,187	243,559	17,402	5,832	(399,000)	2,388,112
Interest expense	(2,887,013)	-	-	-	(47)	-	-	(2,887,060)
Interest income	2,149,883	-	-	8,155	3,457	-	-	2,161,495
Gain (loss) on sale of assets	225,095	1,239	2,451	(11,060)	-	6,429	-	224,154
	1,859,017	21,319	131,638	240,654	20,812	12,261	(399,000)	1,886,701
Margin (loss) before income taxes	304,832	(160,206)	365,870	17,366,944	(540,533)	(893,422)	(1,536,312)	14,907,173
Income tax benefit (expense)	638,332	89,170	109,438	(3,754,760)	336,842	246,640	-	(2,334,338)
Net margin (loss)	\$ 943,164	\$ (71,036)	\$ 475,308	\$ 13,612,184	\$ (203,691)	\$ (646,782)	\$ (1,536,312)	\$ 12,572,835

U.S. Tobacco Cooperative Inc. and Subsidiaries

Earnings Information – Parent Cooperative Years Ended April 30, 2013 and 2012

	2013	2012
Revenue:		
Sales – redried purchased tobacco	\$ 135,189,042	\$ 89,297,788
Sales – ceded tobacco	857,274	3,565,497
Net revenue	136,046,316	92,863,285
Costs and expenses:		
Redried purchased	123,005,022	80,146,582
Ceded tobacco	389,217	3,565,497
Total cost of sales	123,394,239	83,712,079
Gross margin	12,652,077	9,151,206
Selling, general and administrative expenses:		
Warehouse operations and other tobacco selling cost	6,075,241	2,734,804
Salaries, wages, and benefits	4,025,967	3,117,402
Professional fees	1,614,450	1,339,377
Promotional and public relations	734,147	636,990
Travel expense	403,449	403,885
Depreciation	268,194	253,302
Director fees and expense	258,321	279,577
Office supplies and expense	185,332	179,035
Repairs and maintenance	161,362	140,994
Postage and telephone expense	143,815	141,924
Insurance	135,919	142,749
Heat, lights and water	72,356	69,366
Taxes and licenses	56,364	55,666
Automobile and truck expense	53,738	57,225
Member relations	17,607	18,176
Total selling, general and administrative expenses, net	14,206,262	9,570,472
Operating loss	(1,554,185)	(419,266)

(Continued)

U.S. Tobacco Cooperative Inc. and Subsidiaries

Earnings Information – Parent Cooperative (Continued)
Years Ended April 30, 2013 and 2012

	2013	2012
Other income (expenses):		
Interest expense	(2,887,013)	(2,296,130)
Interest income	2,149,883	3,622,072
Management fees	1,032,012	1,077,000
Importer revenue	1,257,197	863,573
Gain (loss) on the sale of assets	225,095	3,236
Rent	81,843	80,234
Other income	-	11,661
	1,859,017	3,361,646
Margin before income taxes	304,832	2,942,380
Income tax benefit	638,332	3,918,163
Net margin	\$ 943,164	\$ 6,860,543

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Earnings Information – Tobacco Growers Services, Inc.
Years Ended April 30, 2013 and 2012**

	2013	2012
Storage income	<u>\$ 1,013,116</u>	<u>\$ 1,086,479</u>
Costs and expenses:		
Salaries, wages, and benefits	725,286	644,845
Depreciation	105,643	99,965
Taxes and licenses	60,755	69,548
Insurance	29,760	32,429
Equipment rental	19,829	57,479
Gasoline and oil	33,102	39,732
Heat, lights and water	20,406	19,969
Repairs and maintenance – building	23,140	28,969
Tow motor expense	24,482	22,288
Operating supplies	21,478	28,440
Office supplies and expense	14,583	14,254
Telephone	5,354	5,790
Repairs and maintenance – equipment	25,162	9,236
Other	85,661	136,644
Total cost of sales	<u>1,194,641</u>	<u>1,209,588</u>
Gross loss	<u>(181,525)</u>	<u>(123,109)</u>
Other income (expense), net		
Management fees	39,000	39,000
Gain on sale of assets	1,239	2,500
Director fee and expense	(8,775)	(9,000)
Legal and accounting expense	(11,855)	(11,880)
Other income	1,710	100,782
	<u>21,319</u>	<u>121,402</u>
Loss before income taxes	<u>(160,206)</u>	<u>(1,707)</u>
Income tax (expense) benefit	89,170	(11,759)
Net loss	<u><u>\$ (71,036)</u></u>	<u><u>\$ (13,466)</u></u>

U.S. Tobacco Cooperative Inc. and Subsidiaries

Earnings Information – U.S. Flue-Cured Tobacco Growers, Inc. Years Ended April 30, 2013 and 2012

	2013	2012
Revenue:		
Tobacco product sales	\$ 41,091,405	\$ 46,511,904
Federal excise taxes	53,303,669	58,557,512
Processing and redrying	10,254,737	8,197,996
Blended rag sales	8,188,647	12,814,734
	112,838,458	126,082,146
Costs and expenses:		
Cost of sales	54,761,374	63,081,721
Federal excise taxes	53,303,669	58,557,512
Total cost of sales	108,065,043	121,639,233
Gross margin	4,773,415	4,442,913
Selling, general and administrative expenses:		
Salaries, wages, and benefits	2,169,345	2,105,872
Marketing promotion	711,243	663,451
Depreciation and amortization	91,063	186,802
Travel expense	185,875	246,423
Director fees	218,479	217,680
Professional fees	149,971	211,807
Taxes and licenses	106,670	127,230
Office supplies and expense	149,684	141,260
Software and training	75,011	76,735
Heat, lights and water	147,420	135,794
Telephone	47,096	52,201
Repairs and maintenance – equipment	120,634	59,760
Insurance	63,472	32,766
Repairs and maintenance – building	168,830	22,507
Security services	26,257	30,251
Other	108,133	113,788
Total selling, general and administrative expenses	4,539,183	4,424,327
Operating margin	234,232	18,586
Other income, net	131,638	109,396
Margin before income taxes	365,870	127,982
Income tax (expense) benefit	109,438	(51,596)
Net margin	\$ 475,308	\$ 76,386

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Earnings Information – Premier Manufacturing, Inc.
Year Ended April 30, 2013 and
October 11, 2011, date of acquisition, through April 30, 2012**

	2013	2012
Revenue:		
Tobacco product sales	\$ 40,702,373	\$ 22,169,215
Federal excise taxes	37,596,510	21,932,203
	<u>78,298,883</u>	<u>44,101,418</u>
Costs and expenses:		
Cost of sales	18,353,850	10,607,496
Federal excise taxes	37,596,510	21,932,203
Total cost of sales	<u>55,950,360</u>	<u>32,539,699</u>
Gross margin	<u>22,348,523</u>	<u>11,561,719</u>
Selling, general and administrative expenses:		
Salaries, wages, and benefits	3,185,244	1,840,875
Travel expense	494,932	268,700
Professional fees	218,509	166,803
Rent	271,113	143,307
Promotional and public relations	185,347	135,744
Postage and telephone expense	210,237	121,336
Insurance	72,899	58,693
Taxes and licenses	183,014	64,971
Auto and truck expense	119,628	73,845
Office supplies and expense	51,041	35,784
Depreciation and amortization	34,427	22,241
Telephone	57,945	35,315
Other	137,897	56,004
Total selling, general and administrative expenses	<u>5,222,233</u>	<u>3,023,618</u>
Operating margin	<u>17,126,290</u>	<u>8,538,101</u>

(Continued)

U.S. Tobacco Cooperative Inc. and Subsidiaries

Earnings Information – Premier Manufacturing, Inc. (Continued)

Year Ended April 30, 2013 and

October 11, 2011, date of acquisition, through April 30, 2012

	2013	2012
Other income (expense), net		
Management fees	243,559	132,274
Loss on sale of assets	(11,060)	(3,955)
Other income	8,155	62,732
	<u>240,654</u>	<u>191,051</u>
Margin before income taxes	17,366,944	8,729,152
Income tax expense	(3,754,760)	(3,380,803)
Net margin	\$ 13,612,184	\$ 5,348,349

U.S. Tobacco Cooperative Inc. and Subsidiaries

Earnings Information – Franchise Wholesale Co., L.L.C. Year Ended April 30, 2013 and October 11, 2011, date of acquisition, through April 30, 2012

	2013	2012
Revenue:		
Tobacco product sales	\$ 43,501,357	\$ 23,639,890
State excise taxes	14,533,173	7,816,365
	58,034,530	31,456,255
Costs and expenses:		
Cost of sales	40,673,256	22,171,981
State excise taxes	14,533,173	7,816,365
Total cost of sales	55,206,429	29,988,346
Gross margin	2,828,101	1,467,909
Selling, general and administrative expenses:		
Salaries, wages, and benefits	1,967,647	1,035,867
Professional fees	242,490	120,512
Rent	218,252	123,304
Travel expense	178,797	82,432
Depreciation and amortization	102,994	47,894
Promotional and public relations	98,277	22,642
Office supplies and expense	88,525	45,960
Auto and truck expense	51,118	21,911
Insurance	50,856	57,908
Taxes and licenses	47,044	41,458
Telephone	36,309	21,586
Utilities	27,402	14,018
Bad debt	11,571	5,000
Postage and telephone expense	5,975	3,312
Security services	2,203	2,999
Other	259,986	151,691
Total selling, general and administrative expenses	3,389,446	1,798,494
Operating loss	(561,345)	(330,585)
Other income (expense), net		
Management fees	17,402	10,259
Other income	3,410	2,291
	20,812	12,550
Loss before income taxes	(540,533)	(318,035)
Income tax benefit	336,842	121,188
Net loss	\$ (203,691)	\$ (196,847)

U.S. Tobacco Cooperative Inc. and Subsidiaries

Earnings Information – Big South Distribution, LLC
Years Ended April 30, 2013 and 2012

	2013	2012
Revenue:		
Tobacco product sales	\$ 34,946,735	\$ 38,398,661
Federal and state excise taxes	24,305,458	29,060,882
Other	-	4,535,834
	<u>59,252,193</u>	<u>71,995,377</u>
Costs and expenses:		
Cost of sales	33,414,410	39,232,777
Federal and state excise taxes	24,305,458	29,060,882
Total cost of sales	<u>57,719,868</u>	<u>68,293,659</u>
Gross margin	<u>1,532,325</u>	<u>3,701,718</u>
Selling, general and administrative expenses:		
Salaries, wages, and benefits	1,015,817	1,496,491
Rent	156,825	137,098
Travel expense	151,172	196,445
Depreciation and amortization	142,070	157,491
Insurance	123,177	164,612
Taxes and licenses	45,196	24,337
Auto and truck expense	41,905	53,744
Professional fees	473,764	34,031
Office supplies and expense	35,911	36,255
Utilities	31,916	23,588
Promotional and public relations	27,499	31,383
Telephone	20,271	19,340
Bad Debts	17,216	-
Repairs and maintenance	13,865	11,876
Other	141,404	129,894
Total selling, general and administrative expenses	<u>2,438,008</u>	<u>2,516,585</u>
Operating margin (loss)	<u>(905,683)</u>	<u>1,185,133</u>
Other income, net	12,261	40,610
Margin (loss) before income taxes	<u>(893,422)</u>	<u>1,225,743</u>
Income tax benefit (expense)	246,640	(494,177)
Net margin (loss)	<u>\$ (646,782)</u>	<u>\$ 731,566</u>

EXHIBIT X

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Financial Report
April 30, 2014 and 2013



Assurance ■ Tax ■ Consulting

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Independent Auditor's Report

To the Board of Directors
U.S. Tobacco Cooperative Inc.
Raleigh, North Carolina

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries, which comprise the consolidated balance sheets as of April 30, 2014 and 2013, and the related consolidated statements of operations, comprehensive income, stockholders' equity and cash flows for the years then ended and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of U.S. Tobacco Cooperative Inc. and Subsidiaries as of April 30, 2014 and 2013, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

McGladrey LLP

Orlando, Florida
July 1, 2014

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Balance Sheets
April 30, 2014 and 2013

Assets	2014	2013
Current Assets		
Cash and cash equivalents	\$ 16,487,501	\$ 3,694,675
Investment in interest-bearing obligations	22,610,946	85,007,954
Investment in preferred stock	-	4,999,020
Accounts receivable, net	70,819,949	78,558,317
Accrued interest receivable	565,875	275,170
Inventories, net	94,625,476	81,986,663
Prepaid expenses and other assets	833,029	803,701
Income taxes receivable	243,996	997,899
Deferred tax assets	1,973,123	1,601,609
Total current assets	208,159,895	257,925,008
Investment in Interest-Bearing Obligations	100,975,777	14,125,000
Property, Plant, and Equipment, net	24,633,788	24,947,967
Intangible Assets	132,849,379	132,849,379
Other Assets	1,735,767	1,603,160
Total assets	\$ 468,354,606	\$ 431,450,514

(Continued)

Liabilities and Stockholders' Equity	2014	2013
Current Liabilities		
Accounts payable	\$ 2,029,025	\$ 2,221,380
Accrued expenses	10,228,920	12,317,486
Current portion of long-term debt	8,000,000	6,031,023
Redeemable stockholders' equity credits	-	450,385
Stock redemption and patronage payable	9,165,663	8,887,730
Customer deposits	1,960,444	2,246,166
Total current liabilities	31,384,052	32,154,170
Deferred Income Taxes	9,930,071	6,621,991
Pension Benefits	4,568,537	6,010,502
Revolving Lines of Credit	34,900,000	-
Long-Term Debt, less current portion	28,000,000	36,087,918
Total liabilities	108,782,660	80,874,581
Commitments and Contingencies		
Stockholders' Equity		
Common stock	4,760	4,515
Additional paid-in capital	110,753,161	110,753,161
Accumulated other comprehensive loss	(2,941,592)	(4,031,740)
Contributed capital	81,520,000	81,520,000
Capital equity credits:		
Qualified	38,513,321	33,838,260
Non-qualified	825,761	825,761
Retained earnings	130,896,535	127,665,976
Total stockholders' equity	359,571,946	350,575,933
Total liabilities and stockholders' equity	\$ 468,354,606	\$ 431,450,514

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Statements of Operations
Years Ended April 30, 2014 and 2013

	2014	2013
Revenue	\$ 294,577,926	\$ 300,259,360
Cost of sales	250,362,048	255,992,867
Gross margin	44,215,878	44,266,493
Expenses:		
Selling, general and administrative expenses	28,281,262	31,246,021
Operating margin	15,934,616	13,020,472
Other income (expense):		
Other revenue, net	944,806	2,388,112
Interest expense	(1,877,416)	(2,887,060)
Interest income, net	934,760	2,161,495
(Loss) gain on sale of assets	(73,822)	224,154
	(71,672)	1,886,701
Margin before income taxes	15,862,944	14,907,173
Income tax expense	(2,814,756)	(2,334,338)
Net margin	\$ 13,048,188	\$ 12,572,835
Distribution of net margin:		
Paid or payable in cash	\$ 5,142,568	\$ 5,234,460
Issuance of qualified capital equity credits	4,675,061	5,039,889
Unallocated margin retained	3,230,559	2,298,486
	\$ 13,048,188	\$ 12,572,835

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Consolidated Statements of Comprehensive Income
Years Ended April 30, 2014 and 2013**

	2014	2013
Net margin	<u>\$ 13,048,188</u>	<u>\$ 12,572,835</u>
Unrealized gain on investments	328,047	-
Net gain (loss) on pension	963,880	(42,518)
Amortization of net loss on pension	<u>372,448</u>	<u>353,221</u>
	1,664,375	310,703
Less: deferred taxes	<u>(574,227)</u>	<u>(123,349)</u>
Net gain	<u>1,090,148</u>	<u>187,354</u>
Comprehensive income	<u>\$ 14,138,336</u>	<u>\$ 12,760,189</u>

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Consolidated Statements of Stockholders' Equity
Years Ended April 30, 2014 and 2013**

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive (Loss)	Contributed Capital	Capital Equity Credits		Retained Earnings	Total
	Shares	Amount				Qualified	Non-qualified		
Balances, April 30, 2012	907	\$ 4,535	\$ 110,753,161	\$ (4,219,094)	\$ 81,520,000	\$ 22,336,142	\$ 549,957	\$ 125,367,490	\$ 336,312,191
Net margin	-	-	-	-	-	-	-	12,572,835	12,572,835
Net income on pension plan	-	-	-	187,354	-	-	-	-	187,354
Additional patronage paid on 2012 earnings (see Note 13):									
Issuance of qualified capital equity credits	-	-	-	-	-	369,882	-	(369,882)	-
Distributable in cash	-	-	-	-	-	-	-	(369,870)	(369,870)
Patronage declared on 2013 earnings (see Note 13):									
Issuance of qualified capital equity credits	-	-	-	-	-	4,670,007	-	(4,670,007)	-
Distributable in cash	-	-	-	-	-	-	-	(4,864,590)	(4,864,590)
1967 and 1968 capital equity credits available for redemption, not redeemed by stockholders during 2012 (see Note 13):	-	-	-	-	-	6,912,616	275,804	-	7,188,420
1967 to 1972, omitting 1970, capital equity credits offered for redemption (see Note 13):	-	-	-	-	-	(450,387)	-	-	(450,387)
Membership stock issued and cancelled, net	(4)	(20)	-	-	-	-	-	-	(20)
Balances, April 30, 2013	903	4,515	110,753,161	(4,031,740)	81,520,000	33,838,260	825,761	127,665,976	350,575,933
Net margin	-	-	-	-	-	-	-	13,048,188	13,048,188
Net income on pension plan	-	-	-	762,101	-	-	-	-	762,101
Unrealized gain on investments	-	-	-	328,047	-	-	-	-	328,047
Patronage declared on 2014 earnings (see Note 13):									
Issuance of qualified capital equity credits	-	-	-	-	-	4,675,061	-	(4,675,061)	-
Distributable in cash	-	-	-	-	-	-	-	(5,142,568)	(5,142,568)
Membership stock issued and cancelled, net	49	245	-	-	-	-	-	-	245
Balances, April 30, 2014	952	\$ 4,760	\$ 110,753,161	\$ (2,941,592)	\$ 81,520,000	\$ 38,513,321	\$ 825,761	\$ 130,896,535	\$ 359,571,946

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Statements of Cash Flows
Years Ended April 30, 2014 and 2013

	2014	2013
Cash Flows From Operating Activities		
Net margin	\$ 13,048,188	\$ 12,572,835
Adjustments to reconcile net margin to net cash provided by (used in) operating activities:		
Depreciation	4,681,449	4,432,648
Amortization of premiums on interest-bearing obligations, net	827,546	5,684
Provision for obsolete inventory	(393,682)	488,643
Loss on write-down of inventory	399,789	1,040,431
Realized gains on sales of investments	(40,423)	-
Loss (gain) on sale of assets	2,821	(224,154)
Net periodic benefit costs (benefit)	(36,031)	29,155
Employer contribution to the pension plan	(69,606)	(147,020)
Deferred income taxes	2,334,756	2,462,882
Cash provided by (used in) changes in:		
Accrued interest receivable	(290,705)	514,660
Accounts receivable	7,738,368	(26,309,250)
Income taxes receivable/payable	753,903	(2,308,898)
Inventories	(12,644,920)	(2,018,127)
Prepaid expenses and other assets	(29,328)	359,563
Accounts payable	(192,355)	(107,376)
Accrued expenses	(2,061,028)	(2,248,836)
Customer deposits	(285,722)	1,181,518
Other assets	(132,607)	-
Net cash provided by (used in) operating activities	13,610,413	(10,275,642)
Cash Flows From Investing Activities		
Purchase of property, plant and equipment	(5,219,460)	(2,559,832)
Proceeds on disposal of assets	849,369	538,264
Sales/maturities of other investments	4,999,020	-
Purchases of interest-bearing obligations	(283,065,332)	(165,643,207)
Maturities and calls of interest-bearing obligations	258,152,487	243,800,000
Net cash (used in) provided by investing activities	(24,283,916)	76,135,225

(Continued)

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidated Statements of Cash Flows (Continued)
Years Ended April 30, 2014 and 2013

	2014	2013
Cash Flows From Financing Activities		
Payments on revolving line of credit	(15,593,578)	(121,176,777)
Draws on revolving line of credit	50,493,578	59,847,102
Payments on note payable	(46,118,941)	(5,704,487)
Proceeds from issuance of long term debt	40,000,000	-
Net contributions (payments) on common stock	245	(20)
Redemption of stockholders' equity credits	(450,385)	(1,509,909)
Patronage distribution	(4,864,590)	(369,870)
Net cash provided by (used in) financing activities	23,466,329	(68,913,961)
Net increase (decrease) in cash and cash equivalents	12,792,826	(3,054,378)
Cash and cash equivalents:		
Beginning	3,694,675	6,749,053
Ending	<u>\$ 16,487,501</u>	<u>\$ 3,694,675</u>
Supplemental Disclosure of Cash Flow Information		
Cash paid for income taxes	<u>\$ 692,900</u>	<u>\$ 2,276,423</u>
Cash paid for interest	<u>\$ 1,929,839</u>	<u>\$ 2,140,247</u>
Supplemental Schedule of Noncash Investing and Financing Activities		
Issuance of Qualified Capital Equity Credits	<u>\$ 4,675,061</u>	<u>\$ 5,039,889</u>
Patronage payable	<u>\$ 5,142,568</u>	<u>\$ 5,234,460</u>
1967 to 1972, omitting 1970, Capital Equity Credits offered for Redemption	<u>\$ -</u>	<u>\$ 450,387</u>

See Notes to Consolidated Financial Statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies

Organization data: U.S. Tobacco Cooperative Inc. (USTC) was incorporated on June 1, 1946, under the provisions of the Cooperative Marketing Act of the State of North Carolina as a cooperative operating on a cooperative basis, with capital stock. USTC and its subsidiaries (collectively the Cooperative) have four primary business activities; 1) as a global leaf dealer and 2) as a manufacturer and distributor of six consumer tobacco product brands within the United States of America, 3) as a contract manufacturer of consumer products, principally internationally, and 4) as a producer of cutrag and pipe tobacco. The Cooperative purchases the majority of its green tobacco from member growers. The green tobacco is processed, stored and shipped internationally, domestically and for use in the Cooperative's own brands of consumer products.

The authorized capital stock of USTC consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who shall patronize USTC. At all meetings of the stockholders, each stockholder is entitled to only one vote. No dividends are payable on the common stock. USTC has adopted a bylaw consent form in which each member agrees to take into taxable gross income patronage refunds allocated to them.

USTC is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members. The capital equity credits are used to accumulate capital as considered necessary by the Board of Directors. Capital equity credits bear no interest, have no due date, and may only be redeemed or retired at the discretion of the Board of Directors in order of issuance by years.

A summary of the Cooperative's significant accounting policies follows:

Consolidation policy: The accompanying consolidated financial statements include the accounts of USTC and its wholly-owned subsidiaries, Tobacco Growers Services, Inc. (TGS), U.S. Flue-Cured Tobacco Growers, Inc. (USFC), Premier Manufacturing, Inc. (Premier), Franchise Wholesale Co., L.L.C. (Franchise), and Big South Distribution, LLC (Big South). The results of operations of companies acquired during a year are included in the consolidated financial statements from the effective dates of the respective acquisitions. All material intercompany balances and transactions have been eliminated.

Revenue recognition: Revenues are generated primarily from leaf tobacco and tobacco products sales. Sales are recognized upon shipment of goods to the customer at which time there is transfer of the title and risk of loss to the customer.

The Cooperative's accounting policy is to include federal and state excise taxes in revenues and cost of sales. Such revenues and cost of sales totaled \$129,688,665 and \$137,948,022 for the years ended April 30, 2014 and 2013, respectively.

Shipping and handling costs: Shipping and handling costs are included in cost of sales.

Cash and cash equivalents: For purposes of the statement of cash flows, the Cooperative considers money market funds and all other short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents. The Cooperative places its cash and cash equivalents with high credit-quality institutions.

The Cooperative maintains cash balances that from time to time may exceed the federally insured limits. The Cooperative has not experienced any losses on such accounts and management believes the Cooperative is not exposed to any significant credit risk on these accounts.

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Interest-bearing obligations: The Cooperative's interest-bearing obligations consist of debt securities, which are classified as available for sale for the year ended April 30, 2014. As of April 30, 2013, and in prior years, all of the Cooperative's debt securities were classified as held to maturity. During the year ended April 30, 2014, in order to better respond to fluctuations in the debt securities market, the Cooperative implemented a new investment policy, engaged a third party investments advisor, and transferred the classification of its investment holdings from held to maturity to available for sale. As a result of the transfer from held to maturity to available for sale, the amortized cost basis of approximately \$99,133,000 was transferred to the available for sale classification and an unrealized holding gain of approximately \$235,000 was recorded as a component of accumulated other comprehensive income (loss) on the consolidated statements of stockholders equity.

Investments in debt securities are stated at fair values as adjusted for amortization of premium or discount, if applicable, and unrealized holding gains and losses are reported as accumulated other comprehensive income. Amortized discounts and premiums are included in net interest income. Investments in marketable equity securities are carried at fair value with unrealized holding gains and losses reported as accumulated other comprehensive income (loss) in stockholders' equity.

Interest on certain investments in debt securities is credited to income as it accrues on the principal amount outstanding adjusted for amortization of premiums and discounts computed by the effective interest method. Realized gains and losses on disposition of investments are included in net interest income in the accompanying consolidated statements of operations. The cost of investments sold is determined on the specific identification method. Dividends are recorded as income on the ex-dividend dates.

Investment in preferred stock: As of April 30, 2013, the Cooperative had an investment in the preferred stock of a financial institution. The investment was recorded at cost and sold at book value during the year ended April 30, 2014. As such, there was no gain or loss recorded on the transaction.

Fair value measurements: The estimated fair value of the Cooperative's short-term financial instruments, including cash and cash equivalents, accounts receivable, accrued interest receivable, income taxes receivable, accounts payable, accrued expenses, income taxes payable, redeemable stockholders' equity credits, stock redemption payable, customer deposits, and revolving line of credit approximate their individual carrying amounts due to the relatively short period of time between their origination and expected realization. The fair value of the available for sale securities is based on quoted market rates. The fair value of the lines of credit is estimated based on current rates offered to the Cooperative for similar debt of the same remaining maturities. The carrying value of the fixed rate long-term debt approximates fair value due to its proximity to current market rates for similar debt issues.

Accounts receivable: Accounts receivable are recorded at net realizable value. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history, and current economic conditions. The allowance is reviewed periodically and adjusted for accounts deemed uncollectible by management. After all attempts to collect have failed, the receivable is written off against the allowance.

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

Inventories: Raw materials, work in process and tobacco products inventories are priced at the lower of average cost (which approximates the first-in, first-out method) or market. Processed leaf tobacco purchased from members under marketing agreements is stated at cost.

The Cooperative evaluates its inventory value at the end of each year to ensure that it is carried at the lower of cost or market. This evaluation includes a review of potential obsolete and slow-moving stock, based on historical product sales and forecasted sales, and an overall consolidated analysis of potential excess inventories. Events which could affect the amount of reserves for obsolete or slow moving inventories include a decrease in demand for the products due to economic conditions, price decreases by competitors on specific products or systems, or the discontinuance by a vendor. To the extent historical physical inventory results are not indicative of future results and if future events impact, either favorably or unfavorably, the salability of the Cooperative's products or its relationship with certain key vendors, the Cooperative's inventory reserves could differ significantly, resulting in either higher or lower future inventory provisions.

Property, plant, and equipment: Property, plant, and equipment are stated at cost and depreciated over their estimated useful lives using the declining balance or the straight-line method. Routine maintenance and repairs are charged to expense when incurred. When an asset is disposed of, the asset and related accumulated depreciation are written off and any gain or loss on the disposal is recognized. Major replacements and improvements are capitalized and depreciated over their estimated useful lives.

Accounting for impairment of long-lived assets: Long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate that an asset may not be recoverable and are grouped with other assets to the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. If the sum of the projected undiscounted cash flows (excluding interest charges) is less than the carrying value of the assets, the assets are written down to the estimated fair value.

No impairment of long-lived assets was recognized during the years ended April 30, 2014 and 2013.

Income taxes: Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis and net operating loss carryforwards. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

The Cooperative recognizes the tax benefit from an uncertain tax position only if it is more-likely-than-not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Cooperative's policy is to recognize interest and penalties related to income taxes in its income tax provision. The Cooperative has not accrued or paid interest or penalties which were material to its results of operations for the years ended April 30, 2014 and 2013. As of April 30, 2014 and 2013, the Cooperative had no material unrecognized tax benefits and does not expect the unrecognized tax benefit to significantly change within the next 12 months. The Cooperative files in the U.S. and various state jurisdictions. With few exceptions, the Cooperative is no longer subject to income tax examinations by the U.S. federal, state or local tax authorities for years before 2010.

Pension plan: The Cooperative has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan provides benefits through mutual funds invested in common stocks and bonds. The Cooperative is required to recognize in its balance sheet the funded status of a benefit plan measured as the difference between the fair value of plan assets and benefit obligations, net of tax. The plan was frozen effective July 31, 2010 (see Note 16).

Advertising costs: Advertising costs are expensed as incurred. Advertising expenses of \$634,291 and \$1,005,670 for the years ended April 30, 2014 and 2013, respectively, are included in selling, general and administrative expenses in the accompanying consolidated statements of operations.

Use of estimates: The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates include the valuation of accounts receivable, inventories, trademarks, and the master settlement agreement grandfather exemption. Estimates also include the useful lives of property, plant, and equipment and are used in determining the master settlement agreement obligation, pension benefit obligations, accrued and deferred income taxes, and litigation contingencies.

Recent accounting pronouncements: In January 2014, the Financial Accounting Standards Board (FASB) issued guidance allowing certain private companies the use of the simplified hedge accounting approach to account for swaps that are entered into for the purpose of economically converting a variable-rate borrowing into a fixed-rate borrowing. Under this approach, the income statement charge for interest expense will be similar to the amount that would result if the entity had directly entered into a fixed-rate borrowing instead of a variable-rate borrowing and a receive-variable, pay-fixed interest rate swap. Entities within the scope of this guidance are allowed a practical expedient to qualify for cash flow hedge accounting under Accounting Standards Codification (ASC) 815. Under the simplified hedge accounting approach, a private company also has the option to measure the designated swap at settlement value instead of fair value. The simplified hedge accounting approach will be effective for annual periods beginning after December 15, 2014, and interim periods within annual periods beginning after December 15, 2015, with early adoption permitted. The adoption of this guidance is not expected to have a material effect on the Cooperative's consolidated financial statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 1. Organization Data and Significant Accounting Policies (Continued)

The FASB and other entities issued new or modifications to, or interpretations of, existing accounting guidance during the year ended April 30, 2014. The Cooperative has considered the new pronouncements that altered accounting principles generally accepted in the United States and does not believe that any other new or modified principles will have a material impact on the Cooperative's reported financial position or operations in the near term.

Note 2. Fair Value Measurements

Under the FASB's authoritative guidance on fair value measurements, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value, the Cooperative uses various methods including market, income and cost approaches. Based on these approaches, the Cooperative often uses certain assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and or the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated, or generally unobservable inputs. The Cooperative uses valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs. Based on the observability of the inputs used in the valuation techniques the Cooperative is required to provide the following information according to the fair value hierarchy. The fair value hierarchy ranks the quality and reliability of the information used to determine fair values. Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

- Level 1 — Quoted prices for identical assets and liabilities traded in active exchange markets, such as the New York Stock Exchange.
- Level 2 — Observable inputs other than Level 1 including quoted prices for similar assets or liabilities, quoted prices in less active markets, or other observable inputs that can be corroborated by observable market data. Level 2 also includes derivative contracts whose value is determined using a pricing model with observable market inputs or can be derived principally from or corroborated by observable market data.
- Level 3 — Unobservable inputs supported by little or no market activity for financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation; also includes observable inputs for nonbinding single dealer quotes not corroborated by observable market data.

The following tables summarize fair value measurements by level as of April 30, 2014, for assets measured at fair value on a recurring basis:

	April 30, 2014			
	Total	Level 1	Level 2	Level 3
Available for Sale Securities				
Debt securities:				
Government Agency (State Taxable)	\$ 22,610,946	\$ 4,024,654	\$ 18,586,292	\$ -
Agency Mortgage Backed Securities	100,975,777	57,325,022	43,650,755	-
Total available for sale securities	\$123,586,723	\$ 61,349,676	\$ 62,237,047	\$ -

There were no investments carried at fair value as of April 30, 2013.

Nonfinancial instruments, such as inventories and property, plant, and equipment, are excluded from fair value disclosures.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 3. Investments

Investments in interest-bearing obligations at April 30, 2014 and 2013, were as follows:

2014				
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Available for Sale Securities (carried at fair value (Note 1))				
Short-term	\$ 22,573,370	\$ 61,049	\$ (23,473)	\$ 22,610,946
Long-term	100,685,306	322,036	(31,565)	100,975,777
Total Available for sale securities	<u>\$ 123,258,676</u>	<u>\$ 383,085</u>	<u>\$ (55,038)</u>	<u>\$ 123,586,723</u>
2013				
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Held to Maturity Securities (carried at amortized cost (Note 1))				
Short-term	\$ 85,007,954	\$ 213,589	\$ (91)	\$ 85,221,452
Long-term	14,125,000	25,425	(4,400)	14,146,025
Total Held to maturity securities	<u>\$ 99,132,954</u>	<u>\$ 239,014</u>	<u>\$ (4,491)</u>	<u>\$ 99,367,477</u>

The unrealized gains and losses on debt securities were primarily due to changes in interest rates. The number of debt securities in loss positions as of April 30, 2014 and 2013, was 25 and 5, respectively. The increase or decline in market values of these securities is attributable to changes in interest rates and not credit quality. Because it is unlikely that the Cooperative will be required to sell the investment before recovery of its amortized costs basis, which may be maturity, it does not consider the investment in debt securities to be other-than-temporarily impaired at April 30, 2014.

Contractual maturities of interest-bearing obligations as of April 30, 2014, are summarized below.

	Amortized Cost	Estimated Fair Value
Due in one year or less	\$ 22,573,370	\$ 22,610,946
Due after one year through five years	95,070,837	95,348,956
Due after five years through ten years	4,451,630	4,460,208
Due after ten years	1,162,839	1,166,613
	<u>\$ 123,258,676</u>	<u>\$ 123,586,723</u>

As of April 30, 2013, investments totaling \$83,440,000 were held as collateral for the Cooperative's previous line of credit. During the year ended April 30, 2014, the previous line of credit was replaced with a syndicated debt agreement which requires the entire portfolio to be held as collateral (see Note 10).

As of April 30, 2013, investment in preferred stock consisted of 999,804 shares of preferred stock in AgCarolina. Shares of preferred stock are valued at \$5 par by AgCarolina, with quarterly dividends of up to 8% in preferred stock shares, which are converted to cash and distributed to the Cooperative. These dividends are included as part of interest income on the accompanying consolidated statements of operations. Preferred stock in AgCarolina is non-voting in nature, and can be withdrawn daily, with dividends available for withdrawal upon declaration. The Cooperative recorded the investment on the cost method, and sold the investment at book value during the year ended April 30, 2014. As such, there was no gain or loss recorded on the transaction.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 4. Inventories

Inventories consisted of the following at April 30, 2014 and 2013:

	2014	2013
Purchased tobacco	\$ 79,276,857	\$ 63,390,784
Materials and work in process	3,211,274	3,232,935
Tobacco products	12,818,747	16,537,438
	95,306,878	83,161,157
Reserve for obsolete and slow moving inventory	(868,387)	(1,174,494)
	\$ 94,438,491	\$ 81,986,663

During the year ended April 30, 2014 and 2013, the Cooperative determined that the market value of various tobacco products had permanently declined in value due to obsolescence. In response, the Cooperative recorded an inventory allowance of approximately \$868,000 and \$1,174,000 as of April 30, 2014 and 2013, respectively.

The Cooperative determined that various tobacco products were obsolete, slow moving, or may need to be discounted which resulted in a write-down of approximately \$400,000 and \$1,040,000 related to Big South for the years ended April 30, 2014 and 2013, respectively. Inventory write-downs are included as part of cost of sales in the accompanying consolidated statements of operations.

Note 5. Property, Plant, and Equipment

Property, plant, and equipment, their estimated useful lives, and related accumulated depreciation at April 30, 2014 and 2013, are summarized as follows:

	Estimated Useful Lives in Years	2014	2013
Land	-	\$ 936,589	\$ 936,589
Buildings	5 – 40	13,080,867	12,947,902
Furniture and fixtures	3 – 10	1,627,739	2,296,597
Machinery and equipment	3 – 15	42,723,187	42,214,792
Automobiles and trucks	3 – 5	852,977	998,049
Construction in progress	-	3,266,906	333,639
		62,488,265	59,727,568
Less: accumulated depreciation		(37,854,477)	(34,779,601)
		\$ 24,633,788	\$ 24,947,967

For the years ended April 30, 2014 and 2013, depreciation expense amounted to \$4,681,449 and \$4,432,648, respectively, and of which \$3,745,645 and \$3,733,264 are included in cost of sales, and \$935,804 and \$699,384 are included in selling, general and administrative expenses, respectively, in the accompanying consolidated statements of operations.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 6. Intangible Assets

Intangible assets consisted of the following as of April 30, 2014 and 2013:

	2014	2013
Trademarks	\$ 5,064,000	\$ 5,064,000
Master Settlement Agreement (MSA) – Grandfather Exemption	127,785,379	127,785,379
	<u>\$ 132,849,379</u>	<u>\$ 132,849,379</u>

As part of the acquisition of Premier Manufacturing, the Cooperative acquired the Wildhorse, First Class, Ultra Buy and Shield brands. These brands were available commercially prior to February 15, 2007, the effective date of the FDA's Substantial Equivalence requirements. The value of the trademarks does not include USFC's 1839 and Traffic brands.

In 1998, the major United States cigarette manufacturers entered into the MSA with attorneys general representing 46 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa and the Northern Marianas. The MSA became effective on November 23, 1998, when final approval was achieved in 80% of the settling jurisdictions. The MSA settled all health care cost recovery actions brought by settling jurisdictions and contains releases of various additional present and future claims. To entice other cigarette manufacturers into joining the MSA, the agreement provided that if a subsequent participating manufacturer (SPM) joined within ninety days following the MSA's "Execution Date," that SPM is exempt from making annual payments to the settling states unless their share of the national cigarette market exceeds its 1998 market share or 125% of its 1997 market share.

Premier became a signatory to the MSA in February 1999, and was granted an exemption in perpetuity from payment obligations under the MSA except to the extent that its market share exceeds approximately 0.25% of the total cigarettes sold in the United States.

Note 7. Accrued Expenses

The components of accrued expenses at April 30, 2014 and 2013, are summarized as follows:

	2014	2013
Accrued tobacco product related taxes	\$ 4,635,716	\$ 4,801,814
Accrued accounts payable	3,437,581	5,693,125
Accrued master settlement agreement obligation (Note 8)	1,231,598	913,278
Accrued insurance	595,158	478,249
Accrued salaries and related benefits	261,523	173,953
Accrued interest	60,000	235,487
Accrued legal and regulatory fees	7,344	21,580
	<u>\$ 10,228,920</u>	<u>\$ 12,317,486</u>

Notes to Consolidated Financial Statements

Note 8. Master Settlement Agreement Obligation

As a party to the MSA, Premier and USFC are required to make certain payments to the extent that cases of cigarettes sold exceed a specified level. The payment amounts are based generally on Premier's and USFC's relative market share and is subject to several adjustments, including inflation, United States cigarette volume, and certain other factors. At April 30, 2014 and 2013, the Cooperative's management estimated the liability to be approximately \$1,232,000 and \$913,000, respectively. The balances accrued at April 30, 2014, are expected to be paid in April 2015, along with the accumulated obligation from April 30, 2014, through the end of the 2014 calendar year. The balance accrued at April 30, 2013, was paid in April 2014, along with the accumulated obligation from April 30, 2013, through the end of the 2013 calendar year.

Note 9. Stock Redemption Payable

Cooperative membership requires participation in the crop year, which runs May 1 through April 30. Beginning in May 2004, the Board of Directors approved a plan to terminate stock ownership of members who did not enter into marketing agreements with the Cooperative for the subsequent year. The amounts are payable on demand and are classified as a current liability in the accompanying consolidated balance sheets.

Note 10. Revolving Lines of Credit

On September 27, 2013, the Cooperative entered into a \$215,000,000 syndicated loan (the Agreement) with six financial institutions which consists of a term loan (the Term Loan) and a revolving credit facility (the Revolving Credit Facility). The Agreement is collateralized by all assets of the Cooperative. The Cooperative is required to maintain a minimum tangible net worth and fixed charge coverage ratio under the conditions of the Agreement.

The Revolving Credit Facility provides for up to \$175,000,000 in funding through the use of two separate tranches (Tranche A and Tranche B) and a swing line (the Swing Line), all of which mature on September 27, 2016. Tranche A provides up to \$95,000,000 in funding, subject to borrowing base limitation as defined in the Agreement. Interest only payments are due monthly at a the one-month London Interbank Offered Rate (LIBOR) rate plus 1.10% (1.25% at April 30, 2014). Tranche B is available seasonally from September 1 – April 30 each year, provides up to \$80,000,000 in funding, subject to a borrowing base limitation as defined in the Agreement. Interest only payments are due monthly at the one-month LIBOR rate plus 1.75% (1.90% at April 30, 2014). The Swing Line provides up to \$10,000,000 in funding. Interest only payments are due monthly at the prime rate plus 1.10% (4.35% at April 30, 2014). At April 30, 2014, Tranche A had an outstanding balance of \$34,900,000. There were no balances outstanding on Tranche B or the Swing Line at April 30, 2014.

During the year ended April 30, 2014, the Cooperative had a \$75,000,000 line of credit that matured July 27, 2013. There was no outstanding balance at April 30, 2013.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 11. Long-Term Debt

Long-term debt consisted of the following as of April 30, 2014 and 2013:

	2014	2013
Note payable to financial institutions, payable in monthly interest payments and quarterly principal payments of \$2,000,000 at a variable interest rate equal to the one-month LIBOR rate plus 1.10% (1.25% at April 30, 2014), maturing on September 27, 2018.	\$ 36,000,000	\$ -
Note payable to an individual trust. Paid in full during the year ended April 30, 2014.	-	42,118,941
	36,000,000	42,118,941
	(8,000,000)	(6,031,023)
Less: current portion of long-term debt	\$ 28,000,000	\$ 36,087,918

Remaining maturities of long-term debt subsequent to April 30, 2014 are as follows:

Year Ending April 30,	Amount
2015	\$ 8,000,000
2016	8,000,000
2017	8,000,000
2018	8,000,000
2019	4,000,000
	<u>\$ 36,000,000</u>

Note 12. Operating Leases

During the fiscal years ended April 30, 2014 and 2013, the Cooperative entered into year-to-year operating leases for purposes of operating tobacco marketing centers for the 2013 and 2012 crop years. Total lease expense for the centers amounted to approximately \$826,000 and \$341,000 for the years ended April 30, 2014 and 2013, respectively.

The Cooperative has noncancelable operating leases, primarily for certain equipment and vehicles, that provide for renewal options for varying periods. Commitments for minimum future lease payments, by year and in aggregate, to be paid under noncancelable operating leases with initial or remaining terms in excess of one year as of April 30, 2014, are as follows:

Year Ending April 30,	Minimum Lease Payments
2015	\$ 1,442,965
2016	1,275,128
2017	654,774
2018	317,493
2019	8,260
	<u>\$ 3,698,620</u>

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 12. Operating Leases (Continued)

Total lease and rental expenses for operating leases amounted to approximately \$1,604,000 and \$1,204,000 for the years ended April 30, 2014 and 2013, respectively, and are included as a component of selling, general and other administrative expenses in the accompanying consolidated statements of operations.

Note 13. Capital Equity Credits

At April 30, 2014 and 2013, capital equity credits are comprised of \$38,513,321 and \$33,838,260 qualified certificates, respectively, and \$825,761 and \$825,761 non-qualified certificates, respectively. The patrons have consented to take into their income that portion of the gain, which is allocated and distributed as a qualified certificate as provided for in the Internal Revenue Code. Non-qualified certificates represent allocations of capital reserve net of income taxes paid by the Cooperative for crop pool settlements prior to the adoption of the by-law consent provisions in 1980. Capital equity credits are redeemable at the discretion of the board of directors.

During the year ended April 30, 2013, based upon final earnings and patronage information, the Cooperative declared an additional patronage allocation of 2012 earnings in the amount of \$739,752, of which, \$369,870 was redeemed in cash, and qualified capital equity credit certificates were issued for \$369,882.

During the year ended April 30, 2013, the Cooperative declared a patronage allocation of 2013 earnings in the amount of \$9,534,597, of which qualified capital equity credit certificates were issued for \$4,670,007 and \$4,864,590 is included as a stock redemption payable at year-end.

During the year ended April 30, 2014, the Cooperative declared a patronage allocation of 2014 earnings in the amount of \$9,817,629, of which qualified capital equity credits were issued for \$4,675,061 and \$5,142,568 is included as a stock redemption payable at year-end.

During the year ended April 30, 2013, the Cooperative offered an open call for redemption of the 1967 to 1972, omitting 1970, capital equity credits, with the call period closing March 29, 2013. The amounts of capital equity credits offered for redemption and called for redemption are as follows:

Crop year	Offered for redemption	Called for redemption
1967	\$ 4,882,763	\$ 102,086
1968	2,305,657	57,800
1969	3,264,470	98,888
1971	3,982,282	125,363
1972	1,922,457	66,250
	<u>\$ 16,357,629</u>	<u>\$ 450,387</u>

At April 30, 2013, the redeemable balance of equity credits, amounting to \$450,387, is included in the redeemable stockholders' equity credits balance in the consolidated balance sheets. During 2014, the \$450,387 was remitted to members. The Cooperative did not offer an open call for redemption during the year ended April 30, 2014.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 14. Other Revenue, Net

Other revenue, net, consisted of the following for the years ended April 30, 2014 and 2013:

	2014	2013
Miscellaneous, net	\$ 544,278	1,047,362
Importer revenue	309,569	\$ 1,257,197
Rental income	90,959	83,553
	<u>\$ 944,806</u>	<u>\$ 2,388,112</u>

Note 15. Income Taxes

Income tax (expense) benefit consisted of the following for the years ended April 30, 2014 and 2013:

	2014		
	Current	Deferred	Total
Federal	\$ -	\$ (2,012,720)	\$ (2,012,720)
State	(480,000)	(322,036)	(802,036)
	<u>\$ (480,000)</u>	<u>\$ (2,334,756)</u>	<u>\$ (2,814,756)</u>

	2013		
	Current	Deferred	Total
Federal	\$ 434,369	\$ (2,231,071)	\$ (1,796,702)
State	(305,825)	(231,811)	(537,636)
	<u>\$ 128,544</u>	<u>\$ (2,462,882)</u>	<u>\$ (2,334,338)</u>

The actual income tax (expense) benefit for 2014 and 2013 differs from the "expected" tax (expense) benefit (computed by applying the U.S. federal corporate income tax rate of 35%) to the income before income taxes as follows:

	2014	2013
Computed "expected" tax expense	\$ (5,552,000)	\$ (5,218,000)
Change in income tax (expense) benefit resulting from:		
State income taxes, net of federal income tax benefit	(197,433)	(191,610)
Patronage dividends	3,436,171	3,337,109
Non-deductible expenses	38,494	(122,740)
Valuation allowance	(403,967)	5,390
Other, net	(136,021)	(144,487)
	<u>\$ (2,814,756)</u>	<u>\$ (2,334,338)</u>

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 15. Income Taxes (Continued)

The tax effects of temporary differences that give rise to the net deferred tax liabilities at April 30, 2014 and 2013 are presented below:

	2014	2013
Deferred tax assets:		
Recognition of certain retirement costs	\$ 1,854,826	\$ 2,392,574
Net operating losses	1,993,702	1,887,623
Master settlement agreement	48,639	160,356
Allowances and reserves	152,837	189,432
Inventories	1,443,068	805,886
Accrued expenses	328,579	445,934
Less: valuation allowance	(1,924,609)	(1,520,642)
	<u>3,897,042</u>	<u>4,361,163</u>
Deferred tax liabilities:		
Property, plant and equipment, primarily due to differences in depreciation	2,801,158	4,081,777
Intangibles	9,052,832	5,299,768
	<u>11,853,990</u>	<u>9,381,545</u>
Net deferred tax liability	<u>\$ (7,956,948)</u>	<u>\$ (5,020,382)</u>

At April 30, 2014 and 2013, the deferred income taxes are reflected in the accompanying consolidated balance sheets as follows:

	2014	2013
Deferred income tax asset – current	<u><u>\$ 1,973,123</u></u>	<u><u>\$ 1,601,609</u></u>
Deferred income tax liability – noncurrent	<u><u>\$ 9,930,071</u></u>	<u><u>\$ 6,621,991</u></u>

As of April 30, 2014 and 2013, the Cooperative had North Carolina state net operating loss carryovers of approximately \$28,894,000 and \$28,985,000, respectively. The losses originate from the operations of USFC. The state net operating loss carryovers begin to expire in 2024. A valuation allowance is required to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all the evidence, both positive and negative, management has determined that a \$1,924,609 and \$1,520,642 valuation allowance at April 30, 2014 and 2013, respectively, is necessary to reduce the deferred tax asset related to the state net operating losses that will not be realized. The change in the valuation allowance for 2014 and 2013 was \$403,967 and \$(5,390), respectively. After taking into account the valuation allowance, the Cooperative has a net deferred tax asset relating to North Carolina Net Operating Losses for the years ending April 30, 2013 and 2014 of approximately \$367,000 and \$70,000, respectively.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 16. Retirement Plans

Defined Benefit Pension Plan: The Cooperative sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Cooperative were eligible to participate after one year of service, which is the completion of 1,000 or more hours of service within a period in which the employee is employed for twelve consecutive months. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service. On May 31, 2010, the Cooperative's Board of Directors approved a Certificate of Resolution to freeze benefits after July 31, 2010.

The Cooperative's funding policy requires a contribution in the amount necessary to satisfy the minimum required contributions under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), subject to the Cooperative's long-term funding strategy. The Cooperative's funding policy is to contribute funds to the trust for the plan as necessary to provide for current service and for any unfunded projected benefit obligation over a reasonable period. To the extent that these requirements are fully covered by assets in the trust, the Cooperative may elect not to make a contribution in a particular year. The Cooperative made contributions of \$69,606 and \$145,020 to the plan for the years ended April 30, 2014 and 2013, respectively. The Cooperative anticipates making contributions of approximately \$533,000 to the plan for the year ended April 30, 2015.

The following table sets forth the plan's funded status and amounts recognized in the Cooperative's consolidated balance sheets at April 30, 2014 and 2013, as follows:

	Pension Benefits	
	2014	2013
Change in projected benefit obligation:		
Projected benefit obligation – beginning of year	\$ 23,180,777	\$ 22,735,536
Service cost	-	-
Interest cost	910,933	938,189
Actuarial (gain) loss	(866,995)	783,863
Curtailments	-	-
Benefit payments	(1,282,465)	(1,276,811)
Projected benefit obligation – end of year	21,942,250	23,180,777
Change in plan assets:		
Fair value of plan assets – beginning of year	17,170,275	16,298,466
Actual return on plan assets	1,416,297	2,003,600
Employer contributions	69,606	145,020
Participant contributions	-	-
Benefit payments	(1,282,465)	(1,276,811)
Fair value of plan assets – end of year	17,373,713	17,170,275
Funded status – end of year, and noncurrent liability recognized in the consolidated balance sheets	\$ (4,568,537)	\$ (6,010,502)

The accumulated benefit obligation as of April 30, 2014 and 2013 was \$21,942,250 and \$23,180,777, respectively.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 16. Retirement Plans (Continued)

Amounts recognized in accumulated other comprehensive loss as of April 30, 2014 and 2013, not yet reflected in net periodic benefit cost, consist of:

	Pension Benefits	
	2014	2013
Net loss	\$ 5,349,808	\$ 6,686,136
Less: deferred tax benefit	(2,080,169)	(2,654,396)
	\$ 3,269,639	\$ 4,031,740

The net periodic cost of the plan was \$36,031 and \$29,447 for 2014 and 2013, respectively. These amounts included the following reclassification adjustments of other comprehensive income:

	2014	2013
Amortization of net loss	\$ 372,448	\$ 353,221

The estimated actuarial gains and losses that will be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2015 is \$253,000.

The following table provides the weighted average actuarial assumptions at April 30, 2014 and 2013:

	Pension Benefits	
	2014	2013
Weighted-average assumptions used to determine benefit obligations as of April 30:		
Discount rate	4.50%	4.00%
Weighted-average assumptions used to determine net periodic benefit cost for years ended April 30:		
Discount rate	4.00%	4.25%
Expected long-term return on plan assets	8.00%	8.00%

Management determines the expected return on plan assets based on historical performance of the plan's investments. Management compares their expected rate of return with other companies to ensure that it is in line with broad market expectations.

At April 30, 2014, the plan held investments in twenty mutual funds, administered by eleven fund families, as well as a master limited partnership holding investments in domestic securities. At April 30, 2013, the plan held investments in fourteen mutual funds, administered by six fund families. The various mutual funds invest in publicly traded securities covering a wide range of investment opportunities. The various mutual funds are valued at fair market value based on quoted market prices.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 16. Retirement Plans (Continued)

The fair values of the Cooperative's pension plan assets at April 30, 2014 and 2013, respectively, are as follows:

2014				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurement 04/30/2014
Shares of registered investment companies (mutual funds)				
Domestic equities	\$ 5,719,222	\$ -	\$ -	\$ 5,719,222
International equities	3,294,778	-	-	3,294,778
Real assets	890,522	-	-	890,522
Fixed income securities	7,260,507	-	-	7,260,507
Money market account	-	208,684	-	208,684
Total	\$ 17,165,030	\$ 208,684	\$ -	\$ 17,373,713
2013				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurement 04/30/2013
Shares of registered investment companies (mutual funds)				
Domestic equities	\$ 7,440,371	\$ -	\$ -	\$ 5,306,610
International equities	3,128,339	-	-	1,495,409
Real assets	904,647	-	-	638,352
Fixed income securities	5,580,051	-	-	4,032,986
Money market account	-	116,867	-	116,867
Total	\$ 17,053,408	\$ 116,867	\$ -	\$ 17,170,275

The investment policy guidelines outline risk tolerance, goals, permissible and prohibited investments, and target investment allocations.

Risk tolerance as defined by the policy guidelines identify that historical capital market returns allow for the assumption of short run investment risks in favor of greater returns provided by capital markets over the longer term.

Permissible investments as defined by the policy guidelines are individual securities, separate accounts, mutual funds, trusts, private placements, partnerships, commingled funds, pooled funds, contracts and other legally constituted means of buying and selling investments including domestic equities, fixed income investments, cash equivalents, international equities, and real estate.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 16. Retirement Plans (Continued)

Prohibited investments as defined by the policy guidelines are short sales, margin purchases, securities lending, borrowings of plan assets, purchase of letter stock (restricted stock), options, futures, loans, investments requiring pledging of plan assets as collateral and any other investment not outlined as a permissible investment under the policy guidelines unless authorized in writing by the committee.

The current investment policy target mix is as follows:

Domestic Equities	32%
International Equities	19%
Real Assets	7%
Fixed Income Securities	42%

Schedule of benefits expected to be paid in each of the next five fiscal years, and in the aggregate for the five fiscal years thereafter:

Year Ending April 30,	Amount
2015	\$ 1,393,263
2016	1,390,402
2017	1,398,019
2018	1,427,057
2019	1,427,098
5 years thereafter	7,019,005

Defined Contribution 401(k) Plan: The Cooperative maintains a 401(k) plan for all of its eligible employees. The plan year is January 1 to December 31, and allows eligible employees to defer a portion of their compensation up to the maximum allowed by law (\$17,500 in 2014 and 2013 with catch-up contributions of \$5,500 for age 50 and older). Effective January 1, 2014, the plan allows for a 100% match of the first 3% of an employee's elective contribution and a 50% match of an additional 2% of an employee's elective contribution. In 2013, the plan provided a safe harbor nonelective contribution of 3% to eligible employees regardless of their participation. For the years ended April 30, 2014 and 2013, the employer contributions made to the plan were \$385,183 and \$265,242, respectively.

The Cooperative may make discretionary matching and profit sharing contributions to the plan. The Board of Directors did not elect to make either of these additional contributions for the years ended April 30, 2014 and 2013.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Contingencies

Litigation

The Cooperative is currently engaged in several lawsuits.

In 2005, two civil, class-action lawsuits (*Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corp.* & *Fisher v. Flue-Cured Tobacco Cooperative Stabilization Corp.*) were filed against the Cooperative in North Carolina Superior Court in Wake County, North Carolina. Plaintiffs seek to dissolve the Cooperative and distribute its assets based on allegations that the Cooperative has no valid business purpose following the U.S. Congress's termination of the Federal Tobacco Loan Program. These lawsuits have since been consolidated into a single action, *Fisher*, in North Carolina, from which the claim for dissolution has been dropped. In June 2013, the Judge issued an order certifying named plaintiffs as class representatives for all former and present shareholders/members of the Cooperative from 1946 through 2004. The Cooperative has filed a notice of appeal of the Superior Court's order. The Cooperative denies all allegations in the complaint and will vigorously defend the matter.

In October 2012, a civil, class-action lawsuit (*Speaks v. United States Tobacco Cooperative Inc.*) was filed against the Cooperative in the United States District Court for the Eastern District of North Carolina. Plaintiffs seek to dissolve the Cooperation and distribute its assets to the Cooperative's members based on allegations to the effect that the Cooperative no longer serves a valid business purpose following the U.S. Congress's termination of the Federal Tobacco Loan Program. The Cooperative denies all allegations in the complaint and will vigorously defend the matter. This lawsuit is presently stayed through August 2014.

In May 2007, certain individuals plaintiffs represented by the same counsel filed a series of lawsuits (led by *Rigby v. Flue-Cured Tobacco Cooperative Stabilization Corp.*) against the Cooperative in the Superior Court of Georgia in Berrien County, Georgia. Plaintiffs initially asserted claims for accounting, distribution, breach of contract, and specific performance against the Cooperative. Plaintiffs have since twice amended their complaint to include additional and/or revised claims against the Cooperative. The Cooperative successfully dismissed all of Plaintiffs' claims. Plaintiffs thereafter appealed those dismissals in 2013 to an intermediate appellate court in Georgia that subsequently reinstated one of Plaintiffs' claims, a claim for breach of fiduciary duty, along with a corresponding request for attorney fees associated with that claim. At present, the Cooperative has asked the Georgia Supreme Court to exercise its discretion to hear an appeal that seeks to reverse the decision to reinstate Plaintiffs' claim for breach of fiduciary duty. The Cooperative in all events denies the allegations of that claim and will vigorously defend against it, including by pursuing a future request for summary judgment if necessary. Trial has not been scheduled in this case.

In July 2013, the Cooperative filed a lawsuit (*US Tobacco Cooperative, et al v. Big South Wholesale Virginia, et. al.*) in the United States District Court for the Eastern District of North Carolina. The Cooperative's lawsuit states claims for RICO violations, breach of contract, unfair trade practices, fraud in the inducement, fraud and other legal violations. The defendants include two former executives, a former consultant, several entities that they owned or controlled and unnamed co-conspirators. Some of the defendants have filed counter claims against the plaintiffs. The parties are engaged in extensive discovery and are awaiting the Courts' ruling on multiple motions including a motion to stay the proceedings. Trial has been scheduled for March 2015.

U.S. Tobacco Cooperative Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Note 17. Contingencies (Continued)

California Board of Equalization (BOE) Dispute. During July 2009, the state of California performed a Cigarette and Tobacco Products Tax audit of Franchise. During the audit period (June 2006 through June 2009), Franchise had been routinely selling both stamped and unstamped product into California. At the conclusion of the audit, Franchise was notified that California statutes preclude Franchise from shipping unstamped product into California, which was in contradiction of guidance the State of California had previously provided Franchise. The Cooperative has recorded an accrued expense for \$1,380,000 related to this ongoing dispute.

The Cooperative is also party to legal actions arising in the ordinary course of its business. Management asserted that these cases are without merit and will be defended vigorously. While the results cannot be predicted with certainty, management believes it is not possible to form an assessment of potential outcome or an estimate of liability, if any, and that the final outcome of such legal actions will not have a material adverse effect on the Cooperative's financial position.

Note 18. Business Concentrations

At April 30, 2014 and 2013, 84% and 85%, respectively, of accounts receivable represents open credit shipments with a buyer in mainland China.

For the year ended April 30, 2014, a major customer exceeding 10% of net sales accounted for approximately 33% of net sales.

Customer	Net Sales	Percentage of Net Sales
A	\$ 97,612,609	33%

For the year ended April 30, 2013, a major customer exceeding 10% of net sales accounted for approximately 23% of net sales.

Customer	Net Sales	Percentage of Net Sales
A	\$ 68,767,876	23%

Note 19. Subsequent Events

Management evaluated and noted no additional subsequent events requiring recognition or disclosure through July 1, 2014, which is the date the financial statements were available to be issued.



**Independent Auditor's Report
on the Supplementary Information**

To the Board of Directors
U.S. Tobacco Cooperative Inc.
Raleigh, North Carolina

We have audited the consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries as of and for the years ended April 30, 2014 and 2013, and have issued our report thereon which contains an unmodified opinion on those consolidated financial statements. See page 1. Our audits were conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The supplementary information is presented for purposes of additional analysis and is not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audits of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

McGladrey LLP

Orlando, Florida
July 1, 2014

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidating Balance Sheet Information
April 30, 2014

Assets	U.S. Tobacco Cooperative Inc.	Tobacco Growers Services, Inc.	U.S. Flue- Cured Tobacco Growers, Inc.	Premier Manufacturing, Inc.	Franchise Wholesale Co., L.L.C.	Big South Distribution, LLC	Eliminations	Consolidated
Current Assets								
Cash and cash equivalents	\$ 9,826,985	\$ 176,443	\$ 3,137,229	\$ 930,138	\$ 1,549,443	\$ 867,263	\$ -	\$ 16,487,501
Investment in interest-bearing obligations	22,610,946	-	-	-	-	-	-	22,610,946
Accounts receivable, net	65,640,497	13,970	1,228,641	6,781,877	1,536,677	1,906,721	(6,288,434)	70,819,949
Accrued interest receivable	565,875	-	-	-	-	-	-	565,875
Inventories, net	35,942,154	-	49,111,114	2,019,573	4,303,732	4,264,087	(1,015,184)	94,625,476
Prepaid expenses and other assets	271,235	-	3,357	104,400	435,258	18,779	-	833,029
Intercompany receivables	51,214,425	2,018,809	19,003	34,872,104	458,076	1,518,614	(90,101,031)	-
Income taxes receivable	243,996	-	-	-	-	-	-	243,996
Deferred tax assets	1,973,123	-	-	-	-	-	-	1,973,123
Total current assets	188,289,236	2,209,222	53,499,344	44,708,092	8,283,186	8,575,464	(97,404,649)	208,159,895
Investment in Interest-Bearing Obligations	100,975,777	-	-	-	-	-	-	100,975,777
Investment in Subsidiaries	181,034,049	-	-	-	-	-	(181,034,049)	-
Property, Plant, and Equipment, net	2,009,040	443,901	21,640,027	136,842	150,543	253,435	-	24,633,788
Intangible Assets	-	-	-	132,849,379	-	-	-	132,849,379
Other Assets	1,604,029	-	-	-	-	131,738	-	1,735,767
Total assets	\$ 473,912,131	\$ 2,653,123	\$ 75,139,371	\$ 177,694,313	\$ 8,433,729	\$ 8,960,637	\$ (278,438,698)	\$ 468,354,606
Liabilities and Stockholders' Equity								
Current Liabilities								
Accounts payable	\$ 836,541	\$ 6,714	\$ 913,858	\$ 449,769	\$ 5,851,137	\$ 322,207	\$ (6,351,201)	\$ 2,029,025
Accrued expenses	3,476,413	-	4,667,114	386,235	1,674,015	25,143	-	10,228,920
Current portion of long-term debt	8,000,000	-	-	-	-	-	-	8,000,000
Stock redemption and patronage payable	9,165,663	-	-	-	-	-	-	9,165,663
Intercompany payables	33,623,266	13,616	51,303,157	5,096,035	2,190	-	(90,038,264)	-
Customer deposits	-	-	1,960,444	-	-	-	-	1,960,444
Total current liabilities	55,101,883	20,330	58,844,573	5,932,039	7,527,342	347,350	(96,389,465)	31,384,052
Deferred Income Taxes	9,930,071	-	-	-	-	-	-	9,930,071
Pension Benefits	4,568,537	-	-	-	-	-	-	4,568,537
Revolving Line of Credit	34,900,000	-	-	-	-	-	-	34,900,000
Long-Term Debt, less current portion	28,000,000	-	-	-	-	-	-	28,000,000
Total liabilities	132,500,491	20,330	58,844,573	5,932,039	7,527,342	347,350	(96,389,465)	108,782,660
Commitments and Contingencies								
Stockholders' Equity								
Common stock	4,760	250,000	100,000	-	-	-	(350,000)	4,760
Additional paid-in capital	110,753,161	-	25,700,000	-	-	-	(25,700,000)	110,753,161
Accumulated other comprehensive loss	(2,941,592)	-	-	-	-	-	-	(2,941,592)
Contributed capital	81,520,000	-	-	135,242,569	1,055,474	8,669,387	(144,967,430)	81,520,000
Capital equity credits:								
Qualified	38,513,321	-	-	-	-	-	-	38,513,321
Non-qualified	825,761	-	-	-	-	-	-	825,761
Retained earnings	112,736,229	2,382,793	(9,505,202)	36,519,705	(149,087)	(56,100)	(11,031,803)	130,896,535
Total stockholders' equity	341,411,640	2,632,793	16,294,798	171,762,274	906,387	8,613,287	(182,049,233)	359,571,946
Total liabilities and stockholders' equity	\$ 473,912,131	\$ 2,653,123	\$ 75,139,371	\$ 177,694,313	\$ 8,433,729	\$ 8,960,637	\$ (278,438,698)	\$ 468,354,606

U.S. Tobacco Cooperative Inc. and Subsidiaries

Consolidating Statement of Operations Information
Year Ended April 30, 2014

	U.S. Tobacco Cooperative Inc.	Tobacco Growers Services, Inc.	U.S. Flue- Cured Tobacco Growers, Inc.	Premier Manufacturing, Inc.	Franchise Wholesale Co., L.L.C.	Big South Distribution, LLC	Eliminations	Consolidated
Revenue	\$ 118,387,073	\$ 1,690,484	\$ 109,794,570	\$ 76,740,296	\$ 61,081,660	\$ 51,211,724	\$ (124,327,881)	\$ 294,577,926
Cost of sales	109,762,230	-	104,260,480	53,717,674	57,333,490	49,492,563	(124,204,389)	250,362,048
Gross margin	8,624,843	1,690,484	5,534,090	23,022,622	3,748,170	1,719,161	(123,492)	44,215,878
Expenses:								
Selling, general and administrative expenses	12,968,718	1,344,281	4,427,963	5,691,319	3,499,501	1,852,347	(1,502,867)	28,281,262
Operating margin (loss)	(4,343,875)	346,203	1,106,127	17,331,303	248,669	(133,186)	1,379,375	15,934,616
Other income (expenses):								
Other revenue, net	1,063,438	1,710	49,572	224,680	904	3,502	(399,000)	944,806
Interest expense	(1,877,416)	-	-	-	-	-	-	(1,877,416)
Interest income	929,694	-	-	3,188	1,878	-	-	934,760
(Loss) gain on sale of assets	(63,772)	1,150	-	-	-	(11,200)	-	(73,822)
	51,944	2,860	49,572	227,868	2,782	(7,698)	(399,000)	(71,672)
Margin (loss) before income taxes	(4,291,931)	349,063	1,155,699	17,559,171	251,451	(140,884)	980,375	15,862,944
Income tax expense	(2,814,756)	-	-	-	-	-	-	(2,814,756)
Net margin (loss)	<u>\$ (7,106,687)</u>	<u>\$ 349,063</u>	<u>\$ 1,155,699</u>	<u>\$ 17,559,171</u>	<u>\$ 251,451</u>	<u>\$ (140,884)</u>	<u>\$ 980,375</u>	<u>\$ 13,048,188</u>

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Earnings Information – Parent Cooperative
Years Ended April 30, 2014 and 2013**

	2014	2013
Revenue:		
Processed leaf	\$ 118,128,565	\$ 135,189,042
Ceded tobacco	-	857,274
Tobacco products	199,478	-
Other	59,030	-
Net revenue	118,387,073	136,046,316
Costs and expenses:		
Redried purchased	109,762,230	123,005,022
Ceded tobacco	-	389,217
Total cost of sales	109,762,230	123,394,239
Gross margin	8,624,843	12,652,077
Selling, general and administrative expenses:		
Professional fees	4,172,089	1,624,785
Selling expenses	4,100,269	5,781,698
Labor	2,333,252	3,074,876
Other expenses	867,297	1,810,362
Benefits	432,964	928,136
Depreciation	490,120	268,194
Travel and entertainment	238,549	320,506
Facilities	154,510	288,518
Information technology	144,880	77,163
Auto expense	34,788	32,024
Total selling, general and administrative expenses	12,968,718	14,206,262
Operating loss	(4,343,875)	(1,554,185)

(Continued)

U.S. Tobacco Cooperative Inc. and Subsidiaries

Earnings Information – Parent Cooperative (Continued)
Years Ended April 30, 2014 and 2013

	2014	2013
Other income (expenses):		
Other revenue, net	\$ 1,063,438	\$ 2,371,052
Interest expense	(1,877,416)	(2,887,013)
Interest income	929,694	2,149,883
Gain (loss) on the sale of assets	(63,772)	225,095
	51,944	1,859,017
(Loss) margin before income taxes	(4,291,931)	304,832
Income tax expense	(2,814,756)	(2,334,338)
Net loss	\$ (7,106,687)	\$ (2,029,506)

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Earnings Information – Tobacco Growers Services, Inc.
Years Ended April 30, 2014 and 2013**

	2014	2013
Revenue - Services	\$ 1,690,484	\$ 1,013,116
Selling, general and administrative expenses:		
Labor	643,827	606,543
Distribution expenses	249,390	65,789
Benefits	166,732	232,824
Other expenses	96,529	75,338
Depreciation	88,449	105,643
Facilities	71,412	101,810
Professional fees	10,520	-
Travel and entertainment	6,736	-
Information technology	5,704	5,354
Auto expense	4,982	1,340
Total selling, general and administrative expenses	1,344,281	1,194,641
Operating margin (loss)	346,203	(181,525)
Other income (expenses):		
Other revenue, net	1,710	20,080
Gain on the sale of assets	1,150	1,239
	2,860	21,319
Net margin (loss)	\$ 349,063	\$ (160,206)

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Earnings Information – U.S. Flue-Cured Tobacco Growers, Inc.
Years Ended April 30, 2014 and 2013**

	2014	2013
Revenue:		
Tobacco products	\$ 46,448,432	\$ 49,280,052
Federal excise taxes	51,185,968	53,303,669
Services	12,160,170	10,254,737
Net revenue	109,794,570	112,838,458
Costs and expenses:		
Cost of sales	53,074,512	54,749,385
Federal excise taxes	51,185,968	53,303,669
Total cost of sales	104,260,480	108,053,054
Gross margin	5,534,090	4,785,404
Selling, general and administrative expenses:		
Labor	1,399,800	1,509,123
Selling expenses	1,105,982	1,166,972
Facilities	793,052	671,799
Professional fees	372,941	403,058
Benefits	230,704	251,371
Other expenses	198,029	177,375
Travel and entertainment	121,740	178,185
Depreciation	110,541	82,138
Information technology	78,312	75,011
Auto expense	16,862	36,140
Total selling, general and administrative expenses	4,427,963	4,551,172
Operating margin	1,106,127	234,232
Other income (expenses):		
Other revenue, net	49,572	129,187
Gain on the sale of assets	-	2,451
Net margin	\$ 1,155,699	\$ 365,870

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Earnings Information – Premier Manufacturing, Inc.
Years Ended April 30, 2014 and 2013**

	2014	2013
Revenue:		
Tobacco product sales	\$ 41,136,250	\$ 40,702,373
Federal excise taxes	35,604,046	37,596,510
	<u>76,740,296</u>	<u>78,298,883</u>
Costs and expenses:		
Cost of sales	18,113,628	17,893,591
Federal excise taxes	35,604,046	37,596,510
Total cost of sales	<u>53,717,674</u>	<u>55,490,101</u>
Gross margin	<u>23,022,622</u>	<u>22,808,782</u>
Selling, general and administrative expenses:		
Labor	2,697,422	2,781,050
Selling expenses	722,968	623,689
Benefits	606,831	523,172
Facilities	513,274	506,257
Travel and entertainment	434,988	419,234
Other expenses	214,119	237,732
Auto expense	209,134	227,202
Professional fees	182,181	245,370
Information technology	74,844	81,371
Depreciation	35,558	37,415
Total selling, general and administrative expenses	<u>5,691,319</u>	<u>5,682,492</u>
Operating margin	<u>17,331,303</u>	<u>17,126,290</u>
Other income (expenses):		
Other revenue, net	224,680	243,559
Loss on sale of assets	-	(11,060)
Interest income	3,188	8,155
	<u>227,868</u>	<u>240,654</u>
Net margin	<u>\$ 17,559,171</u>	<u>\$ 17,366,944</u>

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Earnings Information – Franchise Wholesale Co., L.L.C.
Years Ended April 30, 2014 and 2013**

	2014	2013
Revenue:		
Tobacco products	\$ 45,708,600	\$ 43,197,021
Other	330,067	304,336
State excise taxes	15,042,993	14,533,173
Net revenue	61,081,660	58,034,530
Costs and expenses:		
Cost of sales	42,290,497	40,673,256
State excise taxes	15,042,993	14,533,173
Total cost of sales	57,333,490	55,206,429
Gross margin	3,748,170	2,828,101
Selling, general and administrative expenses:		
Labor	1,445,862	1,392,018
Benefits	495,181	441,354
Professional fees	422,594	437,244
Other expenses	251,220	271,050
Selling expenses	248,859	242,185
Facilities	230,934	211,800
Auto expense	185,057	147,948
Depreciation	105,489	102,994
Travel and entertainment	78,452	101,648
Information technology	35,853	41,205
Total selling, general and administrative expenses	3,499,501	3,389,446
Operating margin (loss)	248,669	(561,345)
Other income (expense), net		
Other revenue, net	904	17,402
Interest income, net	1,878	3,410
	2,782	20,812
Net margin (loss)	\$ 251,451	\$ (540,533)

U.S. Tobacco Cooperative Inc. and Subsidiaries

**Earnings Information – Big South Distribution, LLC
Years Ended April 30, 2014 and 2013**

	2014	2013
Revenue:		
Tobacco products	\$ 23,252,817	\$ 26,493,757
Rebates	103,249	243,766
Federal and state excise taxes	27,855,658	32,514,670
Net revenue	51,211,724	59,252,193
Costs and expenses:		
Cost of sales	21,636,905	25,205,198
Federal and state excise taxes	27,855,658	32,514,670
Total cost of sales	49,492,563	57,719,868
Gross margin	1,719,161	1,532,325
Selling, general and administrative expenses:		
Labor	803,464	1,016,212
Facilities	251,168	246,981
Other expenses	234,070	154,920
Benefits	141,243	161,768
Depreciation	140,042	142,070
Auto expense	116,268	135,965
Professional fees	103,620	473,764
Travel and entertainment	31,624	57,112
Information technology	17,466	22,984
Selling expenses	13,382	26,232
Total selling, general and administrative expenses	1,852,347	2,438,008
Operating loss	(133,186)	(905,683)
Other income (expenses):		
Other revenue, net	3,502	5,832
Gain (loss) on the sale of assets	(11,200)	6,429
	(7,698)	12,261
Net loss	\$ (140,884)	\$ (893,422)

EXHIBIT Y

All: Still waiting to hear back as to when we can talk. Understanding that we're all busy, Keith and I are making it a top priority to get our understanding nailed down and moving forward. Please advise. Thanks

Sent from my hand-held device

On May 15, 2017, at 5:40 PM, Derek Shaffer <derekshaffer@quinnemanuel.com> wrote:

Sorry for any disconnect, but Judge Bullock was consistently speaking to us in terms of the payouts being "per claim." That said, we're glad to discuss and agree that we should discuss. I have availability tomorrow morning until 11am, then 2-3, and then 5-6. Do you have any availability during those windows?

From: Gary Shipman [<mailto:gshipman@shipmanlaw.com>]
Sent: Monday, May 15, 2017 5:45 PM
To: Derek Shaffer <derekshaffer@quinnemanuel.com>; William Wright <wwright@shipmanlaw.com>; 'leodaughtry@hotmail.com' <leodaughtry@hotmail.com>; 'Kelly Daughtry' <kellydaughtry@dwslaw.com>
Cc: Keith Forst <keithforst@quinnemanuel.com>
Subject: RE: Speaks et al. v. USTC: mediation

Derek – let's schedule a call to discuss this, as I believe that there are several provisions that need to be discussed, including what you have contained herein as to how any sums would be paid out; we made clear to Judge Bullock that our proposed method of distribution would be based upon patronage, although in the prior settlement we set aside a certain % of the sums to be paid/distributed solely on the basis of years of membership.

I want to speak with Kelly and Leo about this, but what's your schedule tomorrow?

From: Derek Shaffer [<mailto:derekshaffer@quinnemanuel.com>]
Sent: Monday, May 15, 2017 2:11 PM
To: Gary Shipman; William Wright; 'leodaughtry@hotmail.com'; 'Kelly Daughtry'
Cc: Keith Forst
Subject: RE: Speaks et al. v. USTC: mediation

Counsel: I just want to reiterate that we're glad to have had such a constructive mediation this past Friday. Please find attached our write up of the term sheet. We wanted to run it by you before sending it to Judge Bullock for him to sign. Let us know if you see any issues and feel free to call me at my direct extension if you want to discuss anything. Thanks

Derek Shaffer
Partner,
Quinn Emanuel Urquhart & Sullivan, LLP

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From: Gary Shipman [<mailto:gshipman@shipmanlaw.com>]
Sent: Monday, May 08, 2017 3:09 PM
To: Bullock, Frank <FBullock@wcsr.com>; Keith Forst <keithforst@quinnemanuel.com>; William Wright <wwright@shipmanlaw.com>
Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; 'Lee M. Whitman' <lwhitman@wyrick.com>; 'leodaughtry@hotmail.com' <leodaughtry@hotmail.com>; 'Kelly Daughtry' <kellydaughtry@dwslaw.com>; Barbara Hamme <bhamme@shipmanlaw.com>; Angel Adams <aadams@shipmanlaw.com>
Subject: RE: Speaks et al. v. USTC: mediation

Judge- we are attempting to confirm on our end and will get you something as soon as possible. Certainly, the lawyers on our end (Leo Daughtry, Kelly Daughtry, William Wright and Gary Shipman) will be in attendance. And yes, lunch is in order and we will get you the total number on our end and their identities ASAP.

From: Bullock, Frank [<mailto:FBullock@wcsr.com>]
Sent: Monday, May 08, 2017 11:12 AM

To: 'Keith Forst'; William Wright; Gary Shipman
Cc: 'Derek Shaffer'; 'Lee M. Whitman'; 'leodaughtry@hotmail.com'; 'Kelly Daughtry'; Barbara Hamme; Angel Adams
Subject: RE: Speaks et al. v. USTC: mediation

Please provide me with a list of attendees, including lawyers, for our mediation on May 11 and 12. They are very security conscious at our new building in Raleigh. Also, if you would like we can have lunch brought in on Thursday, so a list would help for numbers purposes also. I look forward to seeing everyone at 10 on Thursday.

Frank W. Bullock, Jr.
Womble Carlyle Sandridge & Rice, LLP
300 N. Greene Street
Greensboro, NC 27401
Office Phone: (336) 574-8030
fbullock@wcsr.com

From: Bullock, Frank
Sent: Saturday, April 29, 2017 12:03 PM
To: 'Keith Forst'; 'William Wright'; 'Gary Shipman'
Cc: Derek Shaffer; 'Lee M. Whitman'; 'leodaughtry@hotmail.com'; 'Kelly Daughtry'; 'Barbara Hamme'; 'Angel Adams'
Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

I have mediation statements from both sides. Whether you want to share them with each other I will leave up to you. I will also be sending an engagement letter and directions to our Raleigh offices. I will be driving from Greensboro on Thursday, the 11th, and because of Research Triangle traffic I suggest we start at 10. We can go late Thursday and Friday if necessary. I look forward to seeing all of you next week. Best regards, Frank Bullock

Frank W. Bullock, Jr.
Womble Carlyle Sandridge & Rice, LLP
300 N. Greene Street
Greensboro, NC 27401
Office Phone: (336) 574-8030
fbullock@wcsr.com

From: Keith Forst [<mailto:keithforst@quinnemanuel.com>]
Sent: Friday, April 28, 2017 12:15 PM

To: Bullock, Frank; 'William Wright'; 'Gary Shipman'
Cc: Derek Shaffer; 'Lee M. Whitman'; 'leodaughtry@hotmail.com'; 'Kelly Daughtry'; 'Barbara Hamme'; 'Angel Adams'
Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Judge Bullock: I wanted to touch base about your preference on whether to provide our mediation statement to the entire group or only to you. USTC has no firm inclination. For now, we are planning to default to emailing our statement to only you. The parties further agreed to extend our page limit from 12 to 15 pages. Respectfully, Keith

From: Bullock, Frank [<mailto:FBullock@wcsr.com>]
Sent: Friday, April 14, 2017 11:28 AM
To: Keith Forst <keithforst@quinnemanuel.com>; 'William Wright' <wwright@shipmanlaw.com>; 'Gary Shipman' <gshipman@shipmanlaw.com>
Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; 'Lee M. Whitman' <lwhitman@wyrick.com>; 'leodaughtry@hotmail.com' <leodaughtry@hotmail.com>; 'Kelly Daughtry' <kellydaughtry@dwslaw.com>; 'Barbara Hamme' <bhamme@shipmanlaw.com>; 'Angel Adams' <aadams@shipmanlaw.com>
Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Your agreements are fine with me. We should be able to provide 2-3 rooms in our Raleigh offices. Should one of them be large enough to accommodate a dozen or more people?

Frank W. Bullock, Jr.
Womble Carlyle Sandridge & Rice, LLP
300 N. Greene Street
Greensboro, NC 27401
Office Phone: (336) 574-8030
fbullock@wcsr.com

From: Keith Forst [<mailto:keithforst@quinnemanuel.com>]
Sent: Friday, April 14, 2017 10:03 AM
To: Bullock, Frank; 'William Wright'; 'Gary Shipman'
Cc: Derek Shaffer; 'Lee M. Whitman'; 'leodaughtry@hotmail.com'; 'Kelly Daughtry'; 'Barbara Hamme'; 'Angel Adams'
Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Judge Bullock:

The parties have conferred and agreed to submit simultaneous position papers on April 28, two weeks before our mediation. The parties have also tentatively agreed to limit their papers to 12 pages, excluding any attachments thereto. If possible, we would like to hold the mediation at Womble Carlyle's office in Raleigh. Subject to your guidance and preferred approach, we envision needing at least two conference rooms so that we can hold appropriate breakout sessions. Please let us know if Womble Carlyle is able to accommodate the mediation. If not, we are glad to make other arrangements.

Respectfully, Keith

From: Keith Forst
Sent: Tuesday, April 04, 2017 4:17 PM
To: Bullock, Frank <FBullock@wcsr.com>; 'William Wright' <wwright@shipmanlaw.com>; Gary Shipman <gshipman@shipmanlaw.com>
Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; Lee M. Whitman <lwhitman@wyrick.com>; leodaughtry@hotmail.com; Kelly Daughtry <kellydaughtry@dwslaw.com>; Barbara Hamme <bhamme@shipmanlaw.com>; Angel Adams <aadams@shipmanlaw.com>
Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Yes, we're confirmed for May 11 and 12. USTC will arrange a call with Plaintiffs' counsel to discuss a suggested framework and location for the mediation.

From: Bullock, Frank [<mailto:FBullock@wcsr.com>]
Sent: Friday, March 31, 2017 12:31 PM
To: 'William Wright' <wwright@shipmanlaw.com>; Keith Forst <keithforst@quinnemanuel.com>; Gary Shipman <gshipman@shipmanlaw.com>
Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; Lee M. Whitman <lwhitman@wyrick.com>; leodaughtry@hotmail.com; Kelly Daughtry <kellydaughtry@dwslaw.com>; Barbara Hamme <bhamme@shipmanlaw.com>; Angel Adams <aadams@shipmanlaw.com>
Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Shall we settle on May 11 and 12 for our mediation? I am flexible about the location.

Frank W. Bullock, Jr.
Womble Carlyle Sandridge & Rice, LLP
300 N. Greene Street
Greensboro, NC 27401
Office Phone: (336) 574-8030
fbullock@wcsr.com

From: William Wright [<mailto:wwright@shipmanlaw.com>]
Sent: Tuesday, March 28, 2017 1:44 PM
To: Keith Forst; Bullock, Frank; Gary Shipman
Cc: Derek Shaffer; Lee M. Whitman; leodaughtry@hotmail.com; Kelly Daughtry; Barbara Hamme; Angel Adams
Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Judge Bullock: The Plaintiffs are available Thursday and Friday of that week.

Best regards, William

From: Keith Forst [<mailto:keithforst@quinnemanuel.com>]
Sent: Monday, March 27, 2017 2:43 PM
To: 'Bullock, Frank'; William Wright; Gary Shipman
Cc: Derek Shaffer; Lee M. Whitman; leodaughtry@hotmail.com; Kelly Daughtry
Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Judge Bullock: The week of May 8, in Raleigh, works for USTC. Respectfully, Keith

From: Bullock, Frank [<mailto:FBullock@wcsr.com>]
Sent: Monday, March 27, 2017 2:30 PM
To: Keith Forst <keithforst@quinnemanuel.com>; 'William Wright' <wwright@shipmanlaw.com>; Gary Shipman <gshipman@shipmanlaw.com>
Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; Lee M. Whitman <lwhitman@wyrick.com>; leodaughtry@hotmail.com; Kelly Daughtry

<kellydaughtry@dwslaw.com>

Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Would anything work on April 5—7 or the weeks of April 10 or May 8? I will do it in Raleigh or whatever location you select. The week of May 1 is difficult.

Frank W. Bullock, Jr.
Womble Carlyle Sandridge & Rice, LLP
300 N. Greene Street
Greensboro, NC 27401
Office Phone: (336) 574-8030
fbullock@wcsr.com

From: Keith Forst [<mailto:keithforst@quinnemanuel.com>]

Sent: Monday, March 27, 2017 12:26 PM

To: 'William Wright'; Bullock, Frank; Gary Shipman

Cc: Derek Shaffer; Lee M. Whitman; leodaughtry@hotmail.com; Kelly Daughtry

Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Judge Bullock: The parties have further exchanged emails and would like to propose the following two-day blocks for the mediation: May 1 and 2, or May 3 and 4. Please let us know if either of these two-day blocks work for you. Respectfully, Keith

From: William Wright [<mailto:wwright@shipmanlaw.com>]

Sent: Monday, March 27, 2017 9:57 AM

To: Bullock, Frank <FBullock@wcsr.com>; Gary Shipman

<gshipman@shipmanlaw.com>; Keith Forst <keithforst@quinnemanuel.com>

Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; Lee M. Whitman

<lwhitman@wyrick.com>; leodaughtry@hotmail.com; Kelly Daughtry

<kellydaughtry@dwslaw.com>

Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

Judge Bullock: The plaintiffs have no concerns as well. We would most definitely appreciate your assistance with this matter. Please let us know your availability for the next six weeks.

Best regards, William

William G. Wright

Shipman & Wright, LLP

575 Military Cutoff Road, Suite 106

Wilmington, NC 28405

Tel: (910) 762-1990

Fax: (910) 762-6752

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Visit us on the web at: www.shipmanandwright.com Visit our Facebook Page:
www.facebook.com/shipmanandwright

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From: Bullock, Frank [<mailto:FBullock@wcsr.com>]
Sent: Monday, March 27, 2017 9:47 AM
To: Gary Shipman; Keith Forst
Cc: Derek Shaffer; Lee M. Whitman; William Wright; leodaughtry@hotmail.com; Kelly Daughtry
Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

I am uncertain about the status of this matter, or whether you want me to be involved. If so, some mention was made of doing it in April, which has the potential for being somewhat busy for me, so I will appreciate hearing from you as soon as practicable. Regardless I appreciate your consideration and I hope you are able to resolve this matter in a manner reasonably satisfactory to all parties.

Frank W. Bullock, Jr.
Womble Carlyle Sandridge & Rice, LLP
300 N. Greene Street
Greensboro, NC 27401
Office Phone: (336) 574-8030
fbullock@wcsr.com

From: Gary Shipman [<mailto:gshipman@shipmanlaw.com>]
Sent: Wednesday, March 22, 2017 2:38 PM
To: Keith Forst
Cc: Bullock, Frank; Derek Shaffer; Lee M. Whitman; William Wright; leodaughtry@hotmail.com; Kelly Daughtry
Subject: Re: Speaks et al. v. USTC: inquiry re potential engagement for mediation

The 27th?

Gary K. Shipman

Shipman & Wright, LLP

575 Military Cutoff Rd., Ste. 106

Wilmington, NC. 28405

(910) 762.1990

gshipman@shipmanlaw.com

Sent from my iPhone

On Mar 22, 2017, at 2:17 PM, Keith Forst <keithforst@quinnemanuel.com> wrote:

Judge Bullock: Thank you for the comprehensive conflict check and detailed disclosure. USTC has no concerns. We look forward to hearing from Plaintiffs' counsel. Respectfully, Keith

From: Bullock, Frank [<mailto:FBullock@wcsr.com>]

Sent: Monday, March 20, 2017 3:06 PM

To: Keith Forst <keithforst@quinnemanuel.com>

Cc: Derek Shaffer <derekshaffer@quinnemanuel.com>; 'Lee M.

Whitman' <lwhitman@wyrick.com>; Gary Shipman

<gshipman@shipmanlaw.com>; William Wright

<wwright@shipmanlaw.com>; leodaughtry@hotmail.com; Kelly

Daughtry <kellydaughtry@dwslaw.com>

Subject: RE: Speaks et al. v. USTC: inquiry re potential engagement for mediation

I have done a complete firm-wide conflicts check in this matter. I think everyone knows that Womble represents RJR Tobacco in numerous matters, although I have not been involved in any of them. It appears in some older, closed matters that the Stabilization Corporative and the Tobacco Growers may have been involved in what may have been tobacco purchases of some kind with each other or RJR. Individuals with the names of Eddie Smith, Roy Cook, and Robin Rogers also show up as having had transactions with RJR, perhaps in tobacco purchases, although it is hard to tell. I have no information about any of these matters and none of them appear to be active. Also, I keep my ADR files under my control. I hope this disclosure will be help, and I am confident I can undertake this mediation in an objective and unbiased manner if the parties so choose. Thank you for considering me. Best regards,, Frank Bullock

Frank W. Bullock, Jr.
Womble Carlyle Sandridge & Rice, LLP
300 N. Greene Street
Greensboro, NC 27401
Office Phone: (336) 574-8030
fbullock@wcsr.com

From: Keith Forst [<mailto:keithforst@quinnemanuel.com>]
Sent: Friday, March 17, 2017 11:54 AM
To: Bullock, Frank
Cc: Derek Shaffer; 'Lee M. Whitman'; Gary Shipman; William Wright;
leodaughtry@hotmail.com; Kelly Daughtry
Subject: Speaks et al. v. USTC: inquiry re potential engagement for mediation

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Judge Bullock: Glad we were able to connect today. I wanted to follow-up on our brief discussion to send along the complaint in our case so that you could run conflicts. I've also copied Derek Shaffer (from Quinn Emanuel) and Lee Whitman (from Wyrick Robbins) who, along with me, represent the United States Tobacco Cooperative, the defendant in the case. Gary Shipman, William Wright, Leo Daughtry, and Kelly Daughtry, who are also copied on this email, represent the named plaintiffs. Once you clear conflicts, we'll discuss the best way to provide you with more specifics about the case and to discuss logistics going forward. As I mentioned on the call, we'd like to schedule a 1/2-day arbitration in the near future – ideally in April. Eager to hear back from you, and we'll discuss next steps as a group. Regards, Keith

Keith Forst
Partner,
Quinn Emanuel Urquhart & Sullivan, LLP

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EXHIBIT Z

June 19
" 22

(7/20/67)

C
O
P
Y

As Amended Through
6/30/67

BY - LAWS
of
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

* * * * *

ARTICLE I

Purposes

The purposes for which this association is formed are set forth in the articles of incorporation of the association.

ARTICLE II

Board of Directors

Section 1. The business of the association shall be controlled by a board of directors consisting of ten persons, each of whom shall be a common stockholder, hereinafter referred to as member, of this association. No person shall be eligible for the office of director if he is in competition with it or is affiliated with any enterprise that is in competition with the association; and if a majority of the board of directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. The directors named in the articles of incorporation shall hold office for the first term or until the election and qualification of their successors. In addition to the Directors herein provided for or hereafter appointed by the common stockholders or members of the Corporation, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such Director so appointed need not be a member or stockholder of the corporation but shall have the same powers and rights as other Directors, in accordance with the provisions of the General Statutes of North Carolina, section 54-146.

Election of Directors

Section 2. (a) The directors shall be elected annually at the annual meeting of the association by its members from the membership until the Board of Directors divides the territory in which the Association operates into districts. All directors shall hold office until their successors shall have been elected and shall have qualified. The term of office of the directors so elected shall, from and after the adoption of this resolution, be as follows: At the Annual Meeting in 1948, three directors shall be elected for a term of one year, three directors shall be elected for a term of two years, and three directors shall be elected for a term of three years. At the Annual Meeting in 1949, three directors shall be elected for a term of three years and thereafter, three directors shall be elected at each Annual Meeting for a term of three years. At the annual meeting in 1958, the director elected as the tenth director shall be elected for a term of one year and thereafter his successor shall be elected for a term of three years.

At any time that the Board of Directors of the association deems it advisable the board shall divide the territory in which the association is operating or

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expecting to operate into districts for the election of directors. So far as practicable the territory in which the association shall operate shall be divided into such districts that the tobacco production in each district shall be substantially the same, but in forming districts counties shall not be divided.

(b) Following the formation of such districts the members in each district shall elect a director from that district, from among members actually residing and growing tobacco therein.

(c) As soon as may be practicable after the annual meeting in 1958, the directors shall divide the territory into ten Districts and shall provide that thereafter each vacancy occurring on the Board of Directors by reason of the expiration of the term of office of a director or for other reason, shall be filled by an election in the proper District. Each such director shall be elected for a term of office of three years except that in case of a vacancy occurring for a reason other than expiration of term of office, the term to which the director shall be elected shall be the unexpired term of the director whose office has been vacated. The Board of Directors shall have the power and the duty of providing for the conduct of elections and determining all matters in connection therewith. Elections in the several Districts need not be held on the same date.

Annually after the formation of such districts at least twenty days prior to the district meetings, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

Vacancies

Section 3. Prior to the formation of districts, vacancies in the board of directors shall be filled by remaining members; but after the formation of districts vacancies shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of Directors as may be determined by the board of directors, but not more than ten days after the annual membership meeting, the directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in section 4, shall be mailed to each director at his last known address at least three days prior to the time of such meeting.

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Quorum

Section 7. A majority of the board of directors shall constitute a quorum of the board at all meetings.

Compensation

Section 8. (a) The directors shall receive no compensation for their services other than reimbursement for any necessary transportation and hotel expenses incurred by them in attending the meetings of the board of directors and a per diem allowance of \$5.00 for the time actually covered by attendance at meetings.

(b) No director, during the term of his office shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting.

ARTICLE III

Power of Directors

Section 1. The directors shall have power -

(a) To conduct, manage and control the affairs and business of the association; and to make rules and regulations for the guidance of the officers and the management of its affairs.

(b) To appoint and remove, at pleasure, all officers, agents, and employees of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary; and they must call a meeting at any time upon the written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will,

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SC 13209

ARTICLE IV

Duties of Directors

Section 1. It shall be the duty of the board of directors -

(a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.

(b) To supervise all officers, agents and employees and see that their duties are properly performed.

(c) To cause to be issued appropriate certificates of stock.

(d) To install such a system of bookkeeping and auditing that each member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.

(e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.

(f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V

Officers

The officers of the association shall be a president, one or more vice presidents, a secretary and a treasurer, and a General Counsel, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes.

The board may appoint assistant secretaries, in its discretion, and may delegate to them any or all of the duties of the secretary, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors.

Only the president and vice presidents are required to be members of the board of directors.

ARTICLE VI

President

If at any time the president shall be unable to act, the vice presidents, in the order of their election, shall take his place and perform his duties; and if no vice president is able to act, the board of directors shall appoint a director to do so. The president, such vice president or director shall:

- (a) Preside over all meetings of members (and directors).
- (b) Subject to the advice of the directors, direct the affairs of the association.
- (c) Call the directors together whenever necessary.
- (d) Sign, as president, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors.
- (e) Report at each annual meeting of the members, the salaries of officers and department heads, and the average salary of minor employees in each department.
- (f) Discharge such other duties as may be required of him by these by-laws or by the board of directors.

ARTICLE VII

Secretary and Treasurer

Section 1. It shall be the duty of the secretary:

- (a) To keep a record of the proceedings of the meetings of the board of directors and of members.
- (b) To keep the corporate seal.
- (c) To keep a proper stock book.
- (d) To execute and sign contracts, notes, papers and documents as authorized by the board of directors.
- (e) To act as secretary of the executive committee.
- (f) To discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 2. It shall be the duty of the treasurer:

- (a) To perform such duties with respect to the finances of the association as may be prescribed by the board of directors.
- (b) To furnish bond in such form and in such amount as the board of directors may, from time to time, require.
- (c) The secretary may be the same person as the treasurer. The treasurer need not be a natural person, but may be a corporation, preferably a banking corporation.

ARTICLE VIII

SC 13211

Executive Committee

The board of directors may appoint an executive committee of four members from among its members; determine its tenure of office and prescribe its powers and

duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee, in addition to the four members herein provided for.

Copies of the minutes of the meetings of the executive committee and any reports thereof, must be mailed weekly to all directors.

ARTICLE IX

Auditing Committee

Section 1. The board of directors may appoint an auditing committee from among its members, determine the number thereof, its tenure of office, and the manner and form in which the committee shall function; in lieu of such action by the board, the auditing committee may prescribe rules and regulations with reference to its procedure.

Section 2. The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting.

Section 3. The audits of the association, as provided in Section 2 of this Article, shall be reported to the members at the annual meeting.

ARTICLE X

Stock Certificates

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find following a hearing that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association and then only to persons eligible

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to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

"The preferred stock evidenced hereby shall carry no voting rights and may be transferred only on the books of the association; and may be redeemed in whole or in part on a pro rata basis at par, plus any dividends declared thereon and unpaid at any time on thirty (30) days' notice by the association, provided said stock is redeemed in the same order as originally issued by years, and on the failure to deliver the certificate or certificates evidencing any such stock the association may cancel the same on its books. Stock which has been redeemed may, in the discretion of the board of directors, be reissued or retired. All such preferred stock so redeemed shall be paid for in cash at the par value thereof, plus any dividends declared thereon and unpaid; and such stock shall not bear dividends after it has been called for redemption. Noncumulative dividends of not to exceed six (6) percent per annum may be paid thereon when, if and as declared by the board of directors. This association shall have a lien on all of its issued preferred stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. At the discretion of the board of directors, all dividends or distributions of the association or any part thereof may be paid in certificates of preferred stock or credits on preferred stock, or ad interim certificates representing fractional parts thereof, subject to conversion into full shares. Upon dissolution or distribution of the assets of the association, the holders of all preferred stock shall be entitled to receive the par value of their stock, plus any dividends declared thereon and unpaid before any distribution is made on the common stock."

ARTICLE XI

Books and Papers

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally, and any member shall be entitled at any time to know the salary of any employee.

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ARTICLE XII

MEETINGS OF MEMBERS

Regular Meetings

Section 1. Regular meetings of the members shall be held at the office of the association at Raleigh, North Carolina, on the last Friday in June of each year for the purpose of hearing the report from the president and for transacting such other business as may come before the meeting.

Special Meetings

Section 2. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meeting. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

Notice of Regular Meetings

Section 3. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy thereof shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publications in newspapers circulating in the territory in which the association has members, such notices to appear in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

QUORUM

Section 4. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 persons present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws.

Election of Directors

Section 5. Following the formation of districts the members of each district shall meet for the election of a director or directors to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director or directors therefrom. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

ARTICLE XIII

Members

Section 1. Any person, firm, partnership, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of flue-cured

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tobacco in the territory in which the association is engaged in business may become a member of the association by acquiring a share of the common stock and signing the marketing agreement.

Voting Power of Members

Section 2. The voting power of the members of this association shall be equal and each and every member hereof shall have one vote.

Proxies

Section 3. Any member shall be permitted to vote at any meeting in person or he may vote by mail on a ballot to be prepared by order of the board of directors, but voting by proxy is prohibited.

Board to Establish Standards and Grades

Section 4. The board of directors shall have the power to establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

ARTICLE XIV

General Manager

The board of directors may, in its discretion, appoint a general manager, who shall hold office at the pleasure of and on terms and conditions set by the board of directors. No director may be elected to serve as general manager.

ARTICLE XV

Borrowing Money

The association shall have the power by affirmative vote of a majority vote of the directors, to borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

ARTICLE XVI

Capital Reserves

The books and records of the association shall be kept in such a manner, by years, that the amount carried to capital reserves, which have the status of capital, accruing from patronage of each patron of the association may be ascertained at any time. Whenever in a given year the operation of the association results in a net loss, such loss, to the extent that capital reserves are available, shall be charged against the same and they shall thereby be reduced accordingly.

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SC 13215

The board of directors shall prescribe the basis on which the capital reserve contributions of patrons by years shall be reduced on account of any such loss, so that it will be borne by the patrons on as equitable a basis as the board of directors find practicable. Whenever in the discretion of the board of directors the capital reserves are found to be in excess of the amount deemed reasonably necessary for the sound financial operations of the association, such excess shall be applied to paying off ratably, by years, the oldest unexhausted capital reserve contributions of patrons. Upon the dissolution or winding up of the association in any manner, after the payment of all debts and the retirement at par of all outstanding capital stock, any balance remaining over shall be distributed ratably to the patrons on an equitable basis.

ARTICLE XVII

These by-laws may be altered or amended by a majority vote of a quorum of the common stockholders attending a meeting of which notice of the proposed by-law or by-laws shall have been given.

ARTICLE XVIII

In the event any producer of tobacco who is a non member of the corporation shall make delivery of any quantity of tobacco to the Flue-Cured Tobacco Co-operative Stabilization Corporation at any warehouse and shall thereby obtain the benefit of a loan thereon, there shall be deducted by the warehouse in making settlement with such producer for the tobacco so delivered the amount of five dollars (\$5.00) to cover the par value of one share of common stock of the corporation, and the amount so deducted shall be remitted by the warehouse to the corporation and there shall thereupon be issued to such producer one share of common stock in the corporation. In the event such deduction should not be made by the warehouse in settling with such non member, then such non member would not be entitled to any participation in the profits arising from such transaction until there has been deducted from the participating share of such non member in the profits the amount of five dollars (\$5.00) covering the par value of one share of common stock in the corporation.

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SC 13216

EXHIBIT AA

(AS AMENDED THROUGH 9-10-82)

BY-LAWS
of
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION

* * * * *

ARTICLE I

Purposes

The purposes for which this association is formed are set forth in the Articles of Incorporation of the association.

ARTICLE II

Board of Directors

Section 1. The business of the association shall be controlled by a board of directors consisting of ten persons, each of whom shall be a common stockholder, hereinafter referred to as member, of this association. No person shall be eligible for the office of director if he is in competition with or is affiliated with any enterprise that is in competition with the association; and if a majority of the board of directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. In addition to the directors herein provided for, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such director so appointed need not be a member or stockholder of the corporation but shall have the same powers and rights as other directors, in accordance with the provisions of the General Statutes of North Carolina.

Election of Directors

Section 2. (a) The territory in which the association shall operate shall be divided into such districts that the tobacco production in each district shall be substantially the same, but in forming districts counties shall not be divided. Annually after the formation of such districts at least twenty days prior to the district meeting, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

(b) The common stockholders in each district shall elect a director from that district, from among the common stockholders actually residing and growing tobacco therein. Each such director shall be elected for a term of office of three years except that in case of a vacancy occurring for a reason other than expiration of term of office, the term to which the director shall be elected shall be the unexpired term of the director whose office has been vacated. The board of directors shall have the power and the duty of providing for the conduct of elections and determining all matters in connection therewith. Elections in the several districts need not be held on the same date.

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Vacancies

Section 3. Vacancies in the elected board of directors, shall be filled through a meeting called by the board of directors in the district or districts concerned.

Meetings of Directors

Section 4. At such time after each annual election of directors as may be determined by the board of directors, but no more than ten days after the annual membership meeting, the directors shall hold a regular meeting for the election of a president, one or more vice presidents, a secretary and a treasurer, and the transaction of any other business. Such officers shall hold office for one year and until their successors are elected and have qualified. Notice of such meeting is hereby dispensed with.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the president or on petition of a majority of the board of directors.

Notice of Regular Meeting of Directors

Section 6. Notice, unless waived, of meetings of the directors, except the meeting provided for in Section 4, shall be mailed to each director at his last known address at least three days prior to the time of the meeting.

Quorum

Section 7. A majority of the board of directors shall constitute a quorum of the board at all times.

Compensation

Section 8. (a) The directors shall receive no compensation for their services other than reimbursement for any necessary transportation and hotel expenses incurred by them in attending the meetings of the board of directors and a reasonable per diem allowance as set by the board of directors from time to time for the time actually covered by attendance at board meetings.

(b) No director, during the term of his office, shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting.

ARTICLE III

Power of Directors

Section 1. The directors shall have power -

(a) To conduct, manage and control the affairs and business of the association; and to make rules and regulations for the guidance of the officers and the management of its affairs.

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(b) To appoint and remove, at pleasure, all officers, agents, and employees of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary; and they must call a meeting at any time upon written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will.

ARTICLE IV

Duties of Directors

Section 1. It shall be the duty of the board of directors -

(a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.

(b) To supervise all officers, agents and employees and see that their duties are properly performed.

(c) To cause to be issued appropriate certificates of stock.

(d) To install such a system of bookkeeping and auditing that each member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.

(e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.

(f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V

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Officers

The officers of the association shall be a president, one or more vice presidents,

a secretary and a treasurer, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes.

The board may appoint assistant secretaries and an assistant treasurer, in its discretion, and may delegate to them any or all of the duties of the secretary and treasurer, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors.

Only the president and vice presidents are required to be members of the board of directors.

ARTICLE VI

President

If at any time the president shall be unable to act, the vice presidents, in the order of their election, shall take his place and perform his duties; and if no vice president is able to act, the board of directors shall appoint a director to do so. The president, such vice president or director shall:

- (a) Preside over all meetings of members and directors.
- (b) Subject to the advice of the directors, direct the affairs of the association.
- (c) Call the directors together whenever necessary.
- (d) Sign, as president, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors.
- (e) Report at each annual meeting of the members, the salaries of officers and department heads, and the average salary of minor employees in each department.
- (f) Discharge such other duties as may be required of him by these by-laws or by the board of directors.

ARTICLE VII

Secretary and Treasurer

Section 1. It shall be the duty of the secretary -

- (a) To keep a record of the proceedings of the meetings of the board of directors and of members.
- (b) To keep the corporate seal.
- (c) To keep a proper stock book.

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(d) To execute and sign contracts, notes, papers and documents as authorized by the board of directors.

(e) To act as secretary of the executive committee.

(f) To discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 2. It shall be the duty of the treasurer -

(a) To perform such duties with respect to the finances of the association as may be prescribed by the board of directors.

(b) The secretary may be the same person as the treasurer.

ARTICLE VIII

Executive Committee

The board of directors may appoint an executive committee of four members from among its members; determine its tenure of office and prescribe its powers and duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee, in addition to the four members herein provided for.

Copies of the minutes of the meetings of the executive committee and any reports thereof, must be mailed weekly to all directors.

ARTICLE IX

Auditing Committee

Section 1. The board of directors may appoint an auditing committee from among its members, determine the number thereof, its tenure of office, and the manner and form in which the committee shall function; in lieu of such action by the board, the auditing committee may prescribe rules and regulations with reference to its procedure.

Section 2. The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting.

Section 3. The audits of the association, as provided in Section 2 of this Article, shall be reported to the members at the annual meeting.

ARTICLE X

Stock Certificates

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

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"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find following a hearing that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

"The preferred stock evidenced hereby shall carry no voting rights and no dividend shall be payable thereon. The preferred stock may be redeemed at no more than par value at such times and upon such terms as may be set forth in the by-laws of the corporation. Upon dissolution and liquidation the holders of preferred stock shall be entitled to receive the par value of their stock before any distribution is made on the common stock."

Section 3. The preferred stock of the corporation and all qualified per unit retain certificates issued pursuant to Public Law 97-218 shall be transferable only as set forth below:

(a) In the case of individual owners -- upon death of such owner transfer shall be effectuated in accordance with his or her Last Will and Testament, if any, and if none then in accordance with the Intestate Succession Laws of the state of such owner's last domicile;

(b) In the case of corporate or partnership owners -- transfer shall be permitted only in the event of dissolution, merger or a sale of substantially all of the assets of such corporation or partnership and to a transferee to be approved by the corporation.

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ARTICLE XI

Books and Papers

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally.

ARTICLE XII

MEETINGS OF MEMBERS

Regular Meetings

Section 1. Regular meetings of the members shall be held in the City of Raleigh (or its immediate environs), North Carolina, at such hour and place as the Board shall determine, on the last Friday in May of each year for the purpose of hearing the report from the president and for transacting such other business as may come before the meeting.

Special Meetings

Section 2. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president, or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meeting. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

Notice of Meetings

Section 3. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy of the notice of each special and regular meeting shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publication in a newspaper circulating in each district in which the association has members, such notices to appear on two occasions in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

Quorum

Section 4. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 common stockholders present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws.

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Election of Directors

Section 5. Following the formation of districts the members of each district shall meet for the election of a director to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director therefrom. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

Voting

Section 6. At any meeting of the members of the association or any district only those who are registered owners of common stock shall be entitled to vote. The holders of preferred shares will have the privilege of the floor but without right to vote.

(ARTICLE AS AMENDED 8-12-83)

ARTICLE XIII

Members

Section 1. Any person, firm, partnership, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of flue-cured tobacco in the territory in which the association is engaged in business may ~~become a member~~ acquire ~~of the association by acquiring~~ a share of the common stock and signing the marketing agreement.

Any producer who markets quota tobacco and each owner and operator of any farm who leases all or any part of an acreage allotment or marketing quota for flue-cured tobacco may become a member of the association by acquiring preferred stock of the corporation.

In the event any producer of tobacco who is a non-member of the corporation shall make delivery of any quantity of tobacco to the Flue-Cured Tobacco Cooperative Stabilization Corporation at any warehouse and shall thereby obtain the benefit of a loan thereon, there shall be deducted by the warehouse in making settlement with such producer for the tobacco so delivered the amount of five dollars (\$5.00) to cover the par value of one share of common stock of the corporation, and the amount so deducted shall be remitted by the warehouse, along with a signed marketing agreement, to the corporation and there shall thereupon be issued to such producer one share of common stock in the corporation. In the event such deduction should not be made by the warehouse in settling with such non-member, or in the event such non-member shall fail to sign a marketing agreement, then such non-member would not be entitled to any participation in the profits arising from such transaction until he has signed a marketing agreement and there has been deducted from the participating share of such non-member in the profits the amount of five dollars (\$5.00) covering the par value of one share of common stock in the corporation.

Voting Power of Common Stockholders

Section 2. The voting power of the common stockholders of this association shall be equal and each and every such shareholder shall have one vote.

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Proxies

Section 3. Any common stockholder shall be permitted to vote at any meeting in person or he may vote by mail on a ballot to be prepared by order of the board of directors but voting by proxy is prohibited.

Board to Establish Standards and Grades

Section 4. The board of directors shall have the power to establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

ARTICLE XIV

General Manager

The board of directors may, in its discretion, appoint a general manager, who shall hold office at the pleasure of and on terms and conditions set by the board of directors. No director may be elected to serve as general manager.

ARTICLE XV

Borrowing Money

The association shall have the power by affirmative vote of a majority vote of the directors, to borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

(ARTICLE AS REVISED 8-12-83)

ARTICLE XVI

No Net Cost Tobacco Fund

The corporation shall establish a separate fund to be known as the No Net Cost Tobacco Fund (hereinafter referred to as "the Fund"), the purpose of which will be to implement the provisions of Public Law 97-218 and regulations issued thereunder. The proceeds from the sale of all preferred stock, as well as amounts received for the issuance of qualified per unit retain certificates issued pursuant to said law and regulations, shall be placed in the Fund. Excess amounts in the Fund, when and if released by the Secretary of Agriculture, may be devoted to such uses as shall be determined by the Board of Directors.

Separate records shall be maintained with respect to each crop pool. In assuring that the tobacco price support and production adjustment program be carried out at no net cost to the taxpayer, the charges against the Fund with respect to any particular crop pool shall be made in the following order:

- (1) The current and accumulated earnings of the Fund;
- (2) The principal of the Fund representative of the contributions to the Fund for that crop pool;

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- (3) The principal of the Fund using, in sequential order, the principal of the oldest crop pool.

Following the closing of any crop pool the board of directors shall have the continuing authority in its discretion to declare worthless and to cancel that portion of the preferred stock and per unit retain certificates issued with respect to that crop pool as determined by a formula the denominator of which is the contributions to the Fund for that crop pool and the numerator of which is the charges against the Fund for that crop pool. Written notice of cancellation shall be mailed to each of the holders of such stock and retain certificates and it shall not be necessary for such holders to return any stock or retain certificates to the corporation or for the corporation to reissue same. Any certificates and stock so cancelled shall no longer be considered as outstanding for any purpose.

In the event that the Fund may be used or released for the purpose of redeeming outstanding preferred stock or outstanding qualified per unit retain certificates (other than in the case of dissolution and liquidation), that portion of the Fund so used or released shall be used to redeem, in whole or pro rata, the outstanding qualified per unit retain certificates and outstanding preferred stock representative of the oldest closed crop pool.

ARTICLE XVII

Capital

Section 1. Capital Equity Credits or Certificates:

This association shall establish and maintain a capital account for each member, which shall be evidenced by capital equity credits or certificates, for the purpose of acquiring and maintaining adequate capital to finance its business. Both qualified and nonqualified credits or certificates may be established to create the account evidencing such an amount of capital as may be deemed necessary by the board of directors from time to time, and for redeeming such capital as is no longer necessary.

All qualified capital equity credits or certificates shall satisfy the definition of a "qualified written notice of allocation" as defined in Section 1388 of the 1954 Internal Revenue Code. All nonqualified capital equity credits or certificates shall likewise satisfy the definition of a "nonqualified written notice of allocation" as set forth in Section 1388 of the 1954 Code. Capital equity credits or certificates shall not bear interest.

Patronage dividends and per-unit capital retains may be allocated and disclosed on either a qualified or nonqualified basis as solely determined by the board of directors, and such determination by the board of directors shall be made prior to the end of the association's fiscal year.

A record of all holders of capital equity credits shall be kept and maintained by the association. Such credits however evidenced shall be transferable only to the association.

All debts of the association, both secured and unsecured, shall be entitled to priority over all outstanding capital equity credits or certificates.

Section 2. Capital from Members:

All business transacted by the association with or for members shall be transacted on a cost basis. The board of directors may determine an amount to be retained from net margins arising from all business transacted by the association with or for members. All such net margins shall be allocated to members on a patronage basis at the end of each fiscal year and shall be paid to such members in cash, or by credit to the capital accounts of each member, or partly in cash and partly in credit, within 8-1/2 months following the close of the fiscal year. Such patronage dividends may be paid in either qualified or nonqualified form as determined by the board of directors.

The board of directors may also determine a per-unit capital retain to be deducted from the tobacco proceeds due members. Such per-unit capital retain shall be evidenced by capital equity credits or certificates, and allocation and notification of such per-unit capital retains to members shall be made within 8-1/2 months following the close of the fiscal year. Such per-unit capital retains may be evidenced (paid) in either qualified or nonqualified form as determined by the board of directors.

Section 3. Losses from Member Business:

In the event the association suffers a loss in any fiscal year in handling members' products or in the sale of supplies to or rendering of services for members, the board of directors shall have full authority and discretion to handle such loss so that it will be borne by members in the manner determined by the board to be most equitable and practicable.

Without limitation upon the authority hereby conferred, such loss may be charged to the members' accounts, or may be charged pro rata to such member's outstanding capital credits or certificates and any unabsorbed loss after the exhaustion of all outstanding credits or certificates may be charged against net margins of future years resulting from business handled with members.

In the event any loss be charged against capital equity credits or certificates, each credit or certificate shall be reduced by its proportionate part of the loss and the records pertaining thereto charged accordingly; and anything to the contrary in these by-laws elsewhere contained notwithstanding, there shall be payable in respect of any capital equity credits or certificates against which a loss has been charged, only the difference between the amount of the credit or certificate as originally entered and the portion of the loss charged thereto.

Section 4. Capital from Sources Other than Member Patronage:

Each fiscal year, the association may set aside and retain as capital for use in the business of the association the net earnings (determined in accordance with sound corporate practices and sound accounting principles and after the payment of applicable Federal and State income taxes) derived by the association from sources other than patronage transactions with the members. Amounts so set aside and retained may be used for such purposes of the association as shall be determined by the board of directors.

Section 5. Losses from Nonmember Business:

Any losses from sources other than members' patronage in any fiscal year after exhausting carrybacks and carryforwards relative to income from sources other than

member patronage may be charged to any accumulated capital derived at any time from such sources (such charges to be made against the oldest such unexhausted accumulated capital).

Section 6. The Retirement of Capital Equity Credits:

All capital equity credits issued to member or nonmember patrons shall be issued in annual series, each credit in each series being identified by the year in which it is issued. Each series shall be retired fully or on a pro rata basis, only at the discretion of the board of directors of the association, in order of issuance by years, but subject to priority as outlined herein, as funds are available for that purpose.

The check constituting a part of a nonqualified capital equity credit or certificate resulting from a "qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid" may be redeemed upon the presentation of such a check irrespective of the series or the year in which it is issued. Such redemption of the check portion of the nonqualified capital equity credit or certificate shall in no way affect the balance of the nonqualified capital equity credit or certificate of which the check is a part.

Notwithstanding any other provisions of these by-laws, the board of directors at its discretion shall have the power at any time to pay off or retire or secure a release or satisfaction of any capital equity credits, both qualified and nonqualified, to compromise or settle a legal dispute between the owner thereof and the association.

Section 7. Member's Consent to Take into Income All Qualified Patronage Dividend and Per-Unit Retain Allocations:

Each person who hereafter applies for and is accepted to membership in this Association after July 13, 1979, and each member of this Association as of July 13, 1979, who continues as a member after such date shall, by such act alone, consent and agree that the amount of any distributions or allocations with respect to his patronage occurring after July 13, 1979, which are made in written notices of allocation either as patronage dividends or as per-unit retain allocations (as defined in 26 U.S.C. Section 1388) and which are received by him from this association, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. Section 1385(a) in the taxable year in which such written notices of allocation are received by him.

Section 8. Evidence of Capital Equity:

The records of the association shall be conclusive evidence of the capital equity of a member or nonmember. Capital equity credit notices shall be only memorandum records of such equity and therefore such certificates or notice memorandums need not be endorsed and returned to the association upon any payment thereon, redemption thereof, or cancellation thereof.

Section 9. Set-off:

The association shall be entitled to set off against any claims which any member may have against the association, any amounts which the member may owe the association.

ARTICLE XVIII

These by-laws may be altered or amended by a majority vote of a quorum of the common stockholders attending a meeting of which notice of the proposed by-law or by-laws shall have been given. Any by-law or by-laws of the corporation may be amended or repealed or any new by-law may be enacted by the board of directors of the corporation; subject, however, to any statutory limitation.

ARTICLE XIX

Indemnification

Section 1. The corporation shall indemnify each member of the board of directors, each officer and employee of the corporation, and the estate, executor, administrator, heirs, legatees and devisees of any such person, against all judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys fees, and any other liability that may be incurred as a result of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the corporation, and with respect to any criminal actions or proceedings, in addition, had not reasonable cause to believe that his conduct was unlawful; provided, however, that if any such claim, action, suit or proceeding is compromised or settled, it must be done so with the prior and express approval of the board of directors of the corporation.

Section 2. Such indemnification shall not depend upon whether or not such person is a member of the board of directors or is an officer or employee at the time such claim, action, suit or proceeding is begun, prosecuted or threatened, nor on whether or not the liability to be indemnified was incurred or the act or omission occurred prior to the adoption of this section.

Section 3. In each instance in which a question of indemnification hereunder arises, determination of the right to indemnification hereunder, and of the time, manner, and amount of payment thereof, shall be made by the board of directors; provided however, in the event that a majority of the members of the board of directors are seeking indemnification hereunder as a result of the same occurrence, such determination shall be subject to the approval of the members of the corporation at any regular or special meeting called therefor; and provided further, such membership approval shall not be necessary in those cases where a court of competent jurisdiction has found that the conduct of such board members fairly and equitably merits such indemnity.

Section 4. Nothing hereinabove appearing shall be construed as permitting or requiring indemnity where such is prohibited by law.

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(ARTICLE AS REVISED 8-12-83)

ARTICLE XX

Dissolution and Liquidation

In the event of dissolution of the association in any manner, the monies and properties of the association shall be distributed and applied as follows:

- First: The payment of all debts, liabilities and obligations of the association (other than the indebtedness, liability or obligations evidenced by capital equity credits or certificates or any other special capital credits of the association); provided, all amounts owing to Commodity Credit Corporation for 1982 and subsequent crop pools shall be charged first as set forth in Article XVI above.
- Second: From the remaining balance of the Fund, there shall be redeemed in full or on a pro rata basis, the outstanding qualified per unit retain certificates and preferred stock issued with respect to Public Law 97-218.
- Third: The redemption of qualified capital equity credits, other than those issued pursuant to Public Law 97-218, in full or on a pro rata basis.
- Fourth: The redemption of nonqualified capital equity credits in full or on a pro rata basis.
- Fifth: The redemption of the common stock of the corporation, at par, in full or on a pro rata basis.
- Sixth: Any balance remaining shall be distributed to members of the association at the time of liquidation on the basis of their respective patronage of the association during the ten (10) fiscal years immediately preceding dissolution and liquidation.

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EXHIBIT BB

**BY-LAWS
OF
U.S. TOBACCO COOPERATIVE INC.**

ARTICLE I

PURPOSES

The purposes for which this association is formed are set forth in the Articles of Incorporation of the association.

ARTICLE II

BOARD OF DIRECTORS

Section 1. The business of the association shall be controlled by a board of directors consisting of not less than five nor more than ten persons, as determined by the board, each of whom shall be a member (or the designated representative of a firm, partnership or association which is a member) of this association. No person shall be eligible for the office of director if he is in competition with or is affiliated with any enterprise that is in competition with the association; and if a majority of the board of directors of the association find at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director. No person who has been convicted of, or pled guilty or nolo contendere to, a felony shall be eligible for the office of director, and any director who is convicted of, or pleads guilty or nolo contendere to, a felony shall thereupon cease to be a director. In addition to the directors herein provided for, there shall be at all times a public director, who shall be appointed by the Governor of the State of North Carolina, to serve for a term of three years, and such director so appointed need not be a member or stockholder of the association but shall have the same powers and rights as other directors, in accordance with the provisions of the General Statutes of North Carolina.

Section 2. Election of Directors.

(a) The territory in which the association shall operate shall be divided into such districts that the membership in each district shall be substantially the same, but in forming districts counties shall not be divided, and each of Florida, Georgia, South Carolina, North Carolina and Virginia shall have at least one district, unless the board determines that the membership in a particular state does not warrant a separate district. Annually, at least thirty days prior to the first district meeting, the board of directors by a majority vote may change if necessary the said districts so as to maintain at all times a fair and equitable representation of the members in each of the tobacco producing districts.

(b) The members in each district shall elect a director from that district, from among the members actually residing therein. Each such director shall be elected for a term of office of three years except that in case of a vacancy occurring for a reason other than expiration of term of office, the term to which the director shall be elected shall be the unexpired term of the director whose office has been vacated. The board of directors shall have

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the power and the duty of providing for the conduct of elections and determining all matters in connection therewith. Elections in the several districts need not be held on the same date.

Section 3. Vacancies. Vacancies in the elected board of directors shall be filled through a meeting called by the board of directors in the district or districts concerned.

Section 4. Meetings of Directors. At such time after each annual election of directors as may be determined by the board of directors, but no more than ten days after the annual membership meeting, the directors shall hold a regular meeting for the election of officers and the transaction of any other business.

Section 5. In addition to the meeting mentioned above, meetings of the board of directors shall be held on the call of the chairman or on petition of a majority of the board of directors.

Section 6. Notice of Regular Meeting of Directors. Notice, unless waived, of meetings of the directors shall be mailed to each director at his last known address at least three days prior to the time of the meeting.

Section 7. Quorum. A majority of the board of directors shall constitute a quorum of the board at all times.

Section 8. Compensation.

(a) For attendance at board meetings, and on other occasions where individual members of the board are requested by the board, or by the chairman, to represent the board, board members shall be entitled to reimbursement for reasonable lodging and travel expense incurred and to a reasonable per diem allowance as established from time to time by the board of directors for time actually covered by such attendance or representation. Directors shall receive no other remuneration for their services.

(b) No director, during the term of his office, shall be a salaried officer or employee of the association, and no director, officer or employee of the association during his term of office or employment shall be a party to a contract for profit with the association differing in any way from the business relations accorded the members generally, or be a stockholder or officer in any corporation so contracting; provided, that this prohibition shall not apply to any transaction involving a seasonal employee which has been approved by the board.

Section 9. Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is required by law, the articles of incorporation or these by-laws.

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ARTICLE III

POWER OF DIRECTORS

The directors shall have power -

(a) To conduct, manage and control the affairs and business of the association and to make rules and regulations for the guidance of the officers and the management of its affairs.

(b) To appoint and remove, at pleasure, all officers of the association, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service.

(c) To call special meetings of the members when they deem it necessary and they must call a meeting at any time upon written request of one-tenth of the members.

(d) To make and enter into agreements for the processing, manufacturing, warehousing, drying and marketing of the tobacco handled by the association or the products or by-products derived therefrom, including the leasing or purchasing of warehouses and other facilities.

(e) To carry out the marketing contracts of the members in every way advantageous to the association representing the growers collectively.

(f) To select one or more banks to act as the depository of the funds of the association, to determine the manner of receiving, depositing and disbursing the funds of the association, the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing said checks and the form thereof at will.

(g) To establish and to revise and amend from time to time rules and regulations by which each member shall be governed with reference to the proper handling, delivery and shipping of tobacco and to secure a proper classification of grades and standard of quality.

(h) To borrow money for any corporate purposes, on open account or upon any assets of the association or upon the security of property of members in its possession or upon any accounts thereof, or any property not yet distributed to the members, in such amounts and upon such terms and conditions as may from time to time seem to the board of directors advisable or necessary.

(i) To invest and reinvest the reserves and other funds of the association in any kind of property or investment as the Board may authorize or approve from time to time.

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ARTICLE IV

DUTIES OF DIRECTORS

It shall be the duty of the board of directors -

- (a) To keep a complete record of all its acts and the proceedings of its meetings, and to present a full statement at the regular meetings of the members, showing in detail the condition of the affairs of the association.
- (b) To provide oversight for the operations and affairs of the association.
- (c) To cause to be issued appropriate certificates of stock and marketing agreements.
- (d) To install such a system of bookkeeping and auditing that each board member may know and be advised from time to time fully concerning the receipts, disbursements and financial condition of the association.
- (e) To adopt and rigidly enforce strict regulations to insure economy in salaries and expenditures.
- (f) To require all the officers or employees of the association who handle funds of the association to give adequate bonds, the premiums of which shall be paid by the association.

ARTICLE V

OFFICERS

Section 1. The officers of the association shall be a chairman, one or more vice chairmen, a president, one or more vice presidents, a secretary and a treasurer, together with any other administrative officers whom the board of directors may see fit, in its discretion, to provide for by resolution entered upon the minutes. The board may appoint assistant secretaries and an assistant treasurer, in its discretion, and may delegate to them any or all the duties of the secretary and treasurer, and such other duties as may be deemed advisable.

The compensation and tenure of all officers shall be fixed by the board of directors. Unless otherwise determined by the board, officers shall be elected for a term of one year or until their successors are elected and have qualified.

Only the chairman and vice chairmen are required to be members of the board of directors.

Section 2. Chairman. The chairman shall: (a) preside over all meetings of members and directors, (b) call the directors together whenever necessary, (c) sign, as chairman, all certificates of stock and all contracts, notes and other instruments when so directed by the board of directors, (d) report at each annual meeting of the members, the average salaries of

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officers and department heads and the average salary of minor employees in each department, and (e) discharge such other duties as may be required of him by these by-laws or by the board of directors. If at any time the chairman shall be unable to act, a vice chairman, designated by the board, shall take his place and perform his duties; and if no vice chairman is able to act, the board of directors shall appoint a director to do so.

Section 3. President. The president shall be the principal executive officer of the association, shall have general authority and supervision over the employees of the association, and shall perform such other duties as may be prescribed from time to time by the board of directors. He shall have the authority to sign certificates for shares, as well as any deeds, mortgages, contracts, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution of such contracts or instruments shall be expressly delegated by the board of directors or by these bylaws to some other officer or agent of the association.

Section 4. Vice Presidents. In the absence of the president, the vice presidents in the order of their length of service as vice presidents, unless otherwise determined by the board of directors, shall perform the duties of the president; and when so acting shall have all the powers of and be subject to all the restrictions upon that office. Any vice president may sign certificates for shares, as well as any deeds, mortgages, contracts, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution of such documents or instruments shall be expressly delegated by the board of directors or these bylaws to some other officer or agent of the association. A vice president shall perform such other duties as from time to time may be assigned to him by the president, or the board of directors.

Section 5. Secretary. The secretary shall (a) keep a record of the proceedings of the meetings of the board of directors and of members, (b) keep the corporate seal, (c) keep a proper stock book, (d) execute and sign contracts, notes, papers and documents as authorized by the board of directors, (e) act as secretary of the executive committee, and (f) discharge such other duties as pertain to his office or may be prescribed by the board of directors.

Section 6. Treasurer. The treasurer shall perform such duties with respect to the finances of the association as may be prescribed by the board of directors. The secretary may be the same person as the treasurer.

ARTICLE VI

COMMITTEES

Section 1. Executive Committee. The board of directors may appoint an executive committee of four directors; determine its tenure of office and prescribe its powers and duties, which may be all of the powers and duties of said board of directors, which shall be performed or exercised subject to the general direction, approval and control of the board of directors. The president shall be an ex officio member of the said executive committee; in addition to the four members herein provided for.

Action taken at meetings of the executive committee and any reports thereof must be reported to the full board not later than its next regularly scheduled meeting.

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Section 2. Finance and Audit Committee. The board of directors shall appoint a finance and audit committee from among its members, determine the number thereof, its tenure of office, the manner and form in which the committee shall function, and prescribe its powers and duties; in lieu of such action by the board, the committee may prescribe rules and regulations with reference to its procedure.

The board of directors shall have audits made at least annually, by a certified public accountant whose report shall be filed with the board of directors prior to the annual meeting. Such audits of the association shall be reported to the members at the annual meeting.

Section 3. Other Committees. The board of directors may appoint such other committees from among its members as the board deems necessary or advisable, determine the number thereof, its tenure of office, the manner and form in which the committee shall function, and prescribe its powers and duties.

ARTICLE VII

STOCK CERTIFICATES

Section 1. Each certificate of common stock of the association shall have the following statement printed on its face:

"The common stock evidenced hereby may be purchased, owned or held only by producers who shall patronize the association in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the association. In the event the board of directors of the association shall find that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management or affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par or book value of such stock, whichever is less, in the event of its sale or transfer as herein provided), and the association shall have the right (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association, and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books, or (b) to require the transfer of any such stock at such book or par value to any person eligible to hold the same and on the failure of the holder to deliver the certificate or certificates evidencing any such stock, the association may cancel the same on its books and issue a new certificate or certificates in lieu thereof to any such person. The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall pass, to any person not eligible to hold the same, any rights or privileges

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on account of such stock or vote or voice in the management or affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by him. This association shall have a lien on all of its issued common stock and on dividends declared thereon for all indebtedness of the holders thereof to the association. No dividends shall be paid upon the common stock."

Section 2. The preferred stock of this association shall carry no voting rights. The board of directors of the association may authorize the issuance of preferred stock on such terms as it deems appropriate. The board of directors may, in its discretion, redeem all or a portion of outstanding preferred stock at such times and upon such terms as the board of directors deems appropriate. In the event of dissolution of the association the rights of holders of preferred stock shall be as specified in the by-laws of the association.

ARTICLE VIII

BOOKS AND RECORDS

Section 1. The books and records of the association shall, at all times, be subject to the inspection of the board of directors.

Section 2. Any member of the association, or his representative duly authorized in writing, may inspect the books and records of the association, subject to such rules and regulations as the board of directors may prescribe from time to time for the purpose of protecting the rights of the members and of the association generally.

ARTICLE IX

MEETINGS OF MEMBERS

Section 1. Regular Meetings. Regular meetings of the members shall be held each year at such time and place as the Board shall determine, for the purpose of hearing a report from the president and for transacting such other business as may come before the meeting.

Section 2. Special Meetings. Except where otherwise prescribed by law or elsewhere in these by-laws, a special meeting of the members may be called at any time by the president, or by a majority of the board of directors or on petition of one-tenth of the membership. Each such call shall be in writing and shall state the time, place and the purpose of such meeting. No business shall be transacted at a special meeting other than as is stated in the call for such meeting.

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Section 3. Notice of Meetings. Notice of each regular meeting of the members shall be given. Such notice must state the time and the place of the meeting and that the purpose thereof is the transaction of such business as may come before the meeting. A copy of the notice of each special and regular meeting shall be mailed to each member of the association prior to the time for holding such meeting, but in lieu thereof, notice of the meeting may be given by publication in a newspaper circulating in each district in which the association has members, such notices to appear on two occasions in such newspapers not less than ten days nor more than thirty days prior to the time of the meeting.

Section 4. Quorum. At any meeting of the members of the association other than a district meeting for the election of directors, at least 25 members present in person and/or voting by mail shall constitute a quorum for all purposes except when otherwise provided in these by-laws or by applicable law.

Section 5. Election of Directors. Following the formation of districts the members of each district shall meet for the election of a director to represent that district, and the board of directors of the association shall prescribe the procedure to be followed in each district for the election of a director therefrom; provided, however, that if, after any redistricting occurs with regard to a district, only one incumbent director resides in such district, no election shall be required as a result of such redistricting. In any district meeting the members present in person and/or voting by mail shall constitute a quorum for the election of directors.

Section 6. Voting. At any meeting of the members of the association or any district only those members who are registered owners of common stock shall be entitled to vote. The holders of preferred shares will have the privilege of the floor but without right to vote.

ARTICLE X

MEMBERS

Section 1. Eligibility. Any person, firm, partnership, or association who is a bona fide producer of tobacco in the territory in which the association is engaged in business may become a member of the association by acquiring a share of the common stock and signing the marketing agreement.

Section 2. Voting Power of Members. The voting power of the members of this association shall be equal and each and every such member shall have one vote.

Section 3. Proxies. Any member shall be permitted to vote at any meeting in person or he may vote by mail on a ballot, if prepared by order of the board of directors, but voting by proxy is prohibited.

ARTICLE XI

CAPITAL

Section 1. Capital Equity Credits or Certificates. This association shall establish and maintain a capital account for each member to whom capital equity credits or certificates are

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issued or allocated, for the purpose of acquiring and maintaining adequate capital to finance its business. Both qualified and nonqualified credits or certificates may be established to create the account evidencing such an amount of capital as may be deemed necessary by the board of directors from time to time, and for redeeming such capital as is no longer necessary.

All qualified capital equity credits or certificates shall satisfy the definition of a "qualified written notice of allocation" (40) or a "qualified per unit retain certificate" as defined in Section 1388 of the 1954 Internal Revenue Code. All nonqualified capital equity credits or certificates shall likewise satisfy the definition of a "nonqualified written notice of allocation" or a "nonqualified per unit retain certificate" as set forth in Section 1388 of the 1954 Code. Capital equity credits or certificates shall not bear interest.

Patronage dividends and per unit capital retains may be allocated and disclosed on either a qualified or nonqualified basis as solely determined by the board of directors, and such determination by the board of directors shall be made prior to the end of the association's fiscal year.

A record of all holders of capital equity credits or certificates shall be kept and maintained by the association. Such credits however evidenced shall be transferable only to the association.

All debts of the association, both secured and unsecured, shall be entitled to priority over all outstanding capital equity credits or certificates.

Section 2. Capital from Members. All business transacted by the association with or for members shall be transacted on a cost basis. The board of directors may determine an amount to be retained from net margins arising from all business transacted by the association with or for members. All such net margins shall be allocated to members on a patronage basis at the end of each fiscal year and shall be paid to such members in cash, or by credit to the capital accounts of each member, or partly in cash and partly in credit, within 8-1/2 months following the close of the fiscal year. Such patronage dividends may be paid in either qualified or nonqualified form as determined by the board of directors.

The board of directors may also determine a per unit capital retain to be deducted from the tobacco proceeds due members. Such per unit capital retain shall be evidenced by capital equity credits or certificates, and allocation and notification of such per unit capital retains to members shall be made within 8-1/2 months following the close of the fiscal year. Such per unit capital retains may be evidenced (paid) in either qualified or nonqualified form as determined by the board of directors.

Section 3. Losses from Member Business. In the event the association suffers a loss in any fiscal year in handling members' products or in the sale of supplies to or rendering of services for members, the board of directors shall have full authority and discretion to handle such loss so that it will be borne by members in the manner determined by the board to be most equitable and practicable.

Without limitation upon the authority hereby conferred, such loss may be charged to the members' accounts, or may be charged pro rata to such member's outstanding capital credits or certificates and any unabsorbed loss after the exhaustion of all outstanding

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credits or certificates may be charged against net margins of future years resulting from business handled with members.

In the event any loss be charged against capital equity credits or certificates, each credit or certificate shall be reduced by its proportionate part of the loss and the records pertaining thereto charged accordingly; and any thing to the contrary in these by-laws elsewhere contained notwithstanding, there shall be payable in respect of any capital equity credits or certificates against which a loss has been charged, only the difference between the amount of the credit or certificate as originally entered and the portion of the loss charged thereto.

Section 4. Capital from Sources Other Than Member Patronage. Each fiscal year, the association may set aside and retain as capital for use in the business of the association the net earnings (determined in accordance with sound corporate practices and sound accounting principles and after the payment of applicable Federal and State income taxes) derived by the association from sources other than patronage transactions with the members. Amounts so set aside and retained may be used for such purposes of the association as shall be determined by the board of directors.

Section 5. Losses from Nonmember Business. Any losses from sources other than members' patronage in any fiscal year after exhausting carrybacks and carryforwards relative to income from sources other than member patronage may be charged to any accumulated capital derived at any time from such sources (such charges to be made against the oldest such unexhausted accumulated capital).

Section 6. The Retirement of Capital Equity Credits. All capital equity credits issued to member or nonmember patrons shall be issued in annual series, each credit in each series being identified by the year in which it is issued. Each series shall be retired fully or on a pro rata basis, only at the discretion of the board of directors of the association, in order of issuance by years, but subject to priority as outlined herein, as funds are available for that purpose.

The check constituting a part of a nonqualified capital equity credit or certificate resulting from a "qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid" may be redeemed upon the presentation of such a check irrespective of the series or the year in which it is issued. Such redemption of the check portion of the nonqualified capital equity credit or certificate shall in no way affect the balance of the nonqualified capital equity credit or certificate of which the check is a part.

Notwithstanding any other provisions of these by-laws, the board of directors at its discretion shall have the power at any time to pay off or retire or secure a release or satisfaction of any capital equity credits; both qualified and nonqualified, to compromise or settle a legal dispute between the owner thereof and the association.

Section 7. Member's Consent to Take into Income All Qualified Patronage Dividend and Per Unit Retain Allocations. Each person who hereafter applies for and is accepted to membership in this association after July 13, 1979, and each member of this association as of July 13, 1979, who continues as a member after such date shall, by such act alone, consent and agree that the amount of any distributions or allocations with respect to his patronage occurring after July 13, 1979, which are made in written notices of allocation either as patronage

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dividends or as per unit retain allocations (as defined in 26 U.S.C. Section 1388) and which are received by him from this association, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. Section 1385(a) in the taxable year in which such written notices of allocation are received by him.

Section 8. Evidence of Capital Equity. The records of the association shall be conclusive evidence of the capital equity of a member or nonmember. Capital equity credit or certificate notices shall be only memorandum records of such equity and therefore such credits or certificates or notice memorandums need not be endorsed and returned to the association upon any payment thereon, redemption thereof, or cancellation thereof.

Section 9. Set-off. The association shall be entitled to set off against any claims which any member may have against the association, any amounts which the member may owe the association.

ARTICLE XII**AMENDMENT**

These by-laws may be altered or amended by a majority vote of a quorum of the members attending a meeting of which notice of the proposed by-law or by-laws shall have been given. Any by-law or by-laws of the association may be amended or repealed or any new by-law may be enacted by the board of directors of the association; subject, however, to any statutory limitation.

ARTICLE XIII**INDEMNIFICATION**

Section 1. The association shall indemnify each member of the board of directors, each officer and employee of the association, and the estate, executor, administrator, heirs, legatees and devisees of any such person, against all judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys fees, and any other liability that may be incurred as a result of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the association, and with respect to any criminal actions or proceedings, in addition, had not reasonable cause to believe that his conduct was unlawful; provided, however, that if any such claim, action, suit or proceeding is compromised or settled, it must be done so with the prior and express approval of the board of directors of the association.

Section 2. Such indemnification shall not depend upon whether or not such person is a member of the board of directors or is an officer or employee at the time such claim, action, suit or proceeding is begun, prosecuted or threatened, nor on whether or not the liability to be indemnified was incurred or the act or omission occurred prior to the adoption of this section.

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Section 3. In each instance in which a question of indemnification hereunder arises, determination of the right to indemnification hereunder, and of the time, manner, and amount of payment thereof, shall be made by the board of directors; provided however, in the event that a majority of the members of the board of directors are seeking indemnification hereunder as a result of the same occurrence, such determination shall be subject to the approval of the members of the association at any regular or special meeting called therefor; and provided further, such membership approval shall not be necessary in those cases where a court of competent jurisdiction has found that the conduct of such board members fairly and equitably merits such indemnity.

Section 4. Nothing hereinabove appearing shall be construed as permitting or requiring indemnity where such is prohibited by law.

ARTICLE XIV

DISSOLUTION AND LIQUIDATION

In the event of dissolution of the association in any manner, the monies and properties of the association shall be distributed and applied as follows:

First: The payment of all debts, liabilities and obligations of the association (other than the indebtedness, liability or obligations evidenced by capital equity credits or certificates or any other special capital credits of the association).

Second: The redemption of qualified capital equity credits in full or on a pro rata basis.

Third: The redemption of nonqualified capital equity credits in full or on a pro rata basis.

Fourth: The redemption of the preferred stock at the specified redemption price and the redemption of the common stock at par, in full or on a pro rata basis.

Fifth: Any amounts reflected on the association's books and records as "additional paid-in capital" and not previously distributed shall be distributed to patrons (as defined herein) of the association living at the time of dissolution and liquidation on the basis of the respective assessments paid in by each patron, relative to all assessments paid in, during the 1982-84 crop years. As used in this Article XX, "patron" shall mean any person who grew flue-cured tobacco and paid assessments in any crop year, for which the association's entire crop inventory for such crop year was later sold and the proceeds added to the association's reserves.

Sixth: Any balance remaining shall be distributed to persons who are or have been members during the twenty (20) years immediately preceding dissolution and liquidation on a pro rata basis for the number of years each such person actively participated as a member during such period.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN, ROBERT
POINDEXTER, MIKE MITCHELL, ROY L.
COOK, ALEX SHUGART, H. RANDLE
WOOD, ROBIN ROGERS and DANIEL LEE
NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

**DECLARATION OF JAMES T. HILL IN SUPPORT OF
DEFENDANT U.S. TOBACCO COOPERATIVE, INC.'S RESPONSE TO OBJECTIONS**

I, James T. Hill, declare as follows:

1. My name is James T. Hill. I am a member of the Board of Directors (“Board”) of U.S. Tobacco Cooperative Inc. (the “Cooperative”), the Defendant in the above action (“*Speaks*”). I was first elected as a Director for District 6 in 1976 and served until 1979. I rejoined the Board in May 1993, when I was appointed by James Hunt, then-Governor of North Carolina, as the Cooperative’s Public Director. I have served on the Board since then, and have been re-appointed every three years for the past 24 years. I was re-appointed most recently by Governor Roy Cooper in 2017. I served as the Chairman of the Board between 2013 and 2017.

2. As the Public Director, I am not elected from a geographic region like the other directors. When Governor Hunt appointed me, he told me to “take care of the tobacco farmer,” and that is why I continue to serve.

3. I am familiar with the history of the litigation in *Speaks*, as well as the parallel consolidated class action *Lewis v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 188, and *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 1938 (“*Fisher-Lewis*”), currently pending in North Carolina Superior Court. I was included in the definition for the certified class in *Fisher-Lewis*, but I filed a request for exclusion (“opt-out”) on October 12, 2017.

4. I participated in the two-day mediation that led to the settlement in *Speaks*. I understand that some class members think the settlement was a result of collusion, but that is not the case. The Honorable (Ret.) Judge Bullock oversaw the mediation, and he was an honest broker. Both sides presented their arguments about the case. There was a lot of back-and-forth, and much of it was heated and tense. The Settlement was reached only after a lot of discussions and concessions by both sides.

5. For the Cooperative’s part, I do not think the claims in *Speaks* and others like them have merit. And I do not think Plaintiffs are entitled to any money. That is what the courts in Georgia found in the *Rigby* case, where class members brought claims against the Cooperative that are just like the claims in *Speaks*. That said, I believe that the \$24 million Settlement is in the best interests of everyone involved; it is time for the Cooperative to put this nasty, 13-year litigation, which has divided families (including my own), behind it. I am proud to be a part of the Cooperative and am proud of the role it plays in farmers’ lives. Our members, including my family, benefit from the Cooperative’s active presence. The Tobacco Price Support Program provided a financial safety net for me, my family, and past members, and we benefitted greatly. It is now up to the Cooperative to make sure the current and the next generation of tobacco farmers have the chance to make a living.

6. I would also like to point out that during my 28-year tenure on the Board, including as the Public Director, no one from the government of the state of North Carolina has raised any issues with the Cooperative or its Board about the Cooperative's ongoing operation and business. Neither Steven Troxler (or anyone from the office of the North Carolina Department of Agriculture) nor anyone from the North Carolina Attorney General's Office has ever contacted me to discuss the Cooperative, including about the \$24 million Settlement. Certainly no one has asked us to close our doors.

7. I was surprised and disappointed to learn that the North Carolina Department of Agriculture is concerned about the fairness of the Settlement—without discussing it with me first. I serve on the Board as the appointee of the North Carolina governor and as public director. I believe that the Settlement is fair and in the best interests of the Cooperative and the class members. I would have shared this view (and all the reasons behind it) with the North Carolina Department of Agriculture, Attorney General, and any other North Carolina state government office, had they asked me.

8. I make this declaration in support of the Settlement. This declaration is based on personal knowledge, and I am prepared to testify as to its content at the fairness hearing on January 19, 2018.

The Disputed Funds

9. I understand that plaintiffs in both *Speaks* and *Fisher-Lewis* say that the Cooperative is holding three categories of funds that should be distributed to them. Plaintiffs are wrong. The Cooperative is not holding these funds—it does not have these funds, or anything close to it, in “cash” reserves.

1967-1973 Capital Equity Credits

10. From 1967 to 1973, the Cooperative sold tobacco it purchased from its members at a price above the federal minimum price guarantee. In other words, for each of these crops, the Cooperative paid off in full the loans it had obtained from the Commodity Credit Corporation (“CCC”) to buy the tobacco from members at the federally-guaranteed price, and earned a profit on the sale of the tobacco for those years.

11. In 1975, the Board had to decide what to do with the net profits, and it elected to retain a portion of the profits from the 1967-1968 crop years as a “capital reserve fund.” The Board distributed a portion of this profit to its members in cash and the remaining through capital equity certificates that could be redeemed in the future if the Board so decided. Our family farm was a member of the Cooperative in 1975 and sold tobacco to the Cooperative in 1967-1968, so we received our share of the cash and certificates for the profits from these years. I knew from the Cooperative’s newsletter and from district meetings about the Cooperative’s decision to establish a reserve. I supported the decision. We always had a district meeting, much like we have an annual meeting now. At these meetings, the Cooperative let us know what was going on and explained their positions. That is where elections were held and where information was passed out. I do not remember any farmer opposing the Cooperative’s decision to establish a reserve. We all knew that the day would come when the Tobacco Price Support Program went away—it was just a matter of when—so it was important for the Cooperative to have money to keep operating when the time came.

12. I was elected to the Board for the first time in 1976. Over the years, the Board (including me) voted multiple times to add to the “capital reserve fund” by retaining a portion of the net gains from the 1969-1973 crop years. Each time that the Cooperative learned it would earn a net gain from a particular crop year, the Board discussed whether it was a good decision to add

to the reserve fund. We had a lot of discussions. We knew that the federal program was not going to be in place forever. The Board voted in favor of retaining the reserve every time it was proposed. In the later years, the Board voted to retain a greater percentage of the net gains (compared to the amount distributed to the growers in cash): in 1967-1968, the Cooperative retained 40% of the net gains and distributed 60% in cash; in 1969-1973, the Cooperative retained 60% of the net gains and distributed 40% in cash.

13. I had dozens of conversations with my constituents about the Board's decisions to add to the reserve, and my fellow Board members did the same. The farmers wanted to know why the Cooperative kept the money and what the Cooperative planned to do with it. When I explained that the Cooperative needed the funds to prepare for the end of the Tobacco Price Support Program, so the Cooperative could continue to help farmers even after the Program ended, the members understood. I cannot remember any member challenging the Board's authority to retain the reserves until *Lewis* was filed in 2005.

14. In 1979, the Board recommended to the Cooperative's members that we amend the Articles of Incorporation to make clear what we already knew: the Cooperative was allowed to keep funds and use them at the Board's discretion. That recommendation carried. The amended Articles said the Cooperative was authorized to retain net gains from members in a capital reserve fund, which would be redeemed "only upon such terms and at such times as may be determined from time to time by the Board of Directors." **Ex. A** (May 25, 1979 Annual Meeting Minutes) at 3.¹ The Cooperative recorded the retained funds from the 1967-1973 crop years as "capital equity credits" in the stockholder's equity section of the Cooperative's financial statement.

¹ Included as Appendix 1 is a list of Exhibits attached to this Declaration. To the best of my knowledge, each Exhibit is a true and correct copy of the original.

15. During the decades that followed, we saw the storm clouds growing and knew that the Tobacco Price Support Program was going to disappear. Because of this, the Board never voted to redeem the certificates it held in reserve until much later. 2011 was the first time the Board voted to redeem portions of the 1967-1973 capital equity credits. We made the decision after reading the Cooperative's balance sheet and reviewing our operations. The first open redemption period was December 1, 2011 and February 28, 2012. The Cooperative offered to redeem certificates that had been issued for the 1967 and 1968 crop years. *See, e.g., Ex. B* (2012 Annual Report) at 7 ("In 2012, the Cooperative's Board of Directors began a program to allow for the voluntary redemption of certificates of interest held by current and former tobacco producers.").

16. The Board opened redemption periods for all 1967-1973 capital equity credit certificate holders since then. *Ex. C* (2016 Annual Report) at 31 (stating that the Cooperative offered an open call for redemption of the 1967-1973 credits in December 2015 through February 2016). We did this on a voluntary basis. Members could choose to keep the money with the Cooperative; it was not an obligation to take it out. Between December 1, 2016 and February 28, 2017, the Cooperative offered to redeem certificates that had been issued for the 1967-1973 crop years. In total, only approximately \$5.5 million in the capital equity credits have been redeemed.

The No Net Cost Era and Additional Paid-In Capital

17. In 1982, Congress passed the No Net Cost Act. All of the farm leaders and farm organizations pushed for the Act because we were afraid that the end of the Tobacco Price Support Program was near. We knew the Program was unpopular and that people were lobbying Congress to end the Program. We thought the No Net Cost Act was the way to extend the life of the Program, by saying that we, the farmers, will pay for it instead of the taxpayer. We knew that without the Program, there would be overproduction, prices would tumble, and it would be disastrous for the farmers, especially small farmers.

18. Because of the No Net Cost Act, growers had to pay assessments on flue-cured tobacco so the Program would no longer come at a cost to the American taxpayer.

19. Our farm paid our share of the No Net Cost assessments. I remember in some years, the assessment was \$.01 per pound; it got to as high as \$.25 per pound. Congress soon required assessments from purchasers as well, to help the growers pay the assessments. The amount of the assessment was determined by the CCC, not the Cooperative. My family and I understood that the assessments did not belong to the Cooperative. The Cooperative served as an agent for the CCC to collect assessments on its behalf, not to put the assessments in its reserve. Many of my fellow growers misperceive that the Cooperative took these assessments for its own reserve. That mistaken understanding on their parts is much of the reason why we are where we are today.

20. After 8 years of farmers paying assessments, the CCC agreed to use some of that assessment money to close out part of the Cooperative's loan. In 1990, the CCC sold a portion of the 1982 tobacco inventory it held as collateral. It used some of the assessments collected from growers between 1982 and 1984 to redeem the outstanding loan it had provided to the Cooperative to purchase the 1982 crop, and released the rest of the tobacco to the Cooperative. *See Ex. D* (Jun. 8, 1990 Letter to F. Bond) ("Your request . . . to redeem the 1982 flue-cured crop loan collateral inventory by using approximately \$164 million of the No-Net Cost Assessment . . . collections from the 1982-1984 crops has been approved."). The CCC never told the Cooperative what it had to do with any money it made from selling the tobacco.

21. The CCC did the same thing in 1992. It agreed to redeem the loans it had provided to the Cooperative to purchase the 1983-1984 crop and released the remaining tobacco to the Cooperative. *See Ex. E* (May 7, 1992 Letter to F. Bond) ("CCC approved the redemption of the 1983 and 1984 crop loan collateral inventories upon payment of the total debt outstanding, both

principal and interest, on these crop year loans. . . . By redeeming the 1983 and 1984 crops, [the Cooperative] may retain the sales proceeds resulting from the sale of the remainder of these crop inventories.”). These transactions and the return of the tobacco to the Cooperative were only possible because the CCC used the No Net Cost assessments to reduce the amount of the Cooperative’s loan to the CCC.

22. When the Cooperative realized it was getting tobacco back from the CCC and that it could make money selling it, the Board had to decide what to do with the money. The Board decided to hold the proceeds as a reserve, which is reflected on the balance sheet as the Additional Paid-In Capital portion of stockholder’s equity. The Board told the Cooperative’s members about its decision in a July 1990 newsletter sent to members: “[a] major long term benefit of this use of these funds [obtained from the sale of the 1982 tobacco crop] is to provide security for the operation of a market stabilization program in the event that tobacco is excluded from participation in USDA commodity programs. Even though the tobacco price support program operates on a no-net-cost basis to American taxpayers, the no-net-cost legislation is subject to repeal by Congress . . . In the event such [repeal] legislation is adopted by Congress, the Board of Directors would be in position with surplus No Net Cost funds and reserves to operate a program to protect and stabilize the market for flue-cured tobacco growers.” **Ex. F** (July 1990 Newsletter) at SC-09631.

23. I was not on the Board when the CCC redeemed the first loan (for the 1982 crop year), but remember hearing about it through the Cooperative and fellow growers. I also became very familiar with these transactions when I re-joined the Board in 1993, right when the redemptions were happening. The Board has the authority to retain income at its discretion and chose to do so for the benefit of future farmers once the Tobacco Price Support Program came to an end.

24. The Board also did not consider the proceeds from the 1982-1984 crop years as patronage income that should or could be allocated to individual members. The tobacco that was released had been sold to the Cooperative in 1982 to 1984, and the growers who grew it had already received payment in full for their tobacco at that time. And the proceeds at issue did not reflect any net profit the Cooperative earned from later selling the tobacco to third parties. The only reason the tobacco was returned to the Cooperative at all was because of the CCC's authorization and decision to use the No Net Cost assessments (taxes) to pay off the Cooperative's debt to the CCC. The assessments used to pay off the 1982 loan came from all growers for the 1982-1984 crop years (and was not limited to the growers in 1982 who grew the tobacco in question), so it would not have made sense to distribute the proceeds to only those growers in any event. The same assessments used to pay off the 1983-1984 loans came from all growers in 1984 and 1986, and not only from the growers in 1983 and 1984 who grew and sold the tobacco that wound up getting returned.

25. To the best of my knowledge, no member objected to the Board's decision to hold the funds earned from the sale of the released 1982-1984 crop as a reserve until the *Fisher-Lewis* litigation.

26. In the late 1990s and early 2000s, the Board started to consider other lines of business that the Cooperative could get into that would sustain it in the post-price-support era. In 2004, the Board voted to purchase a cigarette manufacturing and processing facility in Timberlake, North Carolina, so that the Cooperative could pursue a long-term business strategy of continuing to buy, market, and sell flue-cured tobacco from its member growers. The market for buying and selling tobacco green leaf was declining, and the Board knew that in order to continue to operate profitably, the Cooperative would have to vertically integrate and enter into the manufacturing

business. I had a slightly different vision for the Cooperative at the time, which was to use the Cooperative's funds to build a receiving center where growers could deliver their tobacco, and then the Cooperative would make agreements with the tobacco companies to share the costs and distribute the tobacco. I did not vote in favor of purchasing the facility in Timberlake, though I supported the ultimate decision of the Board. I understood the economics of the purchase, but I just had a different vision for the Cooperative moving forward. The Board believed the purchase to be in the best interests of the Cooperative's members, and I believe today that this was the right decision—one that has been proved right by the Cooperative's ensuing success.

FETRA and Contributed Capital

27. In October 2004, Congress passed the Fair and Equitable Tobacco Reform Act ("FETRA"), which ended the Tobacco Price Support Program. FETRA provided for a significant "buyout" of tobacco growers' quotas paid by the cigarette manufacturers. My family and I received the buyout payments, as did my member constituents. People who both owned quota and grew tobacco got \$10 a pound. Some of the big farmers made off with hundreds of thousands and even millions of dollars.

28. FETRA also required the U.S. Government to call the remaining CCC loans, using the No Net Cost assessments that the Cooperative had collected on behalf of the Government. The CCC released the remaining tobacco as collateral, free and clear of any liens, back to the Cooperative. The Board deliberated and decided to keep the proceeds from the sale of this tobacco in reserve to be used to sustain the Cooperative in the post-price-support era. The third set of disputed funds in this litigation, the "Contributed Capital," refers to the approximately \$81 million in funds earned through the sale of this tobacco. CCC also instructed the Cooperative to pay the farmers around \$7 million in cash from the leftover No Net Cost assessments. We devised and

implemented a plan to do that. The CCC approved the Cooperative's plan and then we executed it, including paying out the \$7 million in cash to farmers.

29. Just like the tobacco that had been released from the 1982-1984 crop years, the CCC told us that we could handle the tobacco "in any manner that [the Cooperative] desires." **Ex. G** (March 21, 2005 Letter). The tobacco was released to the Cooperative only after the CCC applied the assessments that had been paid over a number of years, by all growers, in addition to tobacco manufacturers and importers. Because everyone paid these assessments, it would not make sense in my view to distribute the proceeds of the sale of this tobacco only to those members that had grown the tobacco.

30. The *Fisher-Lewis* and *Speaks* plaintiffs argue that the purpose of the Cooperative no longer existed once the Tobacco Price Support Program ended. This surprised me. The members had been told for years that the very reason the Cooperative accumulated its reserve was for this very day: the day when price support ended and the Cooperative would need to use its own funds to help farmers sell their tobacco and get a fair price for it.

My Proposal To Distribute Funds In 2005

31. I understand that some of the objectors to the Settlement have argued that a proposal I made in 2005 to distribute a portion of the Cooperative's funds to the members is evidence that the current Settlement cannot be fair. These objectors have taken my motion out of context, and I disagree that my 2005 proposal has any relevance to the Settlement today.

32. In late 2004 and early 2005, the Board was facing a decision point concerning its future. FETRA had just been enacted and the Cooperative was deciding how best to move forward. The Board was also considering whether to return capital to its members. Obviously, the decision about the scope and direction of the Cooperative's future business would impact the amount of capital it needed.

33. In January 2005, I seconded a motion that the Cooperative's management should examine the capital reserves and determine if adequate funds existed to distribute to the Cooperative's members. I also offered my own proposal to be discussed at the Board's meeting in February 2005 to distribute approximately \$136.7 million from the Cooperative's funds to members. I proposed distributing approximately \$26 million in the 1967-1973 capital equity credits to those equity credit holders, and the approximately \$110.8 million in "Additional Paid-In Capital." I made this proposal shortly after the *Lewis* action was filed in January 2005 and shortly before the *Fisher* action was filed in February 2005. I thought that the Cooperative should remain in business and fulfill its obligations to its members. My intention was to give certain funds to the growers as a compromise, after which the Cooperative would use its remaining funds to move forward in those formative years after the end of the Tobacco Price Support Program. I thought we could do both. After I offered my proposal, Andy Shepherd made a motion that the Cooperative's Chief Financial Officer, Kenneth Bopp, should do a study to determine what funds might be available at that time potentially to distribute to the Cooperative's members.

34. At the Board's meeting in February 2005, Mr. Bopp presented a five-year financial analysis and pointed out that the Cooperative needed to maintain all of its funds for its operations. It was management's recommendation not to distribute any funds at that time to the Cooperative's members. Afterwards, my motion came up for a vote and I was the only one on the Board who voted for it. The Board determined it was a better decision to retain the full reserve. I understood the Board's decision, especially in light of Mr. Bopp's analysis showing that there were not any available funds to distribute.

35. In making the motion, I wanted to appease former growers who wanted money after leaving the tobacco farming business. I heard their complaints and was sympathetic to them.

These were farmers I had known for a long time and who had been working hard to grow tobacco for a long time. I naturally wanted to help them and to avoid any hard feelings. My desire was not driven by a view that *Fisher-Lewis* had legal merit or that the members had any legal authority to force a distribution of the retained equity. Instead, all I was doing was making and voting for a motion, recognizing that the prospect of making a distribution was something the Board should discuss, consider, and reach a collective decision about. It is clear to me that the Cooperative's continued retention of the funds at issue were fully authorized by North Carolina law, the Cooperative's Articles of Incorporation and by-laws, and the FETRA legislation.

36. Later in 2005, the Cooperative agreed to settle with the *Lewis* plaintiffs. I voted in favor of the settlement because of my desire to quickly end the litigation, heal divisions, and move forward. That settlement was not approved. Since that time and moving forward, the old stabilization organization has become a true marketing cooperative. It has expanded its sales in international markets through its marketing efforts, acquired and created cigarette brands, acquired distributors of tobacco products, obtained a line of credit with favorable financial terms, and established several marketing centers where growers can sell their tobacco. These business decisions have benefitted the Cooperative's members by providing a stable market for their tobacco. But it means that the Cooperative of today is very different than the Cooperative of 2005, before the Cooperative made all of these investments. The Cooperative cannot pay out what the *Lewis* plaintiffs were asking for in 2005 without effectively shutting down.

37. I continue to believe that the claims asserted in both *Speaks* and *Fisher-Lewis* have no merit. Even so, I also believe that the \$24 million Settlement is in the best interests of the Cooperative because it enables the Cooperative to focus on business strategy and the future instead

of spending more time and money on litigation, while making substantial payments to all the former growers who believe they have a continuing claim upon the Cooperative.

* * *

I declare under penalty of perjury that the foregoing is true and correct to the best of my recollection. Executed in Raleigh, NC, this 11TH day of January, 2018.


James T. Hill

APPENDIX 1

Attached hereto as Exhibits A-G are, to the best of my knowledge, true and correct copies of the following documents:

Exhibit	Document
A	May 25, 1979 Cooperative Annual Meeting Minutes
B	2012 Cooperative Annual Report
C	2016 Cooperative Annual Report
D	June 8, 1990 Letter to F. Bond
E	May 7, 1992 Letter to F. Bond
F	July 1990 Cooperative Newsletter
G	March 21, 2005 Letter

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN,
ROBERT POINDEXTER, MIKE MITCHELL,
ROY L. COOK, ALEX SHUGART, H.
RANDLE WOOD, ROBIN ROGERS and
DANIEL LEE NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

INDEX OF EXHIBITS

Defendant U.S. Tobacco Cooperative Inc. (the “Cooperative”) respectfully submits the following exhibits in connection with the Declaration of James T. Hill in Support of the Cooperative’s Response to Objections, dated January 11, 2018:

Exhibit A: Attached hereto as Exhibit A is a true and correct copy of minutes from the 33rd Annual Membership Meeting of the Cooperative, dated May 25, 1979.

Exhibit B: Attached hereto as Exhibit B is a true and correct copy of the Cooperative’s 2012 Annual Report.

Exhibit C: Attached hereto as Exhibit C is a true and correct copy of the Cooperative’s 2016 Annual Report.

Exhibit D: Attached hereto as Exhibit D is a true and Correct Copy of a letter from the United States Department of Agriculture to Fred Bond, Chief Executive Officer of the Cooperative, dated June 8, 1990.

Exhibit E: Attached hereto as Exhibit E is a true and correct copy of a letter form the United States Department of Agriculture to Fred Bond, Chief Executive Officer of the Cooperative, dated May 7, 1992.

Exhibit F: Attached hereto as Exhibit F is a true and correct copy of the Cooperative's July 1990 Newsletter.

Exhibit G: Attached hereto is a true and correct copy of a letter from John M. Truluck, of the United States Department of Agriculture, to Lioniel Edwards, General Manager of the Cooperative, dated March 21, 2005.

EXHIBIT A

33RD ANNUAL MEMBERSHIP MEETING
FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATIONRaleigh, N. C.
May 25, 1979

The 33rd Annual Membership Meeting of Flue-Cured Tobacco Cooperative Stabilization Corporation was called to order at the office of the Corporation, 1304 Annapolis Drive, Raleigh, N. C., on Friday, May 25, 1979, at 10:00 a.m., and recessed to the Scott Pavilion, N. C. State Fairgrounds, Raleigh, N. C. Attendance at the meeting totaled approximately 1400.

President Billy W. Hill called the meeting to order and extended brief remarks of welcome to those in attendance.

Mrs. Isabelle M. Fletcher, Stabilization's Public Director, gave the prayer of invocation.

North Carolina's Governor James B. Hunt, Jr., extended words of welcome to those in attendance at the meeting and made other remarks appropriate for the occasion.

President Hill announced to the group that the speaker of the day would be Assistant Secretary of Agriculture for Marketing Services P. R. (Bobby) Smith. The scheduled speaker, Deputy Secretary of Agriculture James H. (Jim) Williams, had been unable to fulfill the speaking engagement due to the fact that President Jimmy Carter had requested him to attend an Energy Conference in Kansas City.

He then introduced Assistant Secretary Smith who gave a timely, interesting, and informative message. An opportunity was given for the audience to direct questions to Secretary Smith; however, no questions were asked.

The Annual Report of the President was presented by Mr. Hill.

The Annual Report of the General Manager/Secretary-Treasurer was given by Fred G. Bond, assisted by A. L. Jackson, Assistant Treasurer.

The report was based on the printed booklet which had been given to each person present. Mr. Jackson reviewed the financial report as of April 30, 1979, which was a part of the booklet. Mr. Bond then reviewed highlights of the remainder of the report and included other matters of pertinent interest at the present time in connection with the overall tobacco program, and particularly Stabilization's operations.

President Hill presented a statement relative to a proposed amendment to Stabilization's Charter (Articles of Incorporation) for the consideration of the membership. This amendment to Stabilization's Charter is permitted by a recent amendment to the N. C. Cooperative Marketing Statutes G.S. 54-136 under which Flue-Cured Tobacco Cooperative Stabilization Corporation was organized in 1946.

Annual Meeting, May 25, 1979

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Following extensive study by the Board, decision had been made three years ago that there was a need to establish a Capital Reserve Fund for the long-range protection of the grower's cooperative marketing association in the event the present program, or a similar program, was no longer available to the flue-cured tobacco growers. The Board decided that the practical way to accomplish this goal was by the retention of a portion of net gains realized from the sale of tobaccos delivered to Stabilization under the loan program for the crop years 1967-1973, inclusive. The member's interest in the Capital Reserve in each instance is evidenced by the issuance of a non-transferable Certificate of Interest which was mailed to the member along with the portion of the crop distribution made in cash (or check).

Mr. Hill reviewed reasons why the Board felt justified in establishing the Capital Reserve Fund through this method and why it feels that it is imperative that the fund be held intact until such time as the Board deems it advisable to make disposition of these funds to the individual members involved.

He then presented the following proposed amendment as adopted by the Board and as recommended by the Board to the membership. The amendment, if adopted, would become a new addition to the Articles of Incorporation and would become Article XI.

ARTICLE XI

"The corporation shall have the right to establish and maintain a capital reserve for the future conduct of its business. All amounts contributed by members to the association's capital (or capital reserve), including all amounts properly withheld from amounts derived from the patronage of members, shall be evidenced by the issuance of a non-transferable certificate of interest which shall carry no rights of dividend, interest or other income or appreciation. Certificates of interest shall be redeemable (in whole or in part) out of the capital reserve only upon such terms and at such times as may be determined from time to time by the Board of Directors. The death, withdrawal or expulsion of a member shall not give rise to any right to receive any payment from the capital reserve or to receive any payment on account of other equity credits except capital stock of the corporation. Whenever partial or full redemption of certificates of interest, or the payment of other equity credits, is authorized by the Board of Directors such payments shall be made as follows: 1) to the registered owner if living; or 2) to the registered owner's estate if such owner be deceased and his estate then be in the process of administration; or 3) to those entitled by law thereto as determined by the laws of such owner's last domicile if such owner be deceased and his estate not then be in the process of administration."

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Prior to requesting a motion relative to this amendment, President Hill advised the group that notice of a proposal to amend the Charter had been included in the legal notice of the Annual Membership Meeting, that there was a quorum of the membership present at the meeting, and that only members of Stabilization were eligible to vote on this proposed amendment to the Charter. Attendee-members had previously been presented with special cards as evidence of their membership in Stabilization.

Motion was made by W. S. Adkisson, Jr., Clover, Va. (Halifax County), that the amendment to the Articles of Incorporation be adopted as presented. Motion was seconded by L. Calvin Oglesby, Route 1, Box 176, Oak City, N. C. (Martin County).

There being no questions raised, the motion was passed by voice vote. (NOTE: No dissenting vote was cast.) President Hill declared the amendment duly adopted as presented.

Joyner & Howison, General Counsel, will complete the legal procedures involved in finalizing this amendment to the Charter of Flue-Cured Tobacco Cooperative Stabilization Corporation.

President Hill recognized Outgoing Director James T. Hill, Jr., for the service he had rendered on the Board for the past three years, representing District #6 growers. Director Hill thanked the group, and especially members of District #6, for the opportunity he had been given to serve on the Board of Directors for this period of time.

Special recognition was given to Colonel William T. Joyner who had completed more than thirty years of continuous service as Stabilization's General Counsel. President Hill presented Colonel Joyner a plaque commemorating this period of service. The plaque read as follows:

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION
Bestows this

OUTSTANDING SERVICE AWARD

On

COLONEL WILLIAM T. JOYNER

for his loyal and dedicated service as General Counsel since November 1948.

His sound judgment, valuable counsel, and his wide range of legal experience and personal contacts have helped guide this association in attaining many difficult objectives satisfactorily and successfully. His dedicated commitment as General Counsel, his availability to Stabilization on any occasion on

(cont'd)

Annual Meeting, May 25, 1979

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Plaque (cont'd)

which his advice was sought, and his loyal attendance at Board meetings during this period have represented a deep and sincere concern for the welfare of tobacco producers.

On behalf of all farm people engaged in agricultural endeavors in general, and flue-cured tobacco in particular, the Board members and staff, as a group and individually, are deeply grateful to him and sincerely thank him for this tenure of service of more than thirty years.

This is a permanent record of the deep appreciation of the Board of Directors, the staff, and the membership of Stabilization for his honorable, unselfish, diligent, and efficient guidance since November 1948.

Given at Raleigh, North Carolina, this 25th day of May, 1979.

Colonel Joyner accepted the plaque and thanked the group for the opportunity and privilege of serving Stabilization in this way and for the honor bestowed upon him at the meeting. He assured the group that he expected to continue to render advice and counsel to the Board and staff, when requested to do so, to the very best of his ability.

Those present paid tribute to Colonel Joyner for the dedicated service he had rendered to agriculture in general, and to Stabilization and flue-cured tobacco in particular, with a standing ovation.

General Manager Bond thanked those in attendance for their interest in Stabilization and its operations as shown by their attendance at the meeting. He extended special thanks and appreciation from the Board and staff of Stabilization for the work done by representatives of the many organizations and agencies in promoting and encouraging attendance at the meeting. He expressed special appreciation to the Advisory Committee members and other individual growers for the efforts they had put forth in encouraging attendance at the meeting.

He then introduced some special guests, many of them having come from other states. He introduced members of the Board of Directors, including Incoming Director Atlas Wooten who will represent District #6 growers for the ensuing three-year period, and Counsel members, Colonel W. T. Joyner and Walton K. Joyner.

Mr. Bond made a brief announcement about arrangements for the barbecue lunch which would follow adjournment of the meeting and he invited any individual or group present who would like to visit Stabilization's office facility at 1304 Annapolis Drive to stop by the building, adding that someone would be on hand to show them through the building.

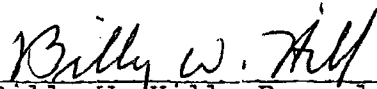
Annual Meeting, May 25, 1979

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W. F. Davis, Stabilization's Vice President from South Carolina, gave the prayer of grace for the meal and benediction for the meeting.

President Hill declared the meeting adjourned at 12:00 Noon.

Respectfully submitted:



Billy W. Hill, President



Fred G. Bond, Secretary-Treasurer

EXHIBIT B



2012 Annual Report



“Serving Flue-Cured Tobacco Growers since 1946”



**U.S. Tobacco Cooperative
Headquarters: Raleigh, NC**



**U.S. Flue-Cured Tobacco Growers
Processing/Manufacturing:
Timberlake, NC**



**Tobacco Growers Services
Storage: Fuquay-Varina, NC**

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U.S. Tobacco Cooperative: Mission Statement



To enhance the livelihood of our member growers by educating potential customers about the superior taste and aroma of U.S. flue-cured tobacco; and promoting its use in increasing percentages to companies that produce tobacco products.

To gain further economic opportunities for our member growers by supporting our subsidiary — U.S. Flue-Cured Tobacco Growers Inc. — in creating products and partnerships developed for the express purpose of increasing the preference for U.S. flue-cured tobacco by adult consumers who use tobacco.



To educate and encourage our member growers in the maintenance of high standards of integrity and agronomy practices in growing and curing tobacco so that adult consumers who use tobacco products will express with their brand choices a preference for those products that contain U.S. flue-cured tobacco.



To educate and encourage our member growers in the use of sound economic practices so that they, along with future generations, can maintain the centuries-old American tradition of tobacco farming as a viable option for supporting their families.



Message to our members....

The U.S. Tobacco Cooperative Chairman's report to members includes information on the 2011-2012 fiscal year activities, as well as, highlights for the current season that is rapidly approaching conclusion.

A review of the 2011 season can demonstrate how good plans and good practices can be circumvented by natural forces that interrupt our production potential. The grueling hot temperatures in the summer of 2011 deteriorated the quality of our tobacco crop.

However, the most dramatic weather factor was Hurricane Irene. Irene moved slowly across eastern North Carolina and eastern Virginia and destroyed a large portion of the 2011 crop that she touched. The damage from Irene was so severe that your Cooperative only received 58 percent of the contracted pounds for the season.

In 2011, our customers went home with orders unfilled. Fortunately for us, we had inventories that helped supply some tobacco to the customers until we could grow another crop in 2012.

These dramatic weather situations help keep us mindful of how dynamic our tobacco production really is, and how resilient the U.S. tobacco growers can be.

We sold most of the 2011 crop and a large amount of our older crop inventories. The information in the 2012 Annual Report gives a snap shot of the inventory level at the end of the fiscal year.

Most of your deliveries to our Cooperative are destined for off-shore customers. China continues to be our largest customer and their loyalty to U.S. Tobacco Cooperative is certainly recognized and appreciated.

All of our customers are important and our mission is to supply each customer's needs whether it is one container or hundreds of containers.

Your sales force travels overseas frequently to attend trade shows, to call on customers, to stay current on customer needs and to seek out new customers. Just like tobacco production, selling tobacco is a never ending process. When we sell a pound of your tobacco, we then have the space and the need for you to grow another pound of tobacco.

We are marketing your tobacco in China and most of the Southeast Asian countries including Indonesia, Malaysia, Thailand, Taiwan, South Korea, Philippines and Vietnam. Our marketing program for European countries includes Germany, Denmark, Greece, Poland, Belarus, United Kingdom, Russia and one African country which is Egypt. All this means that your Cooperative is marketing your production on four continents.



Albert M. Johnson
Chairman of the Board

In addition to supplying leaf strips, as you know, your Cooperative supplies tobacco consumer products. Your Timberlake manufacturing plant, U.S. Flue-Cured Tobacco Growers, manufactures cigarettes, filtered cigars, cut tobacco for roll your own products and pipe tobacco.

The Cooperative's legacy brand is 1839. With the purchase of Premier Manufacturing in October 2011, we acquired four more brands including Wild Horse, First Class, Shield and Ultra Buy.

With Premier came Franchise Wholesale in Omaha, Nebraska. Franchise provides distribution to mid-western and western states. Your other distribution company, Big South Distribution in Bristol, Virginia, was acquired in May of 2011 and covers several southeastern states. The northeastern states are being serviced by U.S. Flue-Cured Tobacco Growers sales staff. The net effect of our brand acquisitions and distribution expansion is that we now have product under our management in at least 23 states.

Additionally, we supply custom made products for the export market. As a member grower of U.S. Tobacco Cooperative, you have representation that spans from the grower's contract all the way to the retailer.

During the 2011 season, at the request of our customers, we implemented a Good Agricultural Practices program for our grower members. Multiple training sessions were held and all grower

members were GAP-certified. The compliance audit report we received showed that our members are following the GAP production methods.

Also, we know that member growers are adjusting their production practices to meet the residue tolerances on leaf. We tested each grower's tobacco several times during the season in order to document that tolerances are being met.

For 2012, we held regional meetings to train and GAP-certify all of our members/growers. For 2013, we are anticipating that the Extension Service will conduct meetings for GAP training that will meet the needs of all purchasing companies. This will certainly be more convenient and efficient for the growers and the instructors. We have advocated such a plan for more than a year and will continue to support an industry GAP training program.

During the 2011-2012 year, FDA officials made an inspection visit to our factory in Timberlake. We anticipate that there will be other visits by FDA officials in the future.

For the 2012-2013 fiscal year, Directors from Districts Four, Six and Nine were re-elected for another three year term. Those Directors are Jimmy Pate from District Four, Blythe Casey from District Six and Richard Renegar from District Nine.

In 2012, the Cooperative's Board of Directors began a program to allow for the voluntary redemption of certificates of interest held by current and former tobacco producers. In 2012, 1967 and 1968 certificates were offered for redemption. In early 2013, the unredeemed 1967 and 1968 certificates will be reoffered for redemption, along with the 1969, 1971 and 1972 certificates.

The operation of the 2013 voluntary redemption program will be similar to the 2012 program. There will be an update to the tobacco redemption website (www.tobaccocheck.com), updated application form (available from the website), and an update to our information call in number 877-277-7422. We anticipate this program will start in early 2013 and be completed prior to the end of our fiscal year in April.

The tobacco trade issues never go away. There is the continuing threat that tobacco will be deleted from U.S. Trade Agreements.

Our own government leaders continue to try to reduce world market access for U.S. tobacco growers. Your Cooperative's Board, staff and lobbyists will continue to advocate for equal world market access for U.S. tobacco at every opportunity.

Activities for the 2012 crop year brighten our view of the overall U.S. tobacco situation. An excellent crop has once again validated the fact that U.S. tobacco is the best quality worldwide. The superb quality of the

crop resulted from mostly favorable weather and the tremendous talent U.S. growers have for managing all the production elements to achieve the styles of tobacco our customers need. The production capabilities of U.S. tobacco growers is a national treasure and your Cooperative recognizes your skills by trying to pay you well for what you do in order to keep you in the tobacco growing business. Not only do we want to keep you in business, we see new opportunities and are constantly planning ways to expand the role your Cooperative plays in supplying customers internationally and domestically.

For the 2013 crop, we need to expand our contracts substantially. We will need our current members to expand their contract pounds and we will need new members that will sign marketing contracts for enough production to satisfy our customers' needs.

Your Cooperative's Board and staff are very optimistic that we can do more to give the members security for investing in a livelihood of tobacco production for the current and the next generation of tobacco growers.

While there are many factors beyond our control, we plan to provide opportunities for flue-cured tobacco growers.



Albert M. Johnson
Chairman of the Board



Seated from left to right: Kenneth Dasher, Albert Johnson, Andy Shepherd. Standing from left to right: Jimmy Hill, Jimmy Crews, Blythe Casey, Charlie Batten, Keith Beavers, Richard Renegar, Jimmy Pate.

Board of Directors

Kenneth Dasher, Vice Chairman	District Two	Live Oak, Florida
Albert M. Johnson, Chairman	District Three	Galivants Ferry, South Carolina
James C. Pate, Vice Chairman	District Four	Rowland, North Carolina
Keith Beavers	District Five	Mt. Olive, North Carolina
Blythe H. Casey	District Six	Kinston, North Carolina
Charlie Batten, Jr.	District Seven	Four Oaks, North Carolina
Jimmy Crews	District Eight	Oxford, North Carolina
Richard Renegar	District Nine	Harmony, North Carolina
Andrew Q. Shepherd, Vice Chairman	District Ten	Blackstone, Virginia
James T. Hill, Jr.	Public Director	Kinston, North Carolina

Factors Affecting 2011-2012 Business Operations

Cooperative Accomplishments

- Value of the dollar continues to favor exports
- China continues to increase its presence in U.S. tobacco market
- Higher fuel prices continue to impact tobacco production costs
- Good Agricultural Practices (GAP) training continues to be an industry requirement for 2012

CANADA	CAD	0.9512	0.9883
CHINA	CNY	0.13168	0.0910
EURO	EUR	0.6644	0.6100
JAPAN	JPY	0.00900	0.00200
SINGAPORE	SGD	0.43712	0.12530
HONG KONG	HKD	0.0043	0.0012
NEW ZEALAND	NZD	0.11646	0.0675
MYR	MYR	0.2536	0.218



Active Crops Dry Basis

(pounds in millions)

Crop Years	2001 to <u>2009</u>	<u>2010</u>	<u>2011</u>	<u>TOTAL</u>
Original Receipts	367	44	26	437
Less Sales and Sales Commitments	367	41	23	431
Uncommitted Inventory 4-30-12	0	3	3	6
Percent of Original Sold or Committed	100%	93%	88%	99%

FINANCIAL STATEMENTS

Condensed Consolidated Balance Sheet

April 30, 2012 and 2011

ASSETS	<u>2012</u>	<u>2011</u>
Cash and Cash Equivalents	\$ 6,749,053	\$ 16,707,936
Investments in Interest-Bearing Obligations, at Amortized Cost	\$ 182,294,451	\$ 283,428,014
Accrued Interest Receivable	\$ 789,830	\$ 1,121,576
Accounts Receivable	\$ 53,852,227	\$ 61,583,173
Deferred Tax Assets	\$ 1,156,623	\$ -
Inventory	\$ 81,497,610	\$ 80,152,694
Prepaid Expenses & Other Current Assets	\$ 1,163,264	\$ 362,082
Land, Buildings & Equipment - Net	\$ 27,134,893	\$ 27,072,246
Intangible Assets	\$ 132,849,379	\$ -
Total Assets	\$ 487,487,330	\$ 470,427,721
LIABILITIES & STOCKHOLDERS' EQUITY		
Liabilities:		
Accounts Payable and Other Accrued Expenses	\$ 16,895,098	\$ 16,179,509
Redeemable Stockholders' Equity Credits	\$ 7,218,730	\$ -
Stock Redemption Payable	\$ 5,502,717	\$ 4,022,125
Revolving Line of Credit	\$ 61,329,675	\$ 104,898,304
Current Portion of Long Term Debt	\$ 5,739,251	\$ -
Income Taxes Payable	\$ 1,310,999	\$ 1,490,314
Deferred Income Taxes	\$ 3,592,774	\$ 4,484,896
Customer Deposits	\$ 1,064,648	\$ 1,142,876
Pension Benefits	\$ 6,437,070	\$ -
Note Payable	\$ 42,084,177	\$ -
Total Liabilities	\$ 151,175,139	\$ 132,218,024
Stockholders' Equity:		
Common Stock	\$ 4,535	\$ 4,700
Additional Paid-in Capital	\$ 110,753,161	\$ 110,753,161
Accumulated Other Comprehensive Loss	\$ (4,219,094)	\$ (988,350)
Contributed Capital	\$ 81,520,000	\$ 81,520,000
Capital Equity Credits	\$ 22,886,099	\$ 26,802,854
Retained Earnings	\$ 125,367,490	\$ 120,117,332
Total Stockholders' Equity	\$ 336,312,191	\$ 338,209,697
Total Liabilities and Stockholders' Equity	\$ 487,487,330	\$ 470,427,721

This condensed balance sheet was prepared by management from audited financial statements on which an unqualified opinion was rendered.

Consumer Tobacco Products Group

Dear Grower Members:

This past year in the tobacco industry has continued to be a very competitive and challenging period especially in the U.S. domestic cigarette market. Our organization has had a vision of continuing to establish itself as a growing participant in this industry and we are very proud to report that this past year, the consumer products segment of your Cooperative has made great strides in fulfilling this vision. Joining U.S. Flue-Cured Tobacco Growers, Inc. to form the Consumer Products Group are our new acquisitions of Premier Manufacturing, Inc., Franchise Wholesale, LLC, and Big South Distribution, LLC. We are very proud to report that the acquisition of these outstanding organizations has allowed us to continue the positive momentum we established last year.

Premier Manufacturing became part of the Consumer Products Group in October of 2011. Headquartered in St. Louis, Premier is a customer driven sales organization which has four U.S. cigarette brands. Its two flagship brands, WILDHORSE® and SHIELD®, are established brands sold throughout the U.S. Franchise Wholesale also became a part of the Consumer Products Group in October of 2011. Franchise is a specialty tobacco products distributor and is licensed to distribute tobacco products in over 40 states. It has warehouses in Nebraska and Nevada. Big South Distribution joined our team in May of 2011. Big South is also a specialty tobacco products distributor specializing in the southeastern U.S. market. It has warehouses in Virginia, Georgia and South Carolina. These additions have dramatically increased our ability to get our products to our consumers.

The Timberlake based manufacturing plant, U.S. Flue-Cured Tobacco Growers, continues to sell its two established U.S. brands. Its flagship brand, 1839®, continues to be a critical part of the overall strategic vision. The Consumer Products Group now has employees in 19 states throughout the U.S.

As we all continue to face very challenging and uncertain economic conditions, our business is affected by the downward pressures on our consumers' disposable income. By way of these acquisitions, we were able to continue to grow and strengthen our position in the industry. As we continue to deal with ever increasing government regulation of the tobacco industry at both the federal and local levels, these acquisitions have allowed us to increase the unit sales to the consumer. The strength of these acquisitions is shown by a significant increase over last year in the net margin of the Consumer Products Group. Our group is very proud to be a significant contributor to the net margin that allows for a patronage dividend to be returned to our Grower Members.

Our overall visibility and company recognition has continued to grow in the industry and we have increasing numbers of requests from companies who are interested in having us manufacture their brands for both the U.S. and International markets. We believe the use of our Grower Members' U.S. flue-cured tobacco in our products has helped us achieve the status of a very desirable high quality manufacturer. This contract manufacturing has been an increasingly positive segment of our overall operations.

We are very proud to be representing you, our Grower Members, with all of our brand families and will continue to promote the "A Product from U.S. Farmers" image around the world.

Our thanks for your continued support,

The Management of the Consumer Products Group:

U.S. Flue-Cured Tobacco Growers, Inc.

Franchise Wholesale, LLC

Premier Manufacturing, Inc.

Big South Distribution, LLC



2012 Marketing Centers

<u>Mkt Ctr #</u>	<u>Location</u>	<u>Contacts</u>	<u>Telephone</u>
262	Planters Warehouse 300 Watson Street Nashville, GA 31639	Jimmy Parker L.E. Watson	229-686-9763
365	Big L Warehouse 901 NE Front Street Mullins, SC 29574	Johnny Shelley Elton Johnson	843-464-4300
635	Big Star Tobacco Warehouse 1920 Black Creek Road SE Wilson, NC 27893	Arthur Ray Talley Jeff Radford	252-206-1800
925	USTC Danville 660 Kentuck Road Danville, VA 24540	W.H. Williams	434-799-8202



2012 Marketing Season

In 2012, we had one of the earliest openings of the marketing season in recent memory. Our marketing center located in Nashville, Georgia opened on July 17, 2012. Our other marketing centers were not far behind, opening within 7 to 10 days of Georgia. The early openings were very much in line with harvesting of the crop in their respective growing areas. Also, the Cooperative felt that it needed to be open for business and available for its member growers for those that may have had tobacco to sell.

The weather pattern this growing season was a change from the previous years. Instead of dry and excessive heat, we had excessive rains. There were some scattered dry areas but the rains were predominant in most areas. A tropical system brought tremendous rains to the tobacco producing area in Florida and parts of South Georgia. Rains in the spring brought excessive rains to parts of the Pee Dee area of South Carolina. The rains continued all through the Border Belt areas to the most eastern and northeastern areas of tobacco production in North Carolina. Southside Virginia experienced some areas of more than plentiful rains as did some areas of the Middle Belt and Western North Carolina Old Belts respectively. Besides the rains, there were numerous reports of hail and wind damage from South Georgia to the Western Old Belt.

Even though we may have experienced a less than desirable growing season (either too wet or too dry areas), the quality of the crop overall that we have purchased has been very pleasing. From the bottom to the top, this crop is as clean as one could ask for, and we say thank you to our member growers for their efforts. Weather conditions have also had some role in the production of the tobacco crop. Production yields have been affected by too much rain; therefore the amount of pounds produced will be reduced, which will have a bearing on the total production size of the crop.

Just prior to and after the Labor Day holiday, there were increases in the price of tobacco from all buying companies that contract directly with the grower. These price increases may be, in part, a result of a shortage of tobacco due to the weather conditions that were mentioned earlier. There is speculation that the shortage is also a result of growers signing contracts to grow tobacco but not planting the crop. Some growers may have "over contracted" to perhaps hedge on having a good production year in which the grower could produce more pounds to sell.

We again thank our member growers for their efforts in producing as good a quality crop as possible under all sorts of conditions. We recognize the support our member growers have provided by bringing good tobacco, which in turn provides our buying customers with the tobacco they need to produce a quality product.



NOTES

A Product Of US FarmersTM

LB

Shield[®]

BLUE BOX

1st CLASS[®]

RED KINGS BOX



20 CLASS A CIGARETTE

100

Wildhorse[®]

GOLD BOX



20 CLASS A CIGARETTES

PREMIUM BLEND

1839

An American Heritage



RED KING BOX

A Product from U.S. Farmers



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Now Greatly Reduces Serious Risks to Your Health.

PREMIER
MANUFACTURING, INC.
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EXHIBIT C



2016 ANNUAL REPORT

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Stuart D. Thompson
Chief Executive Officer

James T. Hill, Jr.
Chairman of the Board

Dear Members,

Last year we wrote to you about the significant initiatives and changes we are making in the Cooperative's culture, marketing efforts and operations. FY2016 was an exceptionally busy year in which we continued to make numerous changes in how we operate with the goal of positioning the company for long term success and prosperity for our members. In this report you will find detailed information about the Cooperative. We encourage every member to take the time to read it.

Cooperative Performance

For FY2016, The Cooperative's revenues were \$247 million with Net Income of \$9.5 million. In June 2016, the board authorized a patronage dividend of \$8.3 million, of which \$4.4 million was distributed in cash. This brought the total patronage declared over the past five years to \$46.2 million. While both revenues and income declined in FY2016, we are pleased with the results given the lower demand for U.S. leaf, reduced prices and high litigation expenses. In addition to our patronage dividend, we also passed our \$7.6 million Section 199 Domestic Production Activity Deduction to our members and redeemed \$1.37 million in equity credits from the 1967 to 1973 crop years. The Cooperative is much bigger, more complex organization than you think. One of the comments that we consistently hear is that both members and customer do not realize how big the Cooperative is. It is a large, sophisticated company with over 450 employees located in 16 states. Through the Cooperative, you have over \$500 million in assets working for your benefit. Our principal goals are simple. We want to contract as much tobacco as we can we can sell, positively

influencing the market so that you receive a fair profit for your crop and maximize our patronage dividends. No other leaf supplier is working harder for its growers.

Market Challenges

As an industry we need to tackle the issue of crop overproduction. The combination of low row crop (corn, soybean & cotton) prices, changes in crop insurance and the emergence of auctions have created a toxic business environment where many are benefiting at the expense of our growers. With high global inventories, demand for US flue-cured and contracts are down. We all know of neighbors that have planted large quantities outside of contracts. In 2012, quality adjustment claims were added to crop insurance. This has caused crop insurance abuse to become rampant. Other Leaf suppliers and dealers are buying tobacco at auction and blending it in with contract tobacco, further reducing prices. As a Cooperative, we find ourselves buying contracted tobacco fairly and then having to compete with auction tobacco prices. Together, we have to work to stop this. If we do not, both contracts and prices will continue to decline.

Social Responsibility

Terms such as social responsibility, sustainability and complaint products have become common in the tobacco industry. Over the last 7 years, the multinational tobacco companies have made social responsibility a key factor in determining where to source their tobacco. This has been the driver behind the Cooperative's decision to voluntarily become SRTP (Social Responsibility in Tobacco Production) certified and to conduct 100% independent audits. These manufacturers expect us to provide extremely detailed data on our growers, their operations and how the tobacco we sell is produced. At first, this seems invasive and just another burden on our growers. We understand that it takes time and it isn't easy. But long term, we believe that this will pay big dividends for our growers and the U.S. market. We know you produce the best tobacco in the world. We also need to be able to prove to the world markets that your crop is the most sustainable and compliant as well. This may well be the key to increasing the long term demand for your crop.

Political Issues

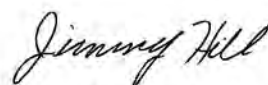
Most of our growers are not familiar with the Tariff Rate Quota (TRQ) and the negative impact it is having on the demand for U.S. flue-cured tobacco. In 1995, legislation was put in place in an effort to ensure that 75% of the tobacco used in U.S. manufactured cigarettes was grown in the U.S. Today the TRQ is allowing cheap imported tobacco to flood our market. Since it was implemented cigarette production for domestic and international markets has fallen 45% and 90% respectively, but the TRQ has remained unchanged, allowing up to 150,000 metric

tons coming into the U.S. annually. What this means is that the percentage of imported tobacco used in the production of U.S. cigarettes has increased four times from 13% to 55% over the past 20 years. The TRQ needs to be reduced to maintain the 75% domestic content as was originally intended. While we are working diligently on addressing this, the fact is that many in the tobacco industry are enjoying the profits from selling and using cheap, imported tobacco. We encourage each of you to be vocal in the organizations you participate in to get the TRQ reduced. If we accomplish this, we estimate it would increase the domestic demand for U.S. flue-cured tobacco by over 100 million pounds green annually.

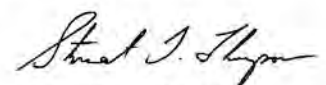
Litigation

Lastly, we need to address our litigation. This continues to be an incredibly time consuming and expensive, but necessary endeavor. We are waiting on important court decisions from the North Carolina Supreme Court and the Georgia Court of Appeals. We are scheduled for trial in the Big South RICO litigation. The cost of this litigation has been and will be significant. In FY2016, the Cooperative spent over \$2.8 million on litigation, reducing patronage by \$0.06 per pound. In addition, it has taken an immense amount of the board's and management's time away from growing our business. We wish this were not the case, but it is critically important for our existence and our ability to operate as a financially strong, transparent company. We intend on defending the company vigorously and pursuing our rights aggressively.

Thank you for your patronage and the confidence that you have place in the Cooperative. We know that most of you are experiencing tough challenges in a difficult environment. Row crop prices are low, tobacco contracts have been cut and tobacco leaf prices are being undermined by over production. As a Cooperative, we face big challenges as well with our leaf inventory, FDA regulation and excessive litigation cost. But we want you to know that we believe the future is bright for you, the best tobacco growers in the world and for us as a Cooperative. We've taking advantage of a difficult economic cycle to build a stronger, more cost efficient Cooperative with a better culture, better people and better operations. You have great story and we're doing our best to tell it. Keep reinvesting in your farms. Keep bringing us the best tobacco in the world. We'll continue our deep commitment to excellence and maximizing our patronage dividends to you.



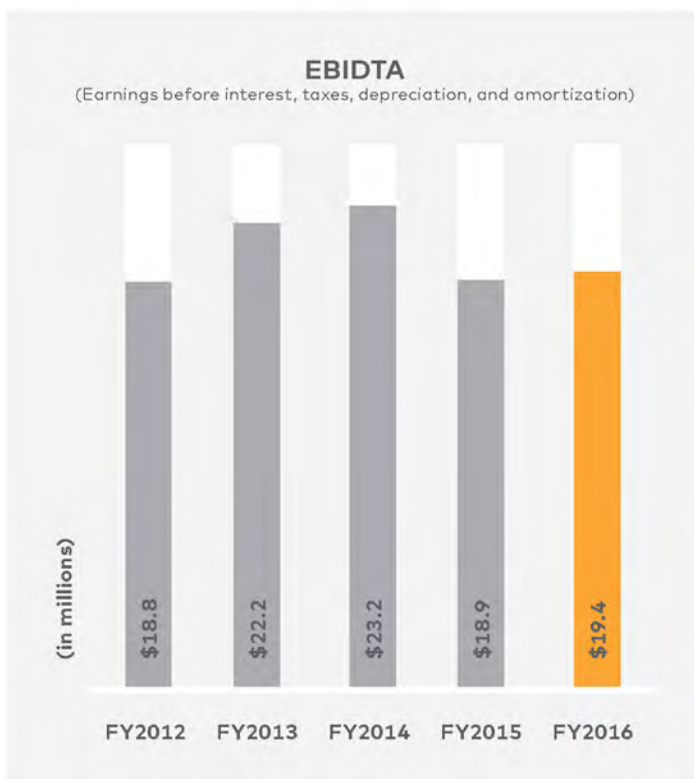
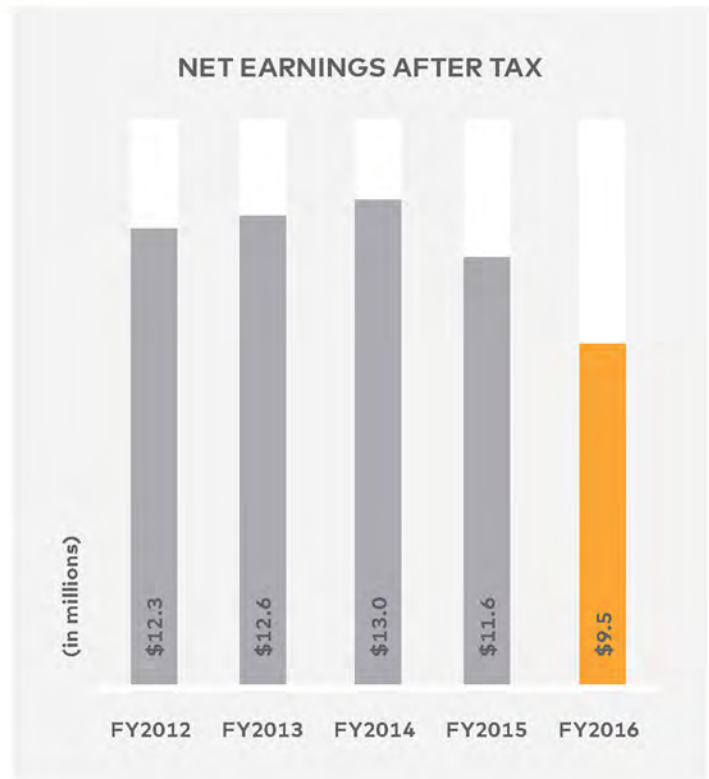
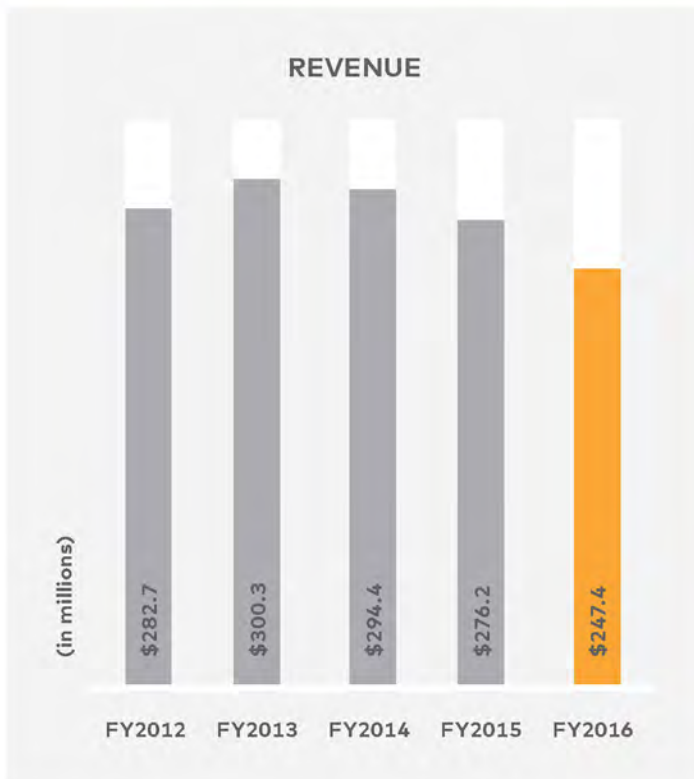
James T. Hill, Jr.
Chairman of the Board



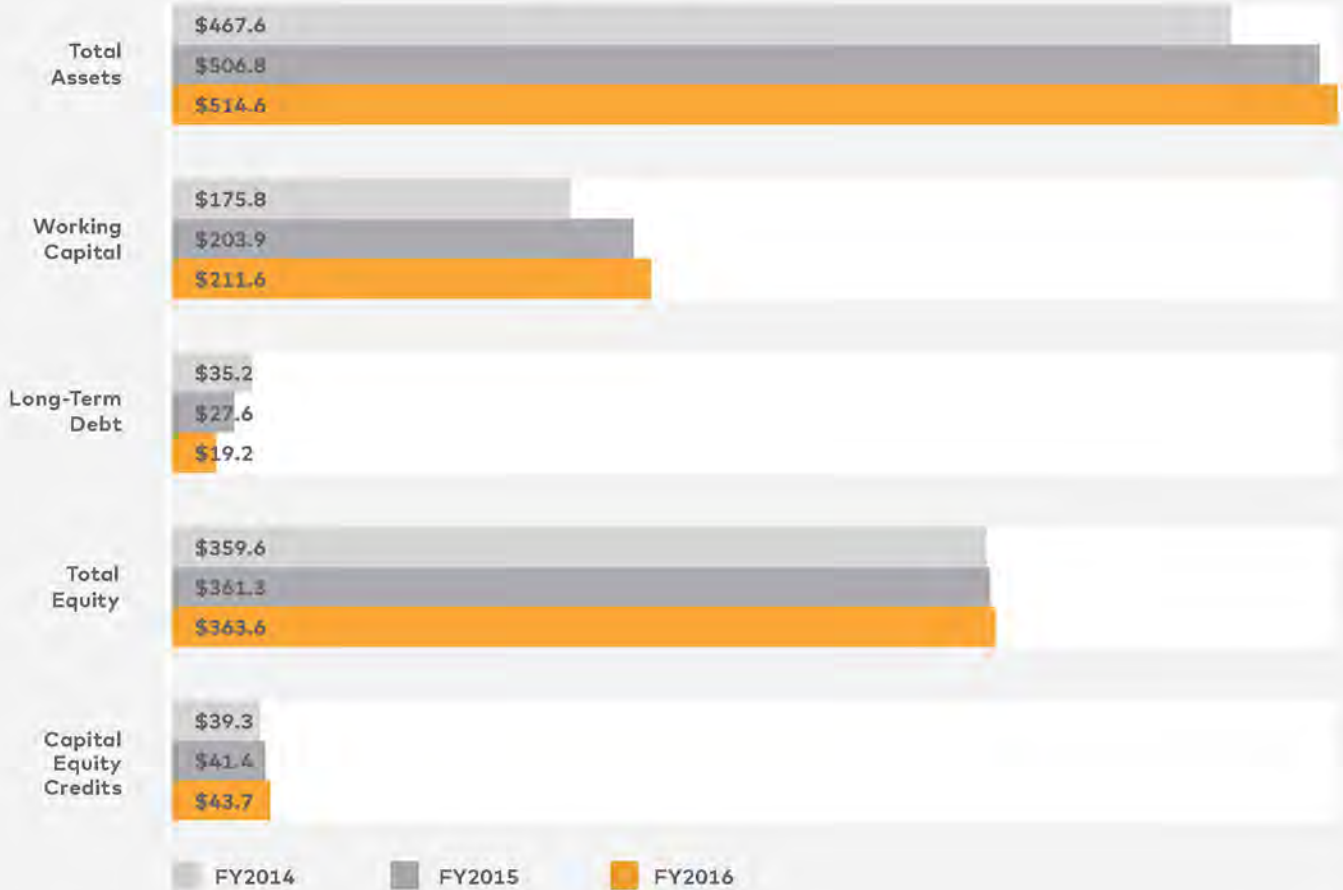
Stuart D. Thompson
Chief Executive Officer



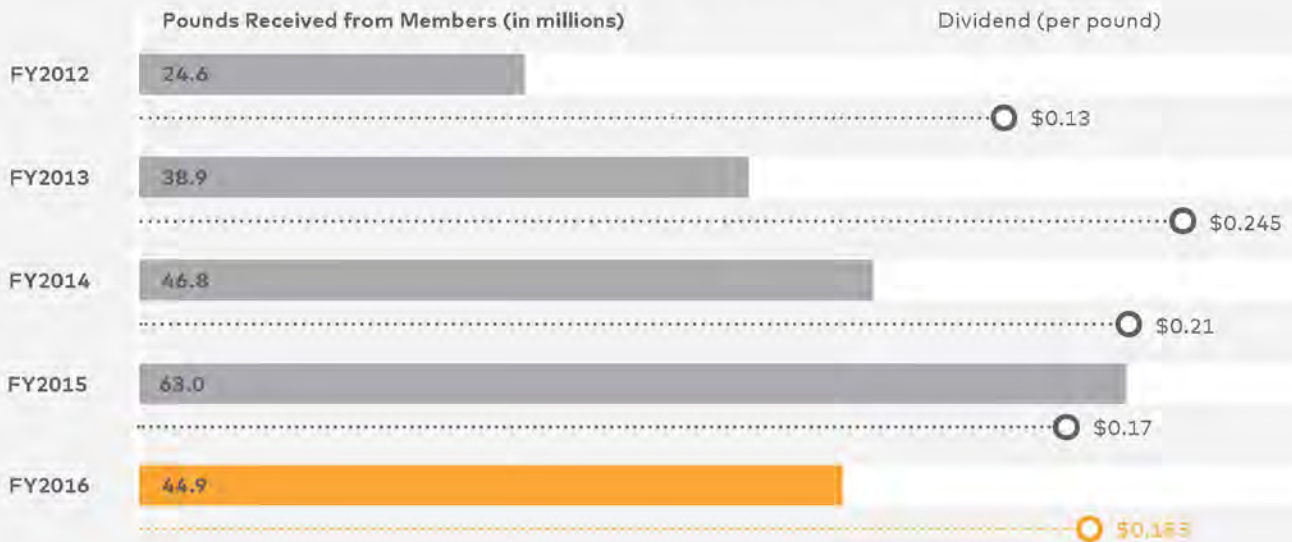
Financial Highlights



BALANCE SHEET



DIVIDEND PER POUND





Leaf Operations

The Cooperative's principal business is being a leaf supplier serving the global and domestic markets. We are the only supplier focused exclusively on the U.S. flue-cured crop and the only buyer that returns dividends to its growers. We continue to believe that this unique model will position USTC to be the premium supplier of U.S. flue-cured tobacco long term.

FY2016 (2015 Season) Leaf Operations Performance

In 2015, we contracted with our members for 51 million pounds of flue-cured tobacco and received 88% of contracted pounds at a cost of \$88 million. The 2015 crop was an average quality crop with some areas hurt by drought. The average price paid declined significantly to \$1.96, principally due to lower overall quality.

FY2016 Revenue from Leaf Operations was \$89.5 million, down 18% from FY2015. Gross profits decreased as well, generating a loss of \$2.9 million. Revenue decreases were principally due to decreased strip sales and lower prices driven by high global inventories. Prices for lugs and stems have fallen significantly over the past 3 years, in some cases as much as 75%. The Cooperative elected to take \$4.1 million in inventory write-downs to sell approximately 5 million pounds of low nicotine lug inventory from 2013 and 2015 crop years. We continue to hold a large quantity of high quality 2014 strips and believe there will be a market for them. The combined effect was that our processed leaf inventory increased 15% to \$110 million.

Leaf Operations Facilities

The Cooperative's leaf operations are extensive with eight facilities in North Carolina, South Carolina, Georgia and Virginia. Operations include five marketing centers, a 340,000 square foot green storage facility, our 26,000-pound per hour stemmery, and 25 dry storage warehouses. In total we have over 1.6 million square feet of warehouse space dedicated to receiving, processing and storing our members' tobacco. During the marketing season, we employ over 100 full-time and 250 seasonal workers in our marketing centers and stemmery.

Investment

While the current leaf market conditions are challenging, we have continued to invest in our leaf operations with the goal of reducing our green conversion cost and improving our product quality. Green conversion costs include all of the costs we incur from operating our marketing centers,

holding tobacco in green storage, processing it at our factory, putting it into storage and all of the freight in between. Reducing those costs benefits both our growers and our customers. Our products are more competitively priced and we enjoy higher margins, and therefore generate higher patronage. To that end, we have committed over \$16 million in investments in leaf operations.

Our largest capital project has been to add 150,000 square feet of green storage space to our Timberlake, NC facility. The total cost of this project is \$13 million, including the purchase of 20 acres adjacent to our existing property. Construction is commencing in the fall of 2016 with an expected completion date of June 2017. Once completed, the facility will hold over 10 million pounds of green tobacco, utilizing a racking system. This addition has many benefits, including allowing us to close our 340,000 square foot green storage facility in Sanford, NC, eliminating the freight to and from Sanford, reducing personnel and most importantly increasing leaf strip yields through better handling. We think our customers will like seeing see tobacco on site prior to processing at our stemmery.

We have also continued to invest in marketing centers in an effort to reduce cost. In 2015, we purchased our marketing center in Mullins, SC. In 2016, we purchased our marketing center in Smithfield, NC and opened a new marketing center in La Crosse, VA. The La Crosse facility is currently leased with a commitment to purchase it within five years. By buying these marketing centers, we have been able to close our Danville, VA and Oxford, NC marketing centers, eliminate lease payments with expensive operator agreements, reduce personnel and reduce freight costs. Equally important, these investments have demonstrated our long-term commitment to growers in those regions.

Social Responsibility & Sustainability

In marketing our growers' crop, social responsibility and sustainability have continued to take an increasing role. Those are words that can mean many things and are often misunderstood. For us, simply put, it means keeping farmers on the farm and encouraging the next generation of growers. Today our growers are the largest, most sophisticated commercial tobacco farmers in the world.



They grow the best tobacco, in the most sustainable and socially responsible way. They are the best source for a stable, secure supply of premium tobacco on the planet. However, the global markets have not given them credit for this. We have embarked on a journey to not only be able to say this, but to prove it.

In FY2016 we made the decision to join GAP Connections to conduct our grower training and randomly audit 15% of our grower base. We also voluntarily engaged AB Sustain to certify us in Social Responsibility in Tobacco Production (SRTP). This was a significant undertaking, but we felt it was an important one in order for us to open new markets with large multi-national manufacturers that sponsor the SRTP program.

For the 2017 season, we elected to do a 100% independent audit of our growers using Gap Connections. We are the only U.S. leaf supplier to do this. We based this decision on the requirements of SRTP and the belief that if we

collected the data to prove conclusively how good our growers are, we could leverage their commitment to excellence to open new markets. The facts are that important issues that plague other tobacco origins are virtually non-existent in the U.S. This includes child labor, forced labor, deforestation and poor agricultural practices. This is a long term project, but one that we believe will pay increasing dividends to our growers. Unfortunately, there is much market resistance. Other global leaf suppliers and some manufacturers are reaping large profits from the sale and use of cheap imported tobacco, produced through unsustainable growing models. Our aim is to highlight all of the intrinsic value in the U.S. flue-cured crop and encourage manufacturers that USTC is their best source for premium tobacco in the U.S. market.

Intrinsic Value of the U.S. Flue-Cured Crop

Beyond being the most compliant, sustainable and secure tobacco origin in the world for premium tobacco, the U.S. flue-cured crop also has imbedded in it a significant

A photograph showing two men in a large industrial warehouse. The man on the left, wearing a plaid shirt and glasses, is reaching out to touch a large, golden-brown bale of tobacco. The man on the right, wearing a dark shirt, is looking down at the tobacco. In the background, there are more bales, a forklift, and the high ceiling of the warehouse with industrial lighting.

TODAY OUR GROWERS ARE THE LARGEST, MOST SOPHISTICATED COMMERCIAL TOBACCO FARMERS IN THE WORLD.



Leaf Operations Continued

amount of intrinsic value that our growers are not getting credit for today. Neither manufacturers nor leaf suppliers have to finance the crop nor bear the costs of bad debt. They do not have the overhead associated with staffing the teams of agronomists and field technicians found in other origins. All of these costs are born by U.S. growers and imbedded in the green price of tobacco. In addition, being U.S. dollar based, most manufacturers do not incur the cost of currency risk associated with many competing origins. The Cooperative is actively highlighting this intrinsic value to the world markets. We see an increasing trend for buyers to reduce their sourcing footprint, recognizing that it makes little sense to source tobacco from 30+ different origins.

Grower Audits

A challenge with grower audits is that many companies have decided to deviate from the industry standard and conduct their own. Growers, big and small, are being inundated with audits, auditors and new requirements. We are strong advocates of a single, rigorous audit standard. But what is required of growers needs to be well-documented and communicated. Auditors need to be certified and audits need to be efficient without being duplicative to state inspections. One audit each season by a certified auditor should be sufficient for all suppliers and manufactures. This is an unresolved industry issue that the Cooperative is actively trying to resolve for its growers.

Crop Overproduction

In addition to high global tobacco inventories, U.S. growers continued to overplant tobacco, many without leaf supplier contracts. Low row crop prices (corn, soybeans & cotton) have made tobacco one of the few sustainable crops that growers can rely on. That combined with changes in crop insurance, encouraged overplanting. The effect in 2015 was that crop insurance abuse became rampant and newly formed tobacco auctions flourished. Many, if not all of our competitors, took advantage of buying cheap tobacco at auction or allowing their growers to fulfill contracts with auction-bought tobacco. Our Cooperative has not done that. We believe that it is vital to our growers' long-term survivability that the U.S. supply is brought in line with demand. Any claims that auction-bought tobacco is traceable are at best highly suspect and most likely false. As part of our core values, we want our growers, our employees and our customers to know that they can trust us, that our products have integrity and that we will

not take economic advantage of growers even though it might result in higher short-term profits. In addition to encouraging overplanting and oversupply, the tobacco auctions further hurt our growers' long-term viability because legitimate markets are forced to compete with auction-bought tobacco which can trade as much as 70% below contract prices.

2016 Crop

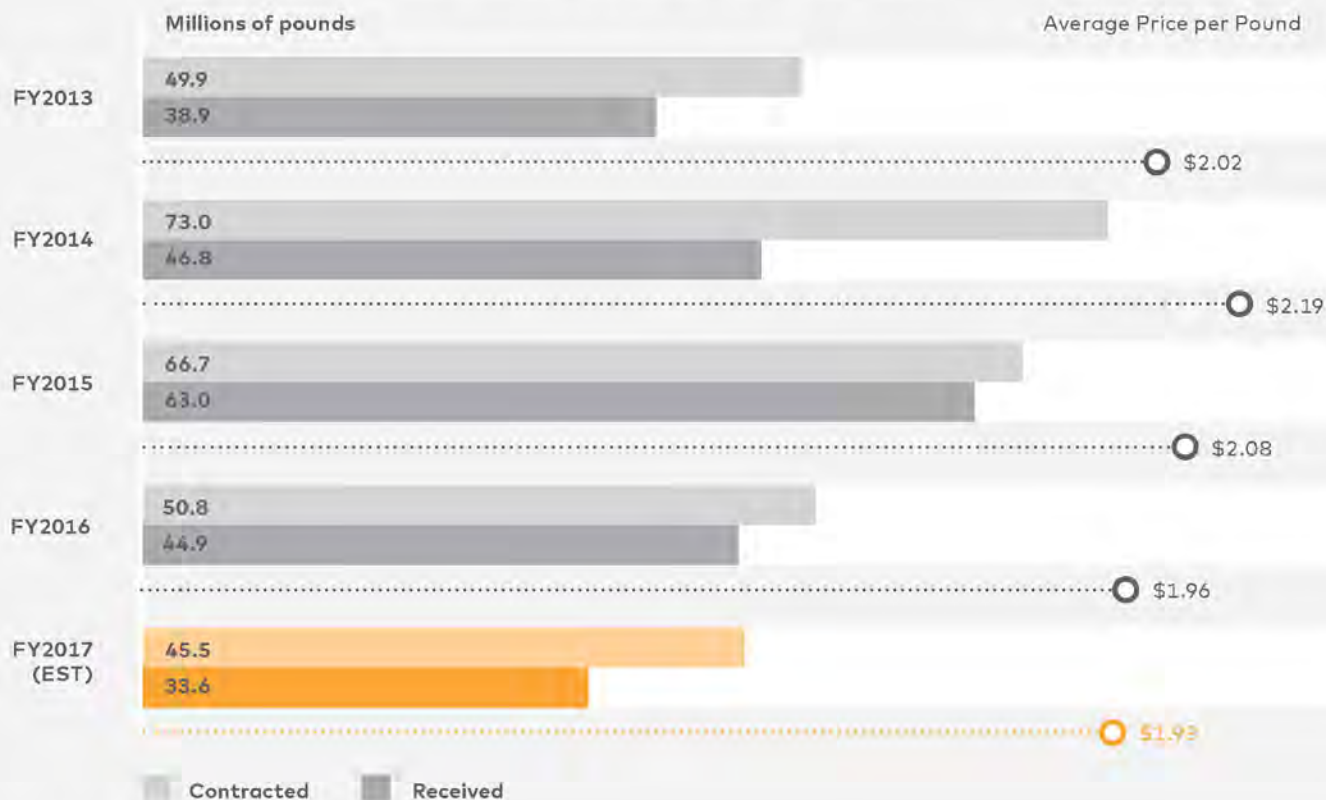
With higher processed leaf inventories and the negative market impact from crop insurance abuse and auction markets, we made significant changes in estimating how much to contract with our growers. We reduced our 2016 contract pounds to 45 million and expect that we will receive 85% of what we contract for this season. Contracts were not renewed with growers who had low quality or low delivery averages, reducing the number of contracts in 2016 from 850 to 750. No cuts were made to our top tier growers that met their 2015 contract obligations.

The 2016 growing season has been extremely difficult due to excessive rains in May and June, followed by drought and excessive heat during July and August. In many regions, the tobacco is sunbaked and light. Because of the skills of our growers, their loyalty to the Cooperative and the patronage we pay, we expect that we will receive the best tobacco in the crop and that we will experience a high delivery percentage of top quality tobacco.

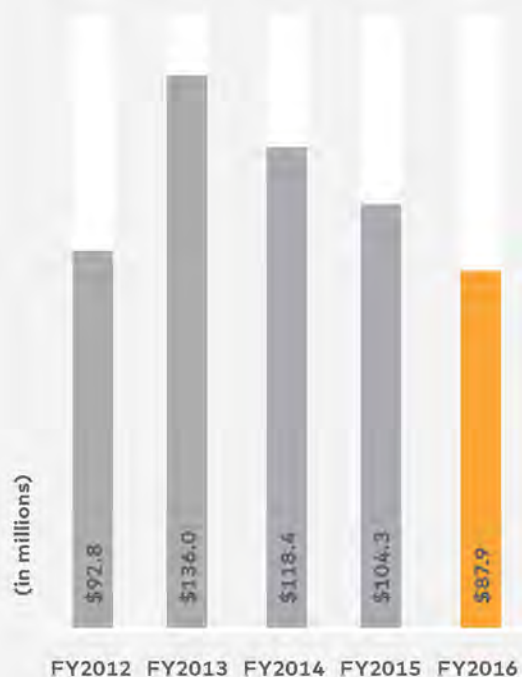
The Future of U.S. Flue-Cured Tobacco

Despite challenging times short-term, we continue to see a very bright long-term future for our growers. We believe that there is annual global demand for 425 to 450 million pounds of premium U.S. flue-cured tobacco. We will continue to be conservative in our contracting until we are able to reduce our inventory of processed leaf tobacco. We are being vocal on the negative impacts of overproduction caused by auctions and crop insurance fraud. Oversupply will continue to be the greatest risk to our growers and their sustainability. We continue to highlight all of the intrinsic value of the U.S. crop of which we have the best growers and best tobacco.

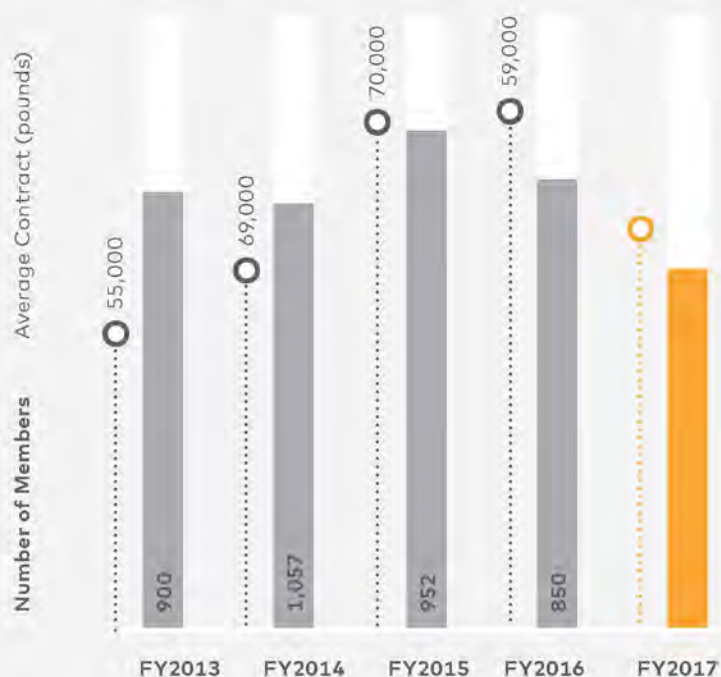
CONTRACTED VS. RECEIVED TOBACCO



LEAF REVENUE



MEMBERS AND AVERAGE CONTRACT SIZE





Consumer Products

Consumer Products sales and distribution continue to be a significant portion of the Cooperative's business and the main driver behind our patronage dividend. In FY2015 we made many changes in the division including personnel and consolidating our brands at our sales and marketing subsidiary Premier Manufacturing.

This segment of our business includes three of our subsidiaries – Premier Manufacturing (St. Louis, MO), Big South Distribution (Bristol, VA) and Franchise Wholesale d/b/a Wildhorse Distributing (Omaha, NE). Big South and Wildhorse Distributing also have operations in Atlanta, GA and Las Vegas, NV respectively. Collectively, the companies market, sell and distribute all six of the Cooperative's brands – Wildhorse, Shield, Traffic, 1839, Ultra Buy and 1st Class. These brands are focused on the value-oriented customer who wants a quality product with exceptional flavor at an extremely competitive price. The products are produced at the Cooperative's manufacturing company, U.S. Flue-Cured Tobacco Growers in Timberlake, NC. All of our brands rely on our growers' flue-cured tobacco as the main ingredient in their product lines. Big South Distribution and Wildhorse Distributing stock more than 30 brands of discount tobacco products and include tax stamping operations for more than 40 states, providing one-stop shopping for retailers. We have strong relationships with national, regional and local distributors such as McLane, Core-Mark and Eby Brown, as well as large independent retail chains such as Cumberland Farms, Food Lion and Stewarts Shop.

For FY2016, Consumer Product revenues were \$160.4 million, down 5.0% from FY2015. The largest component of consumer product revenues is derived from the sale of the Cooperative's six brands of cigarettes. During FY2016, we sold 3.9 million cartons of USTC cigarettes in addition to 1.0 million cartons of third party brands.

There continue to be many challenges for the Cooperative in the U.S. market. Total cigarette consumption has declined 11% since 2014 to approximately 14.9% of the U.S. adult population. Despite this, the Cooperative was able to increase its volume by x% in FY2016 for a total volume of 3.9 million sticks. Large manufacturers have put in highly effective rebate programs that incentivize distributors and retailers to discontinue other brands in order for them to enjoy higher rebates levels. The addition of Newport to Reynold's Every Day Low Price (EDLP) program has

resulted in many customers switching to EDPL and dropping our brands. While traditionally we have marketed our products through exclusive distributor relationships, we see our best strategy going forward as developing controlled brand relationships with large and regional convenience store chains. Under the FDA's oversight, it is cost prohibitive and virtually impossible for these chains to develop their own private labels. The Cooperative has been successful at entering into agreements with sophisticated c-store chains, giving them brand exclusivity within a region and essentially their own private label. In April of 2016, Premier Manufacturing signed a long-term deal with Circle K, the nation's largest convenience store chain with more than 6,700 locations, to be the exclusive retailer of Traffic cigarettes. The product introduction of Traffic has gone extremely well and reorders are ahead of plan.

The FDA has continued to use new product approval as its most effective tobacco control tool. We believe that it has overreached its legal mandate, suppressing most new product applications. The FDA appears to be demanding identical equivalence in new tobacco products to predicate tobacco products instead of substantial equivalence as stated in their own guidelines. Most recently the FDA has deemed that filtered cigars and pipe tobacco are tobacco products subject to FDA oversight. While we were not surprised by this, this will potentially affect our sales of these products after 2018 because of the excessive costs associated with meeting FDA requirements. The Cooperative's sales of these products are minimal and these regulations should not negatively affect the Cooperative's long-term business strategy. In the meantime, many tobacco manufacturers are exploring legal avenues against the FDA. The Cooperative has chosen not to do so.

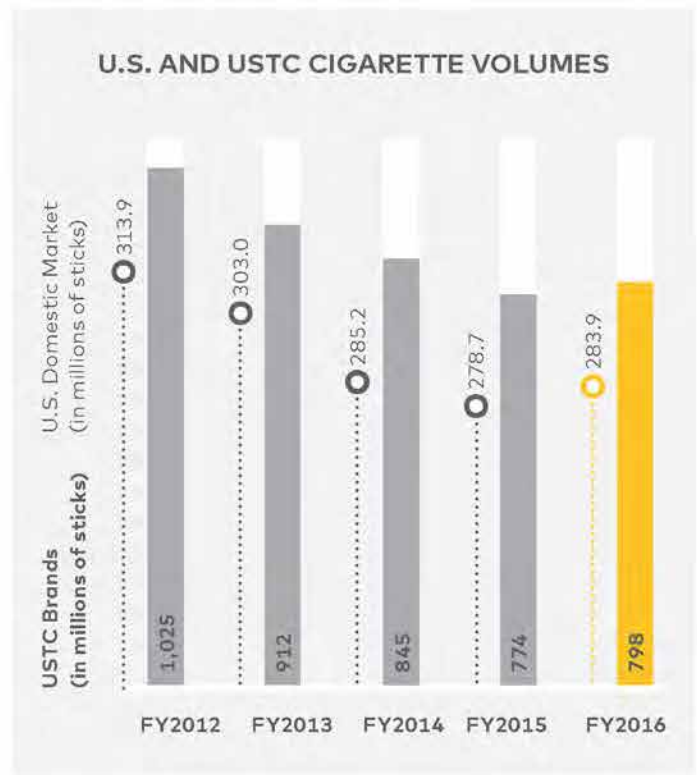
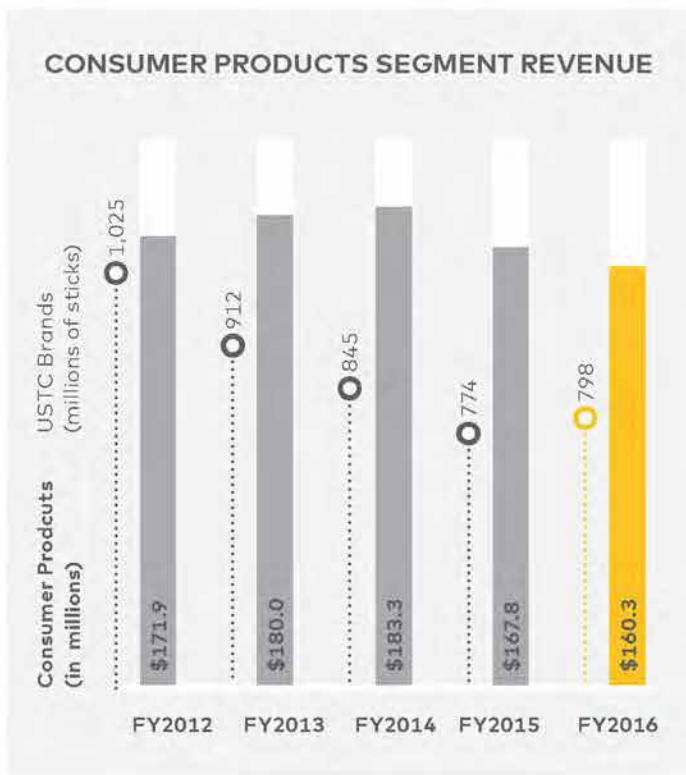
USTC has invested approximately \$13 million over the past 2 years in consumer product manufacturing to insure consistent top-quality products and outstanding service. Major investments have been made in the cigarette and cut rag manufacturing areas to upgrade cigarette making/packing lines and filter making lines at a cost of \$ 7.2 million. The cigarette making and packing lines are now all standardized and have laser perforation capability. In



addition, the company has added quality testing stations in the cigarette manufacturing area to facilitate real time monitoring of the cigarette manufacturing process and ensure that finished products consistently meet product specifications.

Investments have also been made in the primary processing area. Optical sorters have been added to remove

unwanted materials from the tobacco flow, resulting in cut rag quality improvements for that product either sold externally or used in-house for cigarette or pipe tobacco production. Consistently providing top quality cut rag is a major objective, as we continue to focus on meeting our customers' expectations.



IN APRIL OF 2016, PREMIER MANUFACTURING SIGNED A LONG-TERM DEAL WITH CIRCLE K, THE NATION'S LARGEST CONVENIENCE STORE CHAIN WITH OVER 6,700 LOCATIONS, TO BE THE EXCLUSIVE RETAILER OF TRAFFIC CIGARETTES.



Contract Manufacturing

U.S. Flue-Cured Tobacco Growers, Inc. ("USFC"), our manufacturing subsidiary, produces high-quality tobacco products for the domestic and global markets. The 340,000 square foot manufacturing facility located in Timberlake, NC includes green leaf tobacco processing, primary processing, and cigarette manufacturing capabilities.

USFC can provide customer-specific blends and unique tobacco products for domestic and export using the world's best flue-cured tobacco received from our contracted farmers and blended with some of the best available oriental and burley tobaccos. Experienced plant personnel coordinate the shipment of export cut filler tobacco and cigarette shipments, as well as compliance with the domestic regulatory requirements associated with manufacturing and shipping of tobacco products within the borders of the U.S.

USFC has the technical capability and knowledge to develop and produce high-quality tobacco products that meet customer expectations. Working closely with experienced in-house personnel, customers will receive specialized blends or finished products designed to satisfy cost and sensory requirements for their designated markets. Blend development, blend matching, cigarette development, and packaging development are customer-specific and are accomplished by working closely with each individual customer.

Once the tobacco blend has been developed and accepted, cut-filler for cigarettes, pipe tobacco, and RYO tobacco products are manufactured in-house. Cut filler can be used in-house to manufacture high-quality cigarettes or pouch products for MYO products. In addition, cut filler can also be packaged in large containers and shipped to customer locations for final assembly before being sold either domestically or internationally. USFC also has expanded stem processing, providing additional flexibility for the development of diverse blends. Significant investments have been made in the primary production area to provide the latest technology to insure quality, cost, and performance requirements are met. The company uses a sophisticated vision system to remove any non-tobacco material from the process and in-line quality systems to consistently provide high-quality cut filler.

The cigarette making and packing area, with an annual capability of producing 8 billion cigarettes, can convert the cut filler into king size and 100mm crushproof box products. Utilizing industry-leading making and packing equipment, equipped with laser perforation capability, inked code dating, and the latest technological advancements, high-quality finished cigarette products can be manufactured for the domestic and international markets. The plant has extensive experience in contract manufacturing and export shipments. More than 50% of the plants cigarette production is shipped outside of the U.S. domestic market. Knowledgeable and dedicated personnel are capable of consistently producing the highest quality tobacco products for domestic and international customers.

Our goal is to consistently provide products meeting specifications and to show continuous improvement in our ability to satisfy our customers. The implementation of quality control procedures and the use of statistical process control insure USFC's ability to consistently provide top-rated quality products. Service, quality, and customer satisfaction are incredibly important to us. USFC's goal is to improve every day.





**USFC CAN PROVIDE CUSTOMER SPECIFIC BLENDS AND
UNIQUE TOBACCO PRODUCTS FOR DOMESTIC AND EXPORT
USING THE WORLD'S BEST FLUE-CURED TOBACCO**



Patronage

One of our main goals continues to be maximizing patronage dividends to our growers. Much like public companies that declare dividends to their shareholders, we return eligible profits back to our growers.

As a Cooperative, special rules apply to patronage dividends, allowing us to deduct the dividends and reduce our corporate tax liability. We estimate that because of our patronage dividends, growers earn 25% or more in profit for each pound they sell to the Cooperative. In an age where social responsibility has become increasingly important to customers and consumers, we can think of no better testimony to our commitment to sustainability than sending profits back to our growers.

For FY2016, the Board of Directors declared a 18.5-cents-per-pound dividend to members that delivered tobacco to the Cooperative during the 2015 season, totaling \$8.3 million. The board authorized a Qualified Dividend of \$0.10 per pound that was distributed in July 2016 and a Non-Qualified Dividend of \$0.085 per pound, which was allocated to each member's account on the Cooperative's books. FY2016 was the sixth consecutive year that the

Cooperative has paid its members a patronage dividend. This year's patronage dividend notices includes an equity statement for growers summarizing all equity credits issued since 2010.

We have declared \$46.2 million in dividends and paid out \$24.3 million in cash. Since 2010, No other leaf buyer in the U.S. has returned those kinds of profits to its growers. The impact on total profitability for growers can be profound. It is a major factor in helping us secure the best leaf in the market at a fair price. Our unique grower-focused model is what has made us the preferred grower contract in the market.

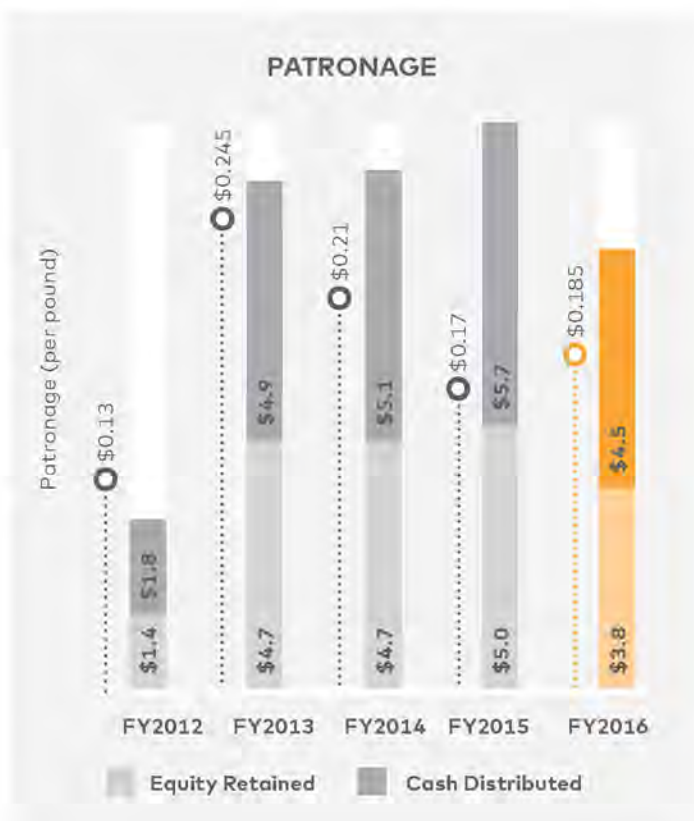
Tax Benefit to Members

In addition to the patronage dividend, the Cooperative also elected to pass its \$7.6 million Section 199 deduction for Domestic Production Activity to its members. This is a significant benefit and we encourage all members to seek professional tax advice to see if they can benefit from this tax deduction. Most growers will not owe any federal taxes on the cash they received from Cooperative's FY2016 dividend payment.

What is Patronage?

Patronage is very similar to the dividends paid by public companies to their shareholders with a few key differences. Patronage dividends are limited to profits derived from our growers' crop and products where it is the main ingredient. Unlike normal corporate dividends, the Cooperative can deduct patronage dividends from its state and federal tax returns. We'd prefer to send the money to our growers and help them reinvest in their farming operations versus paying taxes and letting the government decide how to help.

The process for determining the amount of patronage dividend each year is complex. Not all Income is eligible for patronage dividends, only profits from member activity can be considered. Qualified member activities include profits from leaf sales, consumer products where member tobacco is the main ingredient and interest income. Profits from rental income or non-Cooperative tobacco products are excluded. The profits for the fiscal year are then divided by the total pounds of tobacco purchased from members during the fiscal year.







Board of Directors



James T. Hill, Jr.

Chairman
Public Director
Kinston, NC
North Carolina



Kenneth D. Dasher

Vice Chairman
Live Oak, FL
Florida & Georgia



Danny P. Watkins, Jr.

Angier, NC
NC Counties:
Anson, Bladen,
Brunswick, Columbus,
Cumberland, Harnett,
Hoke, Lee, Montgomery,
Moore, New Hanover,
Richmond, Robeson,
Scotland



Keith R. Beavers

Mount Olive, NC
NC Counties:
Carteret, Duplin,
Onslow, Pender,
Sampson, Wayne



Charlie S. Batten

Four Oaks, NC
NC Counties:
Edgecombe,
Johnston, Martin,
Wilson



Blythe H. Casey

Kinston, NC
NC Counties:
Beaufort, Bertie,
Camden, Chowan,
Craven, Currituck,
Dare, Green, Hyde,
Jones, Lenoir,
Pamlico, Pitt,
Tyrrell, Washington



Andrew Q. Shepard

Vice Chairman
Blackstone, VA
Virginia



John Shelley

Oxford, NC
NC Counties:
Alamance, Caswell,
Chatham, Durham,
Franklin, Gates,
Granville, Guilford,
Halifax, Hertford,
Nash, Northampton,
Orange, Person,
Randolph, Rockingham,
Vance, Wake, Warren



Tommy Kimbro

Harmony, NC
NC Counties:
Alexander, Alleghany,
Cabarrus, Caldwell,
Catawba, Cleveland,
Davidson, Davie,
Forsyth, Gaston,
Iredell, Mecklenburg,
Rowan, Stokes, Surry,
Wilkes, Yadkin

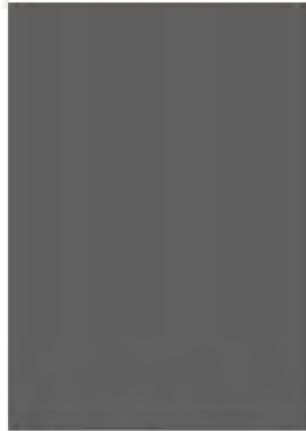


Senior Management



Stuart D. Thompson

Chief Executive Officer



J. Thomas Bunn

President & Secretary



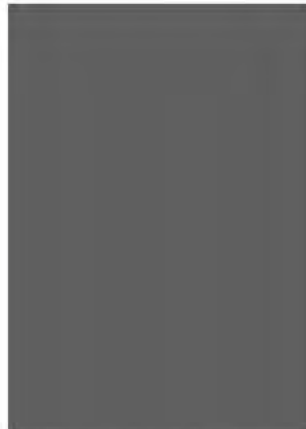
Edward W. Kacsuta

Chief Financial Officer
& Treasurer



Ronald H. Morgan

President U.S. Flue-Cured
Tobacco Growers, Inc.



L. Wayne Crawford

Senior Vice President
Leaf Acquisitions



W. Michael Lynch

Senior Vice President
Leaf Sales



James M. Schneeberger

Vice President
Business Development



Russell G. Mancuso

Vice President
Consumer Products



Fred McClintock

Vice President
Information Technology



Financials



The following data was derived from the audited financial statements. The cooperative engaged CliftonLarsonAllen LLP as its independent outside auditor and received an opinion that the consolidated financial statements fairly presented in all materials respects the financial position

of the U.S. Tobacco Cooperative Inc. and its Subsidiaries as of April 30, 2015. The FY2014 consolidated financial statements were audited by other auditors, whose report dated July 1, 2014, expressed an unmodified opinion on those statements.

U.S. Tobacco Cooperative Inc. and Subsidiaries

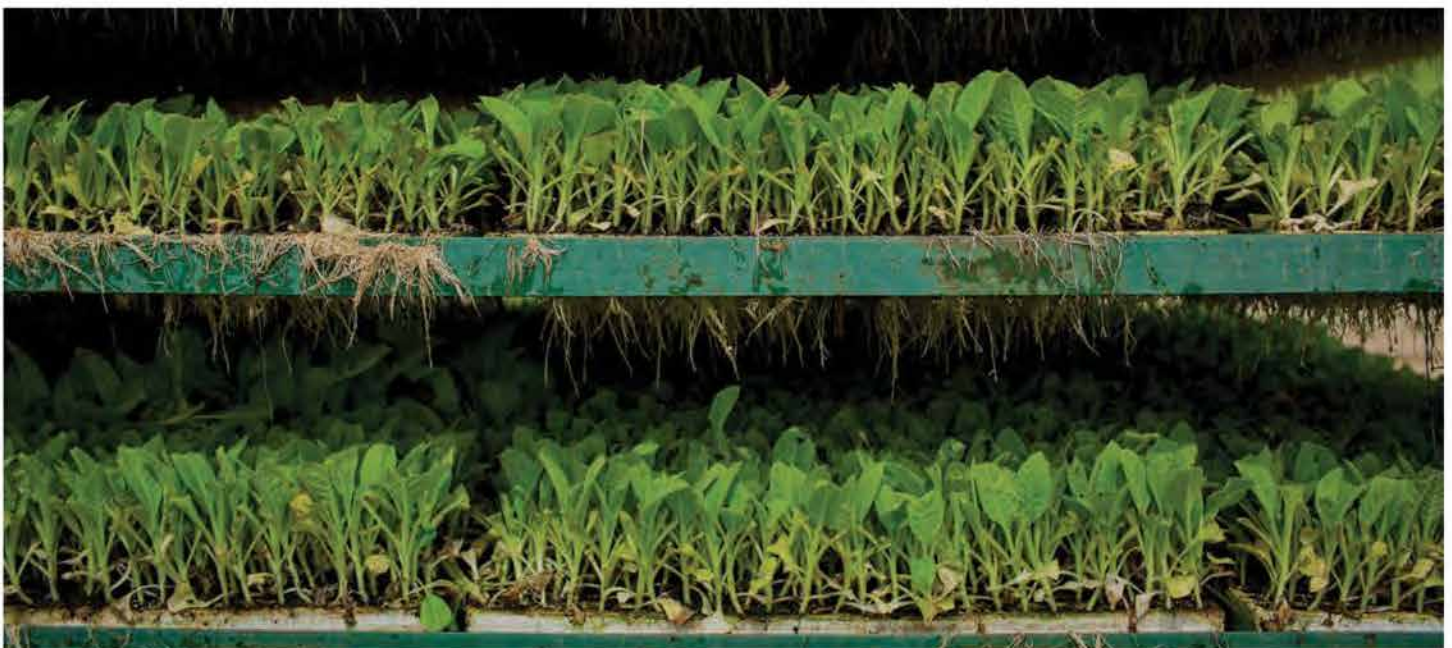
Consolidated Balance Sheets | Assets

Years Ended April 30, 2016 and 2015

	2016	2015
Current assets		
Cash and cash equivalents	\$12,710,115	\$10,225,984
Investment in interest-bearing obligations	21,095,615	13,818,146
Accounts receivable, net	60,333,034	66,800,446
Inventories, net	149,192,091	140,824,202
Prepaid expenses and other assets	1,414,833	347,185
Income taxes receivable	363,772	195,959
Total current assets	\$245,109,460	\$232,211,922
Investment in interest-bearing obligations	106,633,925	111,921,518
Property, plant, and equipment, net	29,364,765	26,197,661
Intangible assets, net	132,860,749	132,878,749
Other assets	621,344	636,424
Total assets	\$514,590,243	\$503,846,274

Consolidated Balance Sheets | Liabilities and Stockholders' Equity Years Ended April 30, 2016 and 2015

	2016	2015
Current liabilities		
Accounts payable	\$1,942,476	\$2,020,376
Accrued expenses	10,534,998	8,034,484
Current portion of long-term debt	8,008,524	8,000,000
Revolving line of credit	2,500,000	-
Patronage refunds payable in cash	4,486,543	5,669,240
Stock redemption payable	4,062,668	5,137,961
Customer deposits	1,948,701	2,421,777
Total current liabilities	\$33,483,910	\$31,283,838
Deferred income taxes	3,732,727	6,860,361
Pension benefits	7,577,240	5,773,111
Other	59,734	100,958
Revolving line of credit	95,000,000	79,000,000
Long-term debt, less current portion	11,146,116	19,555,415
Total liabilities	\$150,999,727	\$142,573,683
Stockholders' equity		
Common stock	3,695	4,245
Additional paid-in capital	110,753,161	110,753,161
Accumulated other comprehensive loss	(5,396,558)	(4,118,642)
Contributed capital	81,520,000	81,520,000
Capital equity credits:		
Qualified	34,895,751	35,508,215
Nonqualified	8,852,886	5,865,085
Retained earnings	132,961,581	131,740,527
Total stockholders' equity	\$363,590,516	\$361,272,591
Total liabilities and stockholders' equity	\$514,590,243	\$503,846,274



Consolidated Statements of Operations

Years Ended April 30, 2016 and 2015

	2016	2015
Revenue	\$247,363,257	\$276,153,134
Cost of sales	212,232,898	236,936,269
Gross margin	\$35,130,359	\$39,216,865
Selling, general, and administrative expenses	28,913,399	29,275,724
Operating margin	\$6,216,960	\$9,941,141
Other income (expense)		
Interest income	1,840,176	1,574,731
Interest expense	(2,197,331)	(2,059,520)
Other revenue, net	1,652,368	1,712,716
Gain (loss) on disposal of assets	(80,020)	91,911
Total other income (expense)	1,215,193	1,319,838
Margin before income taxes	\$7,432,153	\$11,260,979
Provision (credit) for income taxes	(2,089,006)	(291,173)
Net margin	\$9,521,159	\$11,552,152
Distribution of net margin:		
Patronage refunds payable in cash	4,486,543	5,669,240
Issuance of nonqualified equity credits	3,813,562	5,039,324
Total allocated net margin for members	8,300,105	10,708,564
Unallocated margin and income taxes retained	1,221,054	843,588
	\$9,521,159	\$11,552,152

Consolidated Statements of Stockholders' Equity

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss
	Shares	Amount		
Balance April 30, 2014	952	\$4,760	\$110,753,161	\$(2,941,592)
Net margin	-	-	-	-
Net income on pension plan	-	-	-	(1,085,622)
Unrealized gain on investments	-	-	-	(91,428)
Patronage declared on 2014 net margin:				
Issuance of capital equity credits	-	-	-	-
Payable in cash	-	-	-	-
Capital equity credits called for redemption				
Membership stock issued and cancelled, net	(103)	(515)	-	-
Balance April 30, 2015	849	\$4,245	\$110,753,161	\$(4,118,642)
Net margin	-	-	-	-
Net loss on pension plan	-	-	-	(1,425,827)
Unrealized loss on investments	-	-	-	147,911
Patronage declared on 2015 net margin:				
Issuance of capital equity credits	-	-	-	-
Payable in cash	-	-	-	-
Capital equity credits called for redemption	-	-	-	-
Transfers	-	-	-	-
Membership stock issued and cancelled, net	(110)	(550)	-	-
Balance April 30, 2016	739	\$3,695	\$110,753,161	\$(5,396,558)

Consolidated Statements of Comprehensive Income

Years Ended April 30, 2016 and 2015

	2016	2015
Net margin	\$9,521,159	\$11,552,152
Other comprehensive income (loss), net of taxes		
Available-for-sale investments		
Unrealized holding gains (losses) arising during the year	143,471	(164,190)
Add reclassification adjustment for losses included in net margin	4,440	72,762
Total	\$147,911	\$(91,428)
Defined benefit pension plan		
Net gain (loss) arising during the year	(1,652,766)	(1,272,748)
Add reclassification adjustment for amortization of net gain on pension included in net margin	226,939	187,126
Total	\$(1,425,827)	\$(1,085,622)
Other comprehensive income (loss), net of taxes	(1,277,916)	(1,177,050)
Comprehensive income	\$8,243,243	\$10,375,102

Years Ended April 30, 2016 and 2015

Contributed Capital	Capital Equity Credits		Retained Earnings	Total
	Qualified	Non-Qualified		
\$81,520,000	\$38,513,321	\$825,761	\$130,896,535	\$359,571,946
-	-	-	11,552,152	11,552,152
-	-	-	-	(1,085,622)
-	-	-	-	(91,428)
-	-	5,039,324	(5,039,324)	-
-	-	-	(5,669,240)	(5,669,240)
-	(3,005,106)	-	404	(3,004,702)
-	-	-	-	(515)
\$81,520,000	\$35,508,215	\$5,865,085	\$131,740,527	\$361,272,591
-	-	-	9,521,159	9,521,159
-	-	-	-	(1,425,827)
-	-	-	-	147,911
-	-	3,813,562	(3,813,562)	-
-	-	-	(4,486,543)	(4,486,543)
-	(1,438,225)	-	-	(1,438,225)
-	825,761	(825,761)	-	-
-	-	-	-	(550)
\$81,520,000	\$34,895,751	\$8,852,886	\$132,961,581	\$363,590,516

Consolidated Statements of Cash Flows

Years Ended April 30, 2016 and 2015

	2016	2015
Cash flows from operating activities		
Net margin	\$9,521,159	\$11,552,152
Adjustments to reconcile net margin to net cash provided by (used in) operating activities:		
Depreciation and amortization	4,231,345	3,957,433
Amortization of premiums on investments	1,385,239	1,204,289
Provision for obsolete inventory	3,515,760	4,093,627
Provision for doubtful accounts	699,165	155,000
Impairment of trademark	-	130,000
Realized loss on sale of investments	89,690	66,750
Gain loss on disposal of assets	(9,670)	(158,661)
Net periodic benefit costs (benefit)	(52,455)	(86,765)
Employer contribution to the pension plan	(632,719)	(341,764)
Deferred income taxes	(2,174,480)	(502,999)
Cash provided by (used in) changes in:		
Receivables	5,768,247	3,864,503
Income taxes receivable	(167,813)	48,037
Inventories	(11,883,649)	(50,292,353)
Prepaid expenses and other assets	(1,052,568)	630,458
Accounts payable	(77,900)	(8,649)
Accrued expenses and other liabilities	2,459,290	(2,093,478)
Customer deposits	(473,076)	461,333
Net cash provided by (used in) operating activities	\$11,145,565	\$(27,321,087)
Cash flows from investing activities		
Purchase of property, plant, and equipment	(6,994,672)	(5,199,839)
Proceeds on disposal of assets	18,069	121,218
Purchase of interest-bearing obligations	(51,999,686)	(66,170,131)
Maturities and calls of interest-bearing obligations	48,793,114	63,478,098
Net cash used in investing activities	\$(10,183,175)	\$(7,770,654)
Cash flows from financing activities		
Net borrowings on revolving line of credit	18,500,000	44,100,000
Payments on note payable	(8,016,686)	(8,000,000)
Payment of loan origination costs	(778,265)	-
Net contributions (payments) on common stock	(550)	(515)
Redemption of stockholders' equity credits	(2,513,518)	(1,889,836)
Patronage distribution	(5,669,240)	(5,142,568)
Net cash provided by financing activities	\$1,521,741	\$29,067,081
Increase (decrease) in cash and cash equivalents	\$2,484,131	\$(6,024,660)
Cash and cash equivalents, beginning of year	\$10,225,984	\$16,250,644
Cash and cash equivalents, end of year	\$12,710,115	\$10,225,984



Financial Footnotes

1 | Organization Data and Significant Policies

Organization Data: U.S. Tobacco Cooperative Inc. (USTC) was incorporated on June 1, 1946, under the provisions of the Cooperative Marketing Act of the State of North Carolina as a cooperative operating on a cooperative basis, with capital stock. USTC and its subsidiaries (collectively the Cooperative) have four primary business activities; 1) as a global leaf supplier, 2) as a manufacturer and distributor of six consumer tobacco product brands within the United States of America, 3) as a contract manufacturer of consumer products, principally internationally, and 4) as a producer of cut rag and pipe tobacco. The Cooperative purchases the majority of its leaf tobacco from member growers. The leaf tobacco is processed, stored, and shipped internationally, domestically, and for use in the Cooperative's own brands of consumer products.

The authorized capital stock of USTC consists of 1,000,000 shares of common stock having a par value of \$5 per share and may be issued and sold only to and thereafter held only by producers of flue-cured tobacco who patronize USTC. At all meetings of the members, each member is entitled to only one vote. No dividends are payable on the common stock. USTC has adopted a bylaw consent form in which each member agrees to take into taxable gross income patronage refunds allocated to them.

USTC is authorized to issue capital equity credits evidencing per-unit retains or patronage refunds due its members. The capital equity credits are used to accumulate capital as considered necessary by the Board of Directors. Capital equity credits bear no interest, have no due date, and may only be redeemed or retired at the discretion of the Board of Directors in order of issuance by years.

A summary of the Cooperative's significant accounting policies follows:

Consolidation Policy: The accompanying consolidated financial statements include the accounts of USTC and its wholly owned subsidiaries, Tobacco Grower Services, Inc. (TGS), U.S. Flue-Cured Tobacco Growers, Inc. (USFC), Premier Manufacturing, Inc. (Premier), Franchise Wholesale Co., L.L.C. (Franchise), and Big South Distribution, LLC (Big South). TGS was merged into USTC effective May 1, 2015. All material intercompany balances and transactions have been eliminated.

Revenue Recognition: Revenues are generated primarily from leaf tobacco and tobacco consumer products sales. Sales are recognized upon shipment of goods to the customer at which time there is transfer of the title and risk of loss to the customer.

The Cooperative's accounting policy is to include federal and state excise taxes in revenues and cost of sales. Such revenues and cost of sales totaled \$54,149,701 and \$55,853,347 for the years ended April 30, 2016 and 2015, respectively.

Shipping and Handling Costs: Shipping and handling costs are included in cost of sales.

Cash and Cash Equivalents: For purposes of the statements of cash flows, the Cooperative considers money market funds and all other short-term investments with a maturity, at date of purchase, of three months or less to be cash equivalents. The Cooperative places its cash and cash equivalents with high credit-quality institutions.

The Cooperative maintains cash balances that from time to time may exceed the federally insured limits. The Cooperative has not experienced any losses on such accounts and management believes the Cooperative is not exposed to any significant credit risk on these accounts.

Interest-Bearing Obligations: The Cooperative's interest-bearing obligations consist of debt securities, which are classified as available for sale. Investments in debt securities are stated at fair values as adjusted for amortization of premium or discount, if applicable, and unrealized holding gains and losses are reported as accumulated other comprehensive income. Amortized discounts and premiums are included in net interest income. Interest on investments



1 | Organization Data and Significant Policies (Continued)

in debt securities is credited to income as it accrues on the principal amount outstanding adjusted for amortization of premiums and discounts computed by the effective interest method. Realized gains and losses on disposition of investments are included in net interest income in the accompanying consolidated statements of operations. The cost of investments sold is determined on the specific identification method.

Fair Value Measurements: The estimated fair value of the Cooperative's short-term financial instruments, including cash and cash equivalents, accounts receivable, income taxes receivable, accounts payable, accrued expenses, stock redemption and patronage payable, and customer deposits approximates their individual carrying amounts due to the relatively short period of time between their origination and expected realization. The fair value of the line of credit is estimated based on current rates offered to the Cooperative for similar debt of the same remaining maturities. The carrying value of the fixed rate long-term debt approximates fair value due to its proximity to current market rates for similar debt issues.

Accounts Receivable: Accounts receivable are recorded at net realizable value. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history, and current economic conditions. The allowance is reviewed periodically and adjusted for accounts deemed uncollectible by management. After all attempts to collect have failed, the receivable is written off against the allowance. The allowance for doubtful accounts totaled \$868,165 and \$169,000 as of April 30, 2016 and 2015, respectively.

Inventories: Inventories are priced at the lower of average cost (which approximates the first-in, first-out method) or market.

The Cooperative evaluates its inventory value at the end of each year to ensure that it is carried at the lower of cost or market. This evaluation includes a review of potential obsolete and slow-moving stock, based on historical product sales and forecasted sales, and an overall consolidated analysis of potential excess inventories. Events which could affect the amount of reserves for obsolete or slow moving inventories include a decrease in demand for the products due to economic conditions, price decreases by competitors on specific products or systems, or the discontinuance by a vendor. To the extent historical physical inventory results are not indicative of future results and if future events impact, either favorably or unfavorably, the salability of the Cooperative's products or its relationship with certain key vendors, the Cooperative's inventory reserves could differ significantly, resulting in either higher or lower future inventory provisions.

Property, Plant, and Equipment: Property, plant, and equipment are stated at cost and depreciated over their estimated useful lives using the declining balance or the straight-line method. Routine maintenance and repairs are charged to expense when incurred. When an asset is disposed of, the asset and related accumulated depreciation are written off and any gain or loss on the disposal is recognized. Major replacements and improvements are

capitalized and depreciated over their estimated useful lives.

Accounting for Impairment of Long-Lived Assets: Long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate that an asset may not be recoverable and are grouped with other assets to the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. If the sum of the projected undiscounted cash flows is less than the carrying value of the assets, the assets are written down to the estimated fair value. Assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell.

No impairment of long-lived assets was recognized during the years ended April 30, 2016 and 2015.

Income Taxes: Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and net operating loss carryforwards. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The Cooperative recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Cooperative's policy is to recognize interest and penalties related to income taxes in its income tax provision. The Cooperative has not accrued or paid interest or penalties which were material to its results of operations for the years ended April 30, 2016 and 2015. As of April 30, 2016 and 2015, the Cooperative had no material unrecognized tax benefits. The Cooperative files in the U.S. and various state jurisdictions.

Pension Plan: The Cooperative has a noncontributory defined benefit pension plan covering all employees who qualify as to age and length of service. The plan was frozen effective July 31, 2010. The plan provides benefits through mutual funds invested in common stocks and bonds. The Cooperative is required to recognize in its consolidated balance sheet the funded status of a benefit plan measured as the difference between the fair value of plan assets and benefit obligations, net of tax.

Self-Insurance: The Company maintains a self-insured employee benefit plan which covers health care costs. Benefit costs are accrued based on the aggregate of the liability for reported claims and an estimated liability for claims incurred but not reported. The accompanying consolidated statements of operations include expenses relating to self-insured plans.

Advertising Costs: Advertising costs are expensed as incurred. Advertising expenses of \$291,138 and \$701,595 for the years ended April 30, 2016 and 2015, respectively, are included in selling, general, and administrative expenses in the accompanying consolidated statements of operations.

Use of Estimates: The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Significant estimates include the valuation of accounts receivable, inventories, trademarks, and the master settlement agreement grandfather exemption. Estimates also include the useful lives of property, plant, and equipment and are used in determining the master settlement agreement obligation, pension benefit obligations, accrued and deferred income taxes, and litigation contingencies.

Recent Accounting Pronouncements: Effective May 1, 2014, the Cooperative changed its method of accounting for its existing interest rate swaps to the simplified hedge accounting approach, under which interest rate swaps are

accounted for at settlement value. Previously, these interest rate swaps were accounted for at fair value. The effect of the change was not material.

Effective May 1, 2014, the Cooperative adopted the Accounting Standards Update 2015-03 - Simplifying the Presentation of Debt Issuance Costs which provides for the balance sheet classification of debt issuance costs as a direct deduction from the face amount of that note.

Effective May 1, 2015, the Cooperative adopted the Accounting Standards Update 2015-17, Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes, which simplifies the presentation of deferred income taxes. ASU 2015-17 requires that deferred tax assets and liabilities be classified as noncurrent in a classified balance sheet, instead of separating deferred taxes into current and noncurrent amounts. The Cooperative elected to retrospectively adopt ASU 2015-17, resulting in a reclassification reducing both deferred tax assets and deferred tax liabilities by \$2,955,923 on the balance sheet at April 30, 2015.

Reclassifications: Certain amounts in these 2015 consolidated financial statements have been reclassified from where they were previously reported in order to conform to the 2016 presentation. These reclassifications did not affect the previously reported net margin.



2 | Fair Value Measurements

Under the accounting standards authoritative guidance on fair value measurements, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value, the Cooperative uses various methods including market, income, and cost approaches. Based on these approaches, the Cooperative often uses certain assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and/or the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated, or generally unobservable inputs. The Cooperative uses valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs.

Based on the observability of the inputs used in the valuation techniques the Cooperative is required to provide the following information according to the fair value hierarchy. The fair value hierarchy ranks the quality and reliability of the information used to determine fair values. Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

- Level 1 - Quoted prices for identical assets and liabilities traded in active exchange markets, such as the New York Stock Exchange.
- Level 2 - Observable inputs other than Level 1 including quoted prices for similar assets or liabilities, quoted prices in less active markets, or other observable inputs that can be corroborated by observable market data. Level 2 also includes derivative contracts whose value is determined using a pricing model with observable market inputs or can be derived principally from or corroborated by observable market data.
- Level 3 - Unobservable inputs supported by little or no market activity for financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation, also includes observable inputs for nonbinding single dealer quotes not corroborated by observable market data.

The following tables summarize fair value measurements by level as of April 30, 2016 and 2015, for assets measured at fair value on a recurring basis:

April 30, 2016				
	Total	Level 1	Level 2	Level 3
Available for sale securities				
Money market funds	\$401,569	\$401,569	\$-	\$-
Debt securities:				
Government agency (state taxable)	16,974,256	-	16,974,256	-
Agency mortgage-backed securities	38,829,748	-	38,829,748	-
Corporate bonds	71,523,967	-	71,523,967	-
Total available for sale securities	\$127,729,540	\$401,569	\$127,327,971	\$-

April 30, 2015				
	Total	Level 1	Level 2	Level 3
Available for sale securities				
Money market funds	\$923,137	\$923,137	\$-	\$-
Debt securities:				
Government agency (state taxable)	14,009,452	-	14,009,452	-
Agency mortgage-backed securities	38,355,743	-	38,355,743	-
Corporate bonds	72,451,332	-	72,451,332	-
Total available for sale securities	\$125,739,664	\$923,137	\$124,816,527	\$-

3 | Investments

Investments in interest-bearing obligations at April 30, 2016 and 2015 were as follows:

2016				
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term	\$20,949,910	\$145,945	\$(240)	\$21,095,615
Long-term	105,774,274	950,310	(90,659)	106,633,925
	\$126,724,184	1,096,255	\$(90,899)	\$127,729,540

2015				
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Market
Short-term	\$13,799,455	\$20,157	\$(1,466)	\$13,818,146
Long-term	111,693,218	319,234	(90,934)	111,921,518
	\$125,492,673	\$339,391	\$(92,400)	\$125,739,664

The unrealized gains and losses on debt securities were primarily due to changes in interest rates. There were 39 and 37 debt securities in loss positions as of April 30, 2016 and 2015, respectively. The increase or decline in market values of these securities is attributable to changes in interest rates and not credit quality.

Because it is unlikely that the Cooperative will be required to sell the investment before recovery of its amortized cost basis, which may be maturity, it does not consider the investment in debt securities to be other-than-temporarily impaired at April 30, 2016.

Contractual maturities of interest-bearing obligations as of April 30, 2016, are summarized below.

	Amortized Cost	Estimated Fair Value
Due in one year or less	\$20,949,910	\$21,095,615
Due after one year through five years	89,546,524	90,324,745
Due after five years through ten years	7,853,067	7,934,741
Due after ten years	8,374,683	8,374,439
	\$126,724,184	\$127,729,540



4 | Inventories

Inventories consisted of the following at April 30, 2016 and 2015:

	2016	2015
Processed tobacco	\$135,947,430	\$128,779,145
Materials and work in process	4,519,108	3,674,793
Tobacco products	10,777,799	11,003,163
	\$151,244,337	\$143,457,101
Reserve for obsolete and slow moving inventory	(2,052,246)	(2,632,899)
	\$149,192,091	\$140,824,202

During the years ended April 30, 2016 and 2015, the Cooperative determined that the market value of various tobacco products had permanently declined in value. In response, the Cooperative recorded an inventory allowance of \$2,052,246 and \$2,632,899 as of April 30, 2016 and 2015, respectively.

The Cooperative determined that various tobacco products were obsolete, slow moving, or may need to be discounted which resulted in a write-down of \$4,096,413 and \$2,142,130 for the years ended April 30, 2016 and 2015, respectively. These inventory write-downs were charged to the reserve for obsolete and slow moving inventory.

5 | Property, Plant, and Equipment

Property, plant, and equipment, their estimated useful lives, and related accumulated depreciation at April 30, 2016 and 2015, are summarized as follows:

	Estimated Useful Lives In Years	2016	2015
Land	-	\$1,265,977	\$936,589
Buildings	5-20	14,388,917	13,056,828
Machinery and equipment	3-15	49,165,318	49,507,451
Furniture and fixtures	3-10	1,821,241	1,688,514
Automobiles and trucks	3-5	643,433	583,761
Construction in progress	-	2,691,055	932,839
		\$69,975,941	\$66,705,982
Less accumulated depreciation		(40,611,176)	(40,508,321)
		\$29,364,765	\$26,197,661

For the years ended April 30, 2016 and 2015, depreciation expense amounted to \$3,919,780 and \$3,606,659, respectively, and of which \$2,600,083 and \$2,457,384 are included in cost of sales, and \$1,319,697 and \$1,149,275 are included in selling, general, and administrative expenses, respectively, in the accompanying consolidated statements of operations.

The Company entered into various contracts during 2016 for the acquisition of property, equipment and facility upgrades. The acquisitions and upgrades are expected to be completed at various dates through January 2017. Costs totaling \$2,691,055 have been incurred and are included above as construction in progress at April 30, 2016. No interest has been capitalized in association with these contracts, and the total additional cost upon completion is estimated to be approximately \$16,550,000.





6 | Intangible Assets

Intangible assets consisted of the following at April 30, 2016 and 2015:

	Estimated Lives	2016	2015
Master Settlement Agreement (MSA) - grandfather exemption	Indefinite	\$127,785,379	\$127,785,379
Trademarks	Indefinite	5,064,000	5,064,000
Customer list and non-compete	5 years	180,000	180,000
		\$133,029,379	\$133,029,379
Less accumulated amortization		(168,630)	(150,630)
		\$132,860,749	\$132,878,749

Generally accepted accounting principles require that the unamortized value of indefinite lived intangible assets be evaluated annually to determine whether the amount reflected above has been impaired. During 2016, no amounts were determined to be impaired. During 2015, the Cooperative's management determined that \$130,000 of the trademarks owned by Franchise were impaired, and accordingly, were written off.

The customer list and noncompete agreement are amortized over five years on a straight-line basis, with final amortization of \$11,370 recorded in 2017.

As part of the acquisition of Premier, the Cooperative acquired the Wildhorse, First Class, Ultra Buy, and Shield trademarks. These trademarks were available commercially prior to February 15, 2007, the effective date of the FDA's Substantial Equivalence requirements.

The Cooperative also owns the 1839 and Traffic brands, which have no costs associated with them. These two brands were transferred to Premier during 2015, so that all six brands are owned by Premier.

In 1998, the major United States cigarette manufacturers entered into the MSA with attorneys general representing 46 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas. The MSA became effective on November 23, 1998, when final approval was achieved in 80% of the settling jurisdictions. The MSA settled all health care cost recovery actions brought by settling jurisdictions and contains releases of various additional present and future claims. To entice other cigarette manufacturers into joining the MSA, the agreement provided that if a subsequent participating manufacturer (SPM) joined within ninety days following the MSA's "Execution Date," that SPM is exempt from making annual payments to the settling states unless their share of the national cigarette market exceeds its 1998 market share or 125% of its 1997 market share.

Premier became a signatory to the MSA in February 1999, and was granted an exemption in perpetuity from payment obligations under the MSA except to the extent that its market share exceeds approximately 0.25% of the total cigarettes sold in the United States

7 | Master Settlement Agreement Obligation

As a party to the MSA, Premier and USFC are required to make certain payments to the extent cigarettes sold exceed a specified level. The payment amounts are based generally on Premier's and USFC's relative market share and are subject to several adjustments, including inflation, United States cigarette volume, and certain other factors. At April 30, 2016 and 2015, the Cooperative's management estimated the liability to be \$1,553,150 and \$774,374,

respectively. The balances accrued at April 30, 2016, are expected to be paid in April 2017, along with the accumulated obligation from April 30, 2016, through the end of the 2016 calendar year. The balance accrued at April 30, 2015, was paid in April 2016, along with the accumulated obligation from April 30, 2015, through the end of the 2015 calendar year.

8 | Accrued Expenses

The components of accrued expenses at April 30, 2016 and 2015 are summarized as follows:

	2016	2015
Accrued tobacco product related taxes	\$4225,628	\$3,669,710
Other accrued expenses	2,959,507	2,390,298
Accrued master settlement agreement obligation	1,553,150	774,374
Accrued insurance	167,356	300,000
Accrued salaries and related benefits	1,569,357	840,102
Accrued interest	60,000	60,000
	\$10,534,998	\$8,034,484

9 | Revolving Lines of Credit

On March 24, 2016, the Cooperative entered into an amended and restated syndicated loan (Loan Agreement) with six financial institutions which consists of a term loan (Term Loan) and a revolving credit facility (Revolving Credit Facility). The Loan Agreement is collateralized by all assets of the Cooperative. The Cooperative is required to maintain a minimum tangible net worth and fixed charge coverage ratio under the conditions of the Loan Agreement.

The Revolving Credit Facility provides for up to \$205,000,000 in funding through the use of two separate tranches (Tranche A and Tranche B) and a swing line (Swing Line), all of which mature on March 24, 2021. Tranche A provides up to \$95,000,000 in funding, subject to a borrowing base limitation as defined in the Loan Agreement. Interest-only payments are due monthly at the one-month London

Interbank Offered Rate (LIBOR) rate plus 1.00% (1.434% at April 30, 2016). Tranche B provides up to \$100,000,000 in funding, subject to a borrowing base limitation as defined in the Agreement, and requires a zero balance for sixty consecutive days within each fiscal year. Interest-only payments are due monthly at the one-month LIBOR rate plus 1.50% (1.934% at April 30, 2016). The Swing Line provides up to \$10,000,000 in funding. Interest-only payments are due monthly at the prime rate plus 1.00% (4.50% at April 30, 2016). At April 30, 2016 and 2015, Tranche A had an outstanding balance of \$95,000,000 and \$79,000,000, respectively. Tranche B had an outstanding balance of \$2,500,000 as of April 30, 2016. There was no balance outstanding on Tranche B at April 30, 2015. There was no balance outstanding on the Swing Line at April 30, 2016 or 2015.

10 | Long-term Debt

Long-term debt consisted of the following as of April 30, 2016 and 2015:

	2016	2015
Note payable to financial institutions, payable in monthly interest payments and quarterly principal payments of \$2,000,000 at a variable interest rate equal to the one-month LIBOR rate plus 1.00% (1.434% at April 30, 2016), maturing on September 27, 2018	\$20,000,000	\$28,000,000
Equipment financing contracts payable in various monthly payments including interest, through 2021	83,925	-
Loan origination fees and costs	(929,285)	(444,585)
	\$19,154,640	\$27,555,415
Less current portion of long-term debt	(8,008,524)	(8,000,000)
	\$11,146,116	\$19,555,415

Remaining maturities of long-term debt subsequent to April 30, 2016 are as follows:

Year Ending April 30	Amount
2017	\$8,008,524
2018	8,019,584
2019	4,018,841
2020	14,979
2021	21,997
	\$20,083,925

Loan origination fees and costs were \$961,329 and \$941,473 at April 30, 2016 and 2015, respectively, and accumulated amortization was \$32,044 and \$496,888 at April 30, 2016 and 2015, respectively. The costs and fees are amortized over the lives of the applicable debt securities. Total amortization expense for the years ended April 30, 2016 and 2015, was \$293,565 and \$313,824, respectively, and is included as part of interest expense.

The Cooperative entered into two interest rate swap agreements effective September 2013, that effectively fixed the interest rate on the \$20 million term note above from a variable interest rate note to a blended fixed rate

of 2.12%. The interest rate swap agreements mature September 2018. The Cooperative's purpose in entering into the swap agreements was to hedge against the risk of interest rate increases on the related variable rate debt. The derivative financial instrument is reflected on the consolidated balance sheet at its settlement value which was insignificant as of April 30, 2016 and 2015. The cash flow effects of the swap agreements are included in interest expense on the consolidated statement of operations. The effect for the years ended April 30, 2016 and 2015, was to increase interest expense by \$186,010 and \$280,864, respectively.

11 | Operating Leases

During the fiscal years ended April 30, 2016 and 2015, the Cooperative entered into year-to-year operating leases for purposes of operating tobacco marketing centers and office space for the 2015 and 2014 crop years. Total lease expense for the centers amounted to approximately \$990,000 and \$1,143,000 for the years ended April 30, 2016 and 2015, respectively.

The Cooperative has noncancelable operating leases, primarily for certain equipment and vehicles, that provide for renewal options for varying periods.

Commitments for minimum future lease payments, by year and in aggregate, to be paid under noncancelable operating leases with initial or remaining terms in excess of one year as of April 30, 2016, are as follows:

Year Ending April 30	Amount
2017	\$1,210,203
2018	842,362
2019	372,200
2020	294,716
2021	149,739
	\$2,869,220

Total lease and rental expenses for operating leases amounted to \$1,348,783 and \$1,200,008 for the years ended April 30, 2016 and 2015, respectively, and are

included as a component of selling, general and other administrative expenses in the accompanying consolidated statements of operations.

12 | Stock Redemption Payable

Cooperative membership requires participation in the crop year, which runs May 1 through April 30. Beginning in May 2004, the board of directors approved a plan to terminate stock ownership of members who did not enter into marketing agreements with the Cooperative for the subsequent year.

During the year ended April 30, 2016, the Cooperative offered an open call for redemption of the 1967 to 1973, capital equity credits, from December 1, 2015 through February 29, 2016.

The amounts of capital equity credits offered for redemption and called for redemption are as follows:

Crop Year	Offered for Redemption	Called for Redemption
1967	\$4,296,250	\$127,825
1968	2,033,889	109,813
1969	2,832,496	186,948
1970	8,321,538	577,340
1971	3,318,711	255,287
1972	1,659,600	116,421
1973	818,201	64,591
	\$23,280,685	\$1,438,225

The balance of stock redemption payable comprises the following at April 30, 2016 and 2015:

	2016	2015
Terminated stock balances payable	\$4,024,090	\$4,023,580
Balance due on 1967 to 1973 capital credits called for redemption	38,578	1,114,381
	\$4,062,668	\$5,137,961

13 | Income Taxes

The provision (credit) for income taxes consisted of the following for the years ended April 30, 2016 and 2015:

2016			
	Current	Deferred	Total
Federal	\$(19,413)	\$(1,805,347)	\$(1,824,760)
State	104,887	(369,133)	(264,246)
	\$85,474	\$(2,174,480)	\$(2,089,006)

2015			
	Current	Deferred	Total
Federal	\$194,790	\$(420,745)	\$(225,955)
State	17,036	(82,254)	(65,218)
	\$211,826	\$(502,999)	\$(291,173)

The actual provision (credit) for income taxes for 2016 and 2015 differs from the "expected" taxes (computed by applying the U.S. federal corporate income tax rate of 34%) to the margin before income taxes as follows:

	2016	2015
Computed "expected" tax expense	\$2,526,900	\$3,828,733
Change in income tax expense (benefit) resulting from:		
State income taxes, net of federal income tax benefit	318,840	731,964
Patronage dividends	(3,178,100)	(4,101,020)
Nondeductible expenses	103,000	97,333
Valuation allowance	38,000	(305,600)
Other, net	(1,897,646)	(542,583)
	\$(2,089,006)	\$(291,173)

The tax effects of temporary differences that give rise to the net deferred tax liabilities at April 30, 2016 and 2015 are presented below:

	2016	2015
Deferred tax assets		
Recognition of certain retirement costs	\$2,901,326	\$2,210,525
Net operating losses	3,904,407	922,798
Master settlement agreement	593,495	295,836
Allowances and reserves	332,421	64,710
Inventories	2,643,040	2,040,380
Accrued expenses	1,411,678	554,997
Capital loss	83,411	24,157
Nonqualified equity credits	3,705,954	1,962,523
Less valuation allowance	(852,803)	(890,962)
	\$14,772,929	\$7,184,964
Deferred tax liabilities		
Property, plant, and equipment	3,185,980	2,178,970
Intangibles	15,269,676	11,866,355
	\$18,455,656	\$14,045,325
	\$(3,732,727)	\$(6,860,361)

As of April 30, 2016 and 2015, the Cooperative has \$4,716,746 and \$2,296,287, respectively, of federal net operating loss carry forwards, which expire in 2035 through 2036.

As of April 30, 2016 and 2015, the Cooperative had state net operating loss carryovers of \$26,501,024 and \$21,501,000, respectively, which expire in 2018 through 2036. A valuation allowance is required to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all

the evidence, both positive and negative, management has determined that \$852,803 and \$890,962 valuation allowance at April 30, 2016 and 2015, respectively, is necessary to reduce the deferred tax asset related to the state net operating losses that will not be realized. The change in the valuation allowance for 2016 and 2015 was \$38,159 and (\$1,033,647), respectively. After taking into account the valuation allowance, the Cooperative has a net deferred tax asset relating to state net operating losses for the years ending April 30, 2016 and 2015 of \$284,091 and \$31,836, respectively.

14 | Retirement Plans

Defined Benefit Pension Plan: The Cooperative sponsors a defined benefit pension plan. Under the terms of the plan, employees of the Cooperative were eligible to participate after one year of service, which is the completion of 1,000 or more hours of service within a period in which the employee is employed for twelve consecutive months. Pension benefits are based on the employee's compensation during the highest three consecutive years of employment and the number of years of service. On May 31, 2010, the Cooperative's Board of Directors approved a Certificate of Resolution to freeze benefits after July 31, 2010.

The Cooperative's funding policy requires a contribution in the amount necessary to satisfy the minimum required

contributions under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), subject to the Cooperative's long-term funding strategy. The Cooperative's funding policy is to contribute funds to the trust for the plan as necessary to provide for current service and for any unfunded projected benefit obligation over a reasonable period. To the extent that these requirements are fully covered by assets in the trust, the Cooperative may elect not to make a contribution in a particular year. The Cooperative made contributions of \$632,719 and \$341,764 to the plan for the years ended April 30, 2016 and 2015, respectively. The Cooperative anticipates making contributions of \$469,825 to the plan for the year ending April 30, 2017.

The following table sets forth the plan's funded status and amounts recognized in the Cooperative's consolidated balance sheets at April 30, 2016 and 2015, as follows:

Pension Benefits	2016	2015
Change in projected benefit obligation:		
Projected benefit obligation - beginning of year	\$23,251,553	\$21,942,250
Interest cost	905,666	970,935
Actuarial (gain) loss	1,452,512	1,691,649
Benefit payment	(1,414,465)	(1,353,281)
Projected benefit obligation - end of year	\$24,195,266	\$23,251,553
Change in plan assets:		
Fair value of plan assets - beginning of year	17,478,442	17,373,713
Actual return on plan assets	(78,670)	1,116,246
Employer contributions	632,719	341,764
Benefit payments	(1,414,465)	(1,353,281)
Fair value of plan assets - end of year	\$16,618,026	\$17,478,442
Fund status - end of year, and noncurrent liability recognized in the consolidated balance sheets	\$(7,577,240)	\$(5,773,111)

The accumulated benefit obligation as of April 30, 2016 and 2015 was \$24,195,266 and \$23,251,553, respectively.

Amounts recognized in accumulated other comprehensive loss as of April 30, 2016 and 2015, not yet reflected in net periodic benefit cost, consist of:

Pension Benefits	2016	2015
Net loss	\$9,469,799	\$6,980,496
Less deferred tax benefit	(3,801,891)	(2,738,415)
	\$5,667,908	\$4,242,081

The net periodic cost (credit) of the plan was (\$52,455) and (\$86,765) for 2016 and 2015, respectively. These amounts included the following reclassification adjustments of other comprehensive income:

	2016	2015
Amortization of net gain	\$396,206	\$281,494

The estimated gain that will be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2017 is \$560,000.

The following table provides the weighted average actuarial assumptions at April 30, 2016 and 2015:

Pension Benefits	2016	2015
Weighted-average assumptions used to determine benefit obligations as of April 30:		
Discount rate	4.0%	4.0%
Weighted-average assumptions used to determine Net periodic benefit cost for years ended April 30:		
Discount rate	4.0%	4.5%
Expected long-term return on plan assets	8.0%	8.0%

During 2016, the Cooperative changed from the RP-2000 Mortality Table to the RP-2014 Mortality Table, to better reflect current and expected future mortality improvements.

Management determines the expected return on plan assets based on historical performance of the plan's investments. Management compares their expected rate of

return with other companies to ensure that it is in line with broad market expectations.

The plan holds investments in various equities and mutual funds covering a wide range of investment opportunities. The various mutual funds are valued at fair value based on quoted market prices.

The fair values of the Cooperative's pension plan assets at April 30, 2016 and 2015, respectively, are as follows:

April 30, 2016				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$5,262,687	\$5,262,687	\$-	\$-
International equities	2,712,910	2,712,910	-	-
Real estate	343,233	343,233	-	-
Fixed income	6,568,244	6,568,244	-	-
Commodities	348,779	348,779	-	-
Hedge funds	917,770	917,770	-	-
Money market account	464,403	464,403	-	-
Total	\$16,618,026	\$16,618,026	\$-	\$-

April 30, 2015				
	Total	Level 1	Level 2	Level 3
Shares of registered investment				
Companies (mutual funds)				
Domestic equities	\$5,720,552	\$5,720,552	-	-
International equities	3,034,833	3,034,833	-	-
Real estate	1,057,489	1,057,489	-	-
International fixed income	6,430,344	6,430,344	-	-
Common stock				
Domestic equities	1,076,005	1,076,005	-	-
International equities	26,620	26,620	-	-
Money market account	132,599	132,599	-	-
Total	\$17,478,442	\$17,478,442	\$-	\$-

14 | Retirement Plans (Continued)

The investment policy guidelines outline risk tolerance, goals, permissible and prohibited investments, and target investment allocations.

Risk tolerance as defined by the policy guidelines identify that historical capital market returns allow for the assumption of short run investment risks in favor of greater returns provided by capital markets over the longer term.

Permissible investments as defined by the policy guidelines are individual securities, separate accounts, mutual funds, trusts, private placements, partnerships, commingled funds, pooled funds, contracts and other legally constituted means of buying and selling investments including domestic equities, fixed income investments, cash equivalents, international equities, and real estate.

Prohibited investments as defined by the policy guidelines are short sales, margin purchases, securities lending, borrowings of plan assets, purchase of letter stock (restricted stock), options, futures, loans, investments requiring pledging of plan assets as collateral and any other investment not outlined as a permissible investment under the policy guidelines unless authorized in writing by the committee.

The current investment policy target mix is as follows:

Domestic equities	32.0%
International equities	19.0%
Real assets	7.0%
Fixed income securities	42.0%

15 | Contingencies

The Cooperative is currently engaged in several lawsuits.

In 2005, two civil, class-action lawsuits (Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corp. & Fisher v. Flue-Cured Tobacco Cooperative Stabilization Corp.) were filed against the Cooperative in North Carolina Superior Court in Wake County, North Carolina. Plaintiffs seek to dissolve the Cooperative and distribute its assets based on allegations that the Cooperative has no valid business purpose following the U.S. Congress's termination of the Federal Tobacco Loan Program. These lawsuits have since been consolidated into a single action, Fisher, in North Carolina, from which the claim for dissolution has been dropped. Plaintiffs are nonetheless still advancing claims seeking to force the Company to distribute a substantial portion of its reserves. In June 2013, the North Carolina Superior Court (state trial court) issued an order certifying named plaintiffs as class representatives for all former and present shareholders/members of the Cooperative from 1946 through 2004. The Cooperative denies all allegations in the complaint and has been vigorously defending the matter and has challenged class certification via an interlocutory appeal that the North Carolina Supreme Court specially elected to hear on April 20, 2015. The company is waiting for the Supreme Court's decision. To the extent this case returns to the trial court, the Company is prepared to continue vigorously

Benefits expected to be paid in each of the next five fiscal years, and in the aggregate for the five fiscal years thereafter, are as follows:

Year Ending April 30	Amount
2017	\$1,500,801
2018	1,492,271
2019	1,509,231
2020	1,481,226
2021	1,510,569
2022-2026	7,601,132

Defined Contribution 401(k) Plan: The Cooperative maintains a 401(k) plan for all of its eligible employees. The plan year is January 1 to December 31, and allows eligible employees to defer a portion of their compensation up to the maximum allowed by law (\$18,000 in 2016 and 2015 with catch-up contributions of \$6,000 in 2016 and 2015 for age 50 and older). Effective January 1, 2014, the plan allows for a 100% match of the first 3% of an employee's elective contribution and a 50% match of an additional 2% of an employee's elective contribution. For the years ended April 30, 2016 and 2015, the employer contributions made to the plan were \$337,598 and \$387,859, respectively.

The Cooperative may make discretionary matching and profit sharing contributions to the plan. The board of directors did not elect to make either of these additional contributions for the years ended April 30, 2016 and 2015.

defending. While we cannot predict how or when the merits will ultimately be resolved, we perceive a variety of grounds on which the Company may defend against the merits.

In October 2012, a civil, class-action lawsuit (Speaks v. United States Tobacco Cooperative Inc.) was filed against the Cooperative in the United States District Court for the Eastern District of North Carolina. Plaintiffs seek to dissolve the Cooperative and distribute its assets to the Cooperative's members based on allegations to the effect that the Cooperative no longer serves a valid business purpose following the U.S. Congress's termination of the Federal Tobacco Loan Program. The case is currently stayed by agreement pending the North Carolina Supreme Court's resolution of the Fisher appeal. The Company is again prepared to vigorously defend against this class action as to certification, the merits, and otherwise if and when it resumes in federal court.

In May 2007, certain individual plaintiffs represented by the same counsel filed a series of lawsuits (led by Rigby v. Flue-Cured Tobacco Cooperative Stabilization Corp.) against the Cooperative in the Superior Court of Georgia in Berrien County, Georgia. The Cooperative successfully dismissed all of the Plaintiffs' claims except for one that was reinstated on appeal, a claim for breach of fiduciary

duty and corresponding attorney's fees. Following the partial reversal and remand back to the trial court, the trial afforded the Company discovery into the remaining claim as well as to seek summary judgment. The Company has since obtained that discovery, moved for summary judgment, and obtained summary judgment dismissal of plaintiff's remaining claim. Plaintiffs then appealed that summary ruling and the Georgia Court of Appeals has now received full briefing, hearing arguments on May 20, 2016. We cannot predict how or when the Georgia Court of Appeals will decide the appeal. Although we have identified multiple grounds for the Georgia Court of Appeals to affirm the summary judgment ruling, the Company is prepared to continue vigorously defending the case through trial to the extent this case and/or any of the parallel cases may proceed before the trial court.

In July 2013, the Cooperative filed a lawsuit (U.S. Tobacco Cooperative, et al v. Big South Wholesale Virginia, et. al.,) in the United States District Court for the Eastern District of North Carolina. The Cooperative's lawsuit states claims for RICO violations breach of contract, unfair trade practices, fraud in the inducement, fraud and other legal violations. The defendants include the former Chairman of the Board, two former executives, a former consultant, and several entities that they owned or controlled and unnamed co-conspirators. Some of the defendants have filed counter claims against the plaintiffs. The parties have been engaged

in discovery since approximately August 2015. The trial date is currently scheduled for August 2016.

California Board of Equalization (BOE) Dispute. During July 2009, the state of California performed a Cigarette and Tobacco Products tax audit of Franchise. During the audit period (June 2006 through June 2009), Franchise had been routinely selling both stamped and unstamped product into California. At the conclusion of the audit, Franchise was notified that California statutes preclude Franchise from shipping unstamped product into California, which was in contradiction of guidance the State of California had previously provided Franchise. The Cooperative has recorded an accrued expense for \$1,380,000 related to this ongoing dispute. This dispute occurred prior to the Cooperative's acquisition of Franchise, but was known and accounted for as part of that transaction.

The Cooperative is also party to legal actions arising in the ordinary course of its business. Management asserted that these cases are without merit and will be defended vigorously. While the results cannot be predicted with certainty, management believes it is not possible to form an assessment of potential outcome or an estimate of liability, if any, and that the final outcome of such legal actions will not have a material adverse effect on the Cooperative's financial position.

16 | Business Concentrations

Customer Concentrations: The Cooperative has one customer which accounts for over 10% of total sales and total accounts receivable. For the years ended April 30, 2016 and 2015, sales to this customer accounted for 27%

and 30% of total sales, respectively. At April 30, 2016 and 2015, the customer's account balance accounted for 93% and 86% of total receivables, respectively.

17 | Cash Flow Disclosures

Cash paid for interest and income taxes for the years ended April 30, 2016 and 2015 were as follows:

	2016	2015
Interest	\$1,744,450	\$1,424,777
Income taxes	421,446	508,925

Noncash investing and financing activities consisted of acquisition of property, plant, and equipment by notes payable of \$100,611 at April 30, 2016.

18 | Accumulated Other Comprehensive Loss

Accumulated other comprehensive loss consisted of the following at April 30, 2016 and 2015:

April 30, 2016			
	Total	Unrealized Gains on Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$(4,118,642)	\$123,439	\$(4,242,081)
Other comprehensive loss	(1,509,295)	143,471	(1,652,766)
Reclassification adjustments	231,379	4,440	226,939
Balance, end of year	\$(5,396,558)	\$271,350	\$(5,667,908)

Continued on next page

18 | Accumulated Other Comprehensive Loss (Continued)

April 30, 2015			
	Total	Unrealized Gains on Available-For-Sale Investments	Defined Benefit Pension Plan
Balance, beginning of year	\$(2,941,592)	\$214,867	\$(3,156,459)
Other comprehensive loss	(1,436,938)	(164,190)	(1,272,748)
Reclassification adjustments	259,888	72,762	187,126
Balance, end of year	\$(4,118,642)	\$123,439	\$(4,242,081)

The allocation on income tax expense (benefit) for each component of other comprehensive income (loss) was as follows for the years ended April 30, 2016 and 2015:

April 30, 2016			
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding losses arising during the year	\$250,482	\$(107,011)	\$143,471
Add reclassification adjustment for losses included in net margin - other revenue, net	7,751	(3,311)	4,440
Defined benefit pension plan			
Net loss arising during the year	(2,885,509)	1,232,743	(1,652,766)
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	396,206	(169,267)	226,939
	\$(2,231,070)	\$953,154	\$(1,277,916)

April 30, 2015			
	Before-tax Amount	Tax (Expense) Benefit	Net-of tax Amount
Available-for-sale investments			
Unrealized holding losses arising during the year	\$(246,991)	\$82,801	\$(164,190)
Add reclassification adjustment for losses included in net margin - other revenue, net	109,456	(36,694)	72,762
Defined benefit pension plan			
Net loss arising during the year	(1,914,597)	641,849	(1,272,748)
Add reclassification adjustment for amortization of net gain on pension included in net margin - selling, general, and administrative expenses	281,494	(94,368)	187,126
	\$(1,770,638)	\$593,588	\$(1,177,050)

19 | Subsequent Events

Management evaluated and noted no additional subsequent events requiring recognition or disclosure through July 1, 2016, which is the date the consolidated financial statements were available to be issued.



CliftonLarsonAllen LLP
CLAAconnect.com

INDEPENDENT AUDITORS' REPORT

Board of Directors
U.S. Tobacco Cooperative Inc.
Raleigh, North Carolina

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of U.S. Tobacco Cooperative Inc. and Subsidiaries, which comprise the consolidated balance sheets as of April 30, 2016 and 2015, and the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for the years then ended, and the related notes to consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of U.S. Tobacco Cooperative Inc. and Subsidiaries as of April 30, 2016 and 2015, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

A handwritten signature in black ink that reads 'CliftonLarsonAllen LLP'.

CliftonLarsonAllen LLP

Stevens Point, Wisconsin
July 1, 2016





EXHIBIT D



United States
Department of
Agriculture

Agricultural
Stabilization and
Conservation Service

P.O. Box 2415
Washington, D.C.
20013

ASCS

Mr. Fred G. Bond
Chief Executive Officer
Flue-Cured Tobacco Cooperative
Stabilization Corporation
P.O. Box 12300
Raleigh, North Carolina 27605

8 JUN 1990

Dear Mr. Bond:

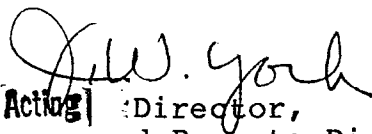
Your request of May 15, 1990, to redeem the 1982 flue-cured crop loan collateral inventory by using approximately \$164 million of the No-Net-Cost Assessment (NNCA) collections from the 1982-1984 crops has been approved. This approval will liquidate the outstanding loan balance owed Commodity Credit Corporation (CCC) by Flue-cured Tobacco Cooperative Stabilization Corporation (Stabilization) with respect to the 1982 crop loan inventory.

This action also relinquishes all CCC responsibilities on the 1982 flue-cured tobacco loan inventory and Stabilization will be solely responsible for the 1982 crop inventory of approximately 49 million pounds. With this approval, Stabilization may retain the sales proceeds resulting from the sale of the remainder of the 1982 crop inventory once the 1982 loan account with CCC is closed.

The Controller, CCC, will instruct your servicing agent bank of actions needed to be taken in order to liquidate Stabilization's outstanding loan balance with CCC on the 1982 crop, effective May 31, 1990. Stabilization's records must be well documented on the differentiation of sales proceeds between the 1982 crop and all other crop year sales proceeds.

Please contact our office if you have any questions concerning this matter.

Sincerely,


Acting Director,
Tobacco and Peanuts Division

SC 08740

EXHIBIT E



United States
Department of
Agriculture

Agricultural
Stabilization and
Conservation Service

P.O. Box 2415
Washington, D.C.
20013

CONFIDENTIAL

07 MAY 1992

Mr. Fred G. Bond
Chief Executive Officer
Flue-Cured Tobacco Cooperative
Stabilization Corporation
P.O. Box 12300
Raleigh, North Carolina 27605

Dear Mr. Bond:

This letter responds to a request from the Board of Directors of Flue-Cured Tobacco Cooperative Stabilization Corporation (Stabilization) to redeem the 1983 crop loan inventory of flue-cured tobacco. In the request, the Board proposed to redeem the 1983 crop of flue-cured tobacco by transferring approximately \$74.4 million of funds generated from the 1984 No-Net-Cost (NNC) Account (\$69.8 million) and the 1986 crop excess Graham-Rudman-Hollings (GRH) special assessment (\$4.6 million), to liquidate the debt owing Commodity Credit Corporation (CCC) on the 1983 loan collateral inventory. Redemption was requested in accordance with paragraph 19 of the 1983 Loan Agreement between Stabilization and CCC.

The request, as submitted, has been disapproved. The principal reason for disapproval of the request is that CCC would be left with a debt of approximately \$28 million on the 1984 crop without NNC funds to cover any possible losses. However, CCC approved the redemption of the 1983 and 1984 crop loan collateral inventories upon payment of the total debt outstanding, both principal and interest, on these crop year loans. CCC also approved the use of the 1984 NNC and 1986 GRH funds to be used to reduce the outstanding debt on these crop loans.

By redeeming both the 1983 and 1984 crop year loan inventories, CCC would be relieved of all responsibilities on the 1983 and 1984 flue-cured tobacco inventories and Stabilization would be solely responsible for these inventories of approximately 15 million pounds. By redeeming the 1983 and 1984 crops, Stabilization may retain the sales proceeds resulting from the sale of the remainder of these crop inventories once the 1983 and 1984 loan accounts with CCC have been closed.

If Stabilization's Board of Directors elect to pursue redemption of both the 1983 and 1984 crop loan inventories, please let us know and CCC will make arrangements with

SC 08650



CONFIDENTIAL

Mr. Fred Bond

Page 2

your servicing agent bank to liquidate the outstanding loan balances on the 1983 and 1984 loan crop inventories.

If you have any questions concerning the above matters, please let me know.

Sincerely,

Dallas L. Smith

Director,
Tobacco and Peanuts Division

SC 08651

EXHIBIT F

1990 MARKET OPENING DATES SET

The USDA Flue-Cured Tobacco Advisory Committee met on June 26 to make recommendations on market opening dates and sub-marketing areas ("sandtraps") for the 1990 season. The committee also recommended that the weight limit for a pile of tobacco remain at 275 pounds. The 39-member advisory committee, which is composed of grower, warehouse and buying company representatives, submits recommendations concerning the marketing of flue-cured tobacco to the Secretary of Agriculture for approval.

SCHEDULE OF OPENING DATES FOR THE 1990 SEASON

Area A: Florida-Georgia	July 17
Area B: South Carolina- NC Border	July 24
Area C: Eastern NC-Sandhills	July 25
Area D: NC Middle Belt	July 31
Area E: Old Belt of NC and Virginia	July 31

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION

Post Office Box 12300
Raleigh, North Carolina 27605

"IDENTIFY
AND
TESTIFY"
For The
Tobacco Industry

SALES AND STOCKS ON HAND (FARM WEIGHT)

During the month of June, Stabilization sold 549,053 pounds of tobacco from its inventory. A total of 34,570,812 pounds from loan stocks have been sold during the calendar year. Following is an analysis of sales and stocks on hand. *[The stocks report each month will continue to show the amount of tobacco on hand, even though the pre-1985 stocks are committed to be purchased by manufacturers over an eight-year period.]*

CROP	POUNDS SOLD DURING JUNE	POUNDS ON HAND
1976	-0-	855,602
1977	-0-	7,196,355
1978	-0-	2,168,605
1979	-0-	2,211,696
1980	-0-	9,174,596
1981	-0-	12,749,551
1982	3,312	28,418,626
1983	1,120	21,635,231
1984	-0-	19,446,157
Sub-Total	4,432	103,856,419
1985	-0-	15,592,549
1986	128,556	27,174,476
1987	228,228	6,415,286
1988	164,922	7,574,315
1989	22,915	22,875,275
Sub-Total	544,621	79,631,901
Total	549,053	183,488,320

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COOPERATIVE STABILIZATION CORPORATION
1304 ANNAPOLIS DRIVE
RALEIGH, NORTH CAROLINA 27605

July 1990

BOARD ACTION SECURES 1990 LOAN RATES

Stabilization's Board of Directors recently approved a measure that would offset a 2-cents per pound reduction in loan rates and prevent the possible loss of millions of dollars in grower income. The Board authorized the use of funds from Stabilization's general reserves to offset a 1.4% reduction in loan rates mandated by Gramm-Rudman-Hollings legislation.

Flue-cured tobacco support prices were cut by 1.4 percent or 2-cents per pound below the previously announced levels when USDA had to reduce budget outlays across the board by 1.4 percent. The cuts mean that USDA's Commodity Credit Corporation, which loans money to Stabilization to operate the

difference so farmers whose tobacco goes under loan will receive the full loan rate.

If Stabilization were to receive 50 million pounds of tobacco under loan this year, the cost of offsetting the price support reduction would be \$1 million. In comparison, if the market average price on a 900 million pound crop of tobacco was reduced by 2-cents per pound, the resulting loss to tobacco growers would be \$18 million.

Producers should be aware that not only will those placing tobacco under loan benefit from this move, supplementing the loan rate in this manner will prevent a related drop in market average and benefit every producer on the auction floor this year.

REDEMPTION OF 1982 CROP DEBT

On May 11, Stabilization's Board of Directors approved a plan to transfer sufficient funds from the No Net Cost Account from crop years 1982-84 for redemption of the debt owed by Stabilization to the Commodity Credit Corporation (CCC) for the crop year 1982. USDA approved the plan and, on May 31, the transfer of \$164 million dollars from the 1982-84 crops No Net Cost Account to CCC liquidated Stabilization's outstanding balance on the 1982 crop.

No assessment funds contributed by purchasers were used to pay the remaining debt on the 1982 crop. As a result of the Tobacco Reform Act of 1985, growers and purchasers have shared equally in paying any assessment since 1986.

The transfer of these funds to eliminate the 1982 crop debt has several important advantages. The short term benefit of this action is that mounting interest charges owed to CCC on this crop are elimi-

The board was concerned that this reduction in grade loan rates could lower the market average by 2-cents per pound.

price support program, can loan only 98.6 percent of the previously published loan rates to Stabilization. This would effectively reduce the average support price by 2-cents per pound.

The board was concerned that this reduction in grade loan rates could lower the market average by 2-cents per pound. If the effective loan rate was reduced by two cents, the board feared that tobacco buyers would also reduce their offering price thereby reducing the market average. For this reason, the board decided to use reserve funds to make up the

nated. The base selling price on the tobacco in the 1982 loan stocks was less than the amount owed to CCC on these stocks; therefore, the debt owed to CCC was increasing at a rapid pace. The Board of Directors deemed the elimination of this debt to be a wise and prudent use of funds.

Most importantly, this action insures that these funds are immediately used for the benefit of tobacco growers instead of continuing to be held in an account where they are no longer needed to protect CCC.

A major long term benefit of this use of these funds is to provide security for the operation of a market stabilization program in the event that tobacco is excluded from participation in USDA commodity programs. Even though the tobacco price support program operates on a no-net-cost basis to American taxpayers, the no-net-cost legislation is subject to repeal by Congress. For example, a bill was introduced in Congress in June that would eliminate the price support and marketing quota legislation beginning with the 1991 crop. In the event such legislation is adopted by Congress, the Board of Directors would be in position with surplus No Net Cost funds and reserves to operate a program to protect and stabilize the market for flue-cured tobacco growers.

Flue-Cured Tobacco Cooperative Stabilization Corporation is the grower owned and supported cooperative that administers the price support program for flue-cured tobacco growers in Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida.

President
Billy W. Hill

Vice Presidents

Roy B. Davis, Jr. B. Frank Strickland
Albert M. Johnson Richard J. Jenks

Chief Executive Officer and Secretary-Treasurer

Fred G. Bond

DIRECTORS

(District 1) Billy W. Hill Jasper, Florida
(District 2) B. Frank Strickland Lakeland, Georgia
(District 3) Albert M. Johnson Galivants Ferry, South Carolina
(District 4) W. Graham Smith St. Pauls, North Carolina
(District 5) F.H. Shackelford, Jr. Hookerton, North Carolina
(District 6) Atlas W. Wooten Greenville, North Carolina
(District 7) Bruce L. Fye Battleboro, North Carolina
(District 8) Richard J. Jenks Apex, North Carolina
(District 9) Richard N. Apple Browns Summit, North Carolina
(District 10) Roy B. Davis, Jr. South Boston, Virginia
(Public Director) John J. Collett, Jr. Thomasville, North Carolina

44th ANNUAL MEETING HIGHLIGHTS

(Continued from last month's Newsletter)

The 44th Annual Membership Meeting, held Friday, May 25 in Raleigh, was highlighted by addresses from Keith Bjerke, Administrator of USDA's Agricultural Stabilization and Conservation Service (ASCS), and Congressman Martin Lancaster (D-NC) whose district is the largest tobacco producing congressional district in the U.S. In addition, the audience of just over five hundred was addressed by Farrell Delman, President of the Tobacco Merchants Association of the U.S.; Gene B. Lanier, President of Tobacco Growers' Information Committee; and James A. Graham, North Carolina Commissioner of Agriculture. The Annual Reports of the President, Billy W. Hill, and Chief Executive Officer, Fred G. Bond, were also presented.

Last month's Newsletter contained excerpts of remarks made at Stabilization's 44th Annual Membership meeting by Mr. Graham, Mr. Bjerke, Mr. Lanier, and Congressman Lancaster. Excerpts of remarks by the other program participants follow.

Excerpts of Speaker's Remarks

BILLY HILL, PRESIDENT

In his Annual Report, Billy Hill, President of Flue-Cured Stabilization, recapped the 1989 season and reported on the outlook for the 1990 flue-cured tobacco season. He said, "the outlook for the 1990 season is for one of continued advancement and stability in the tobacco program operations. At this point, all indicators point to a very promising outlook for the 1990 crop."

Hill also reported that the inventory buyout contracts are continuing well ahead of schedule. "After almost four years of the eight-year contract period, the buyout contracts covering the 1976 through 1984 crops are 82% complete. We are pleased with this rate of take-down of committed stocks and are confident that the buyout will be completed in less than the allotted time."

Echoing the sentiments of the other speakers, Hill said, "when I addressed you at our Annual Meeting in 1987, I said, and I quote, 'there is a storm rising...that is potentially more damaging than anything we have seen. Smoking and health issues are at the forefront of an agenda to eliminate tobacco use by the year 2000.' Friends that storm is here and gaining strength every day! The anti-tobacco forces will surely destroy us lest we act. As far as I'm concerned, our only choice is to fight."

FARRELL DELMAN, PRESIDENT OF TMA

Farrell Delman, President of the Tobacco Merchants Association of the U.S. (TMA), reviewed recent activities in Washington that strike out at tobacco and the tobacco industry. He stated that in the last two weeks we have seen hearings on the "Kennedy Bill" blasting tobacco exports, a vote by the Labor and Human Resources Committee to report the bill on to the Senate, proposed restrictions on cigarette sales from vending machines, and a proposal to dismantle the entire tobacco program.

Questioning the motives of some of tobacco's detractors, Delman said that the publicity generated in the media about tobacco issues creates "a great opportunity for people to make the news. People get into the newspapers; they make headlines. Tobacco is clearly the whipping boy of all commodities in the United States."

Referencing the growing intolerance toward tobacco and the apparent willingness of some to regulate the behavior of others, Delman said, "what's ironic about what's going on in Eastern Europe is that, as freedom rings loudly around the world, our own 'Liberty Bell' is curiously silent."

At a recent hearing on tobacco exports held by Congressman Henry Waxman (a staunch opponent of tobacco), Delman said, "for the first time, I saw an anti-tobacco initiative (that) went too far." He said that other Congressmen on the committee, who are opposed to tobacco as well, recognized that Congressman Waxman's attempts to attack tobacco exports as a 'health' issue were unfounded and agreed that the real issue was fair trade and access to foreign markets for U.S. tobacco.

Delman said that he can see a change taking place in the attitude of the tobacco community toward the

anti-tobacco campaign. "You are not the only ones fed up. The feeling is shared across all sectors of the industry on how we are being treated. I can hear a cry coming from every sector, from growers through to smokers, that says 'Enough is Enough!'"

FRED BOND, CHIEF EXECUTIVE OFFICER

Fred Bond, Chief Executive Officer of Flue-Cured Stabilization, presented an abbreviated Annual Report in which he reviewed the financial statement of Flue-Cured Tobacco Cooperative Stabilization Corporation and its' subsidiary, Tobacco Growers Services, Inc. He reported that Total Stockholders' Equity has increased \$2.8 million each of the last two years and now totals \$64.7 million.

Bond also reported that the results of last seasons pesticide residue testing program were satisfactory; however, MH (Maleic Hydrazide) residue levels were up slightly in some areas and decreased in other areas. He stressed the continued need for correct application and reduced residue levels for MH. Bond said, "our foreign and domestic customers have made it very clear that MH residues are a vital concern and we must work to insure that our product will continue to meet market standards."

In regard to the 1990 loan rates, Bond reported that in 1990, by law, the Commodity Credit Corporation of USDA is only allowed to loan the co-op 98.6% of the published price support of each grade of tobacco. This would mean that the 1990 loan rates must be reduced by 2-cents per pound. However, Bond reported that Stabilization's Board of Directors has taken measures to offset the 2-cent per pound reduction in loan rates so that growers will receive the full loan rate at the auction warehouse.

In closing, Bond said, "we are going into a season which appears to be promising in spite of what we've heard and seen in recent weeks about those who would put us out of business. Let's make sure we go into this crop using every available recommendation for the planting, for the cultivation and, in particular, for those pesticides or chemicals that you are using on your tobacco. This is a critical issue. If we do that and bring a good, solid, uniform crop of tobacco to market...there will certainly be a good season for all the growers from Florida through Virginia for the 1990 marketing season."

EXHIBIT G

MAR-21-2005 11:13

P.02/03



United States
Department of
Agriculture

Commodity Credit
Corporation

1400 Independence
Avenue, SW
Stop 0514

Washington, DC
20250-0514

Mr. Lioniel Edwards
General Manager
Flue-Cured Tobacco Cooperative
Stabilization Corporation
P. O. Box 12300
Raleigh, NC 27605

Dear Mr. Edwards:

As you are well aware, Title VI of the America Jobs Creation Act of 2004 (the 2004 Act) terminates the tobacco marketing quota and price support loan programs effective with the 2005 marketing year. In order to provide for an orderly transition to an unregulated marketplace, section 641 of the 2004 Act sets forth the procedure for liquidation of existing Commodity Credit Corporation (CCC) tobacco price support loans. The purpose of this letter is to take the first step needed to implement this statutory provision. In accordance with section 7 of the 2002, 2003 and 2004 crop flue-cured tobacco loan agreements executed by Flue-Cured Tobacco Cooperative Stabilization Corporation (the Association) and CCC, CCC hereby notifies the Association that all such loans are due and payable no later than 12:00 a.m. on March 21, 2005, and effective at that time CCC will take title to all tobacco pledged as collateral for such loans.

As soon as possible, CCC will notify the Association of those lots of tobacco that are transferred to the Association. Section 641 of the 2004 Act provides that the division of these loan stocks between the Association and CCC will be accomplished by dividing the amount of funds held by the Association in its No Net Cost Tobacco Account by the average list price for flue-cured tobacco as determined by the Secretary of Agriculture. Once this tobacco has been transferred to the Association, the Association may utilize these lots of tobacco in any manner that it desires. Once CCC takes title to the tobacco that was not transferred, CCC will pay to the Association costs for the storage of the tobacco as provided in the Association Service Agreement executed on March 10, 2005, by the Association and CCC.

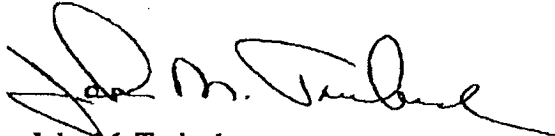


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Mr. Lioniel Edwards
Page 2

If you have any questions regarding these issues, please contact the Director, Tobacco Division, Farm Service Agency, John "Moot" Truluck, at 202 720-7413.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Truluck", written over a horizontal line.

John M. Truluck
Contract Officer

TOTAL P.03

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN, ROBERT
POINDEXTER, MIKE MITCHELL, ROY L.
COOK, ALEX SHUGART, H. RANDLE
WOOD, ROBIN ROGERS and DANIEL LEE
NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

**DECLARATION OF ANDREW QUINN SHEPHERD, SR., IN SUPPORT OF
DEFENDANT U.S. TOBACCO COOPERATIVE, INC.'S RESPONSE TO OBJECTIONS**

I, Andrew Quinn Shepherd, Sr., declare as follows:

1. My name is Andrew Quinn Shepherd, Sr. I am the Chairman of the Board of Directors (the "Board") of the United States Tobacco Cooperative, Inc. (the "Cooperative"), the Defendant in the above action ("*Speaks*"). I live in Blackstone, Virginia.

2. I am familiar with this litigation and with the parallel, consolidated class action *Lewis v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 188, and *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 1938 ("*Fisher-Lewis*"), currently proceeding in North Carolina Superior Court. On October 12, 2017, I filed a request for exclusion ("opt-out") in *Fisher-Lewis*.

3. I participated in the mediation in *Speaks* that took place from May 11-12, 2017. After that hard-fought mediation, the parties reached a Settlement. I understand that now some

potential class members object to the Settlement. I support this Settlement, and make this declaration based on personal knowledge. I am prepared to testify as to its contents at the fairness hearing on January 19, 2018.

My Membership In The Cooperative

4. I have farmed flue-cured tobacco since 1970, when I was 22 years old. I have been a member of the Cooperative since 1973, the first year I put tobacco under loan in exchange for price support. I became a member of the Cooperative then and bought a share of common stock at \$5.00 par value.

5. The Tobacco Price Support Program put mandatory marketing quotas on all tobacco farmers. Each farm's quota was assigned to the land. Every year I tried to meet my quota, and I brought my tobacco to participating auction warehouses to be sold. If the cigarette companies bid at more than the support price, then my tobacco would be sold to them. Otherwise, it would go under loan at the support price.

6. As a member of the Cooperative, I would attend annual meetings on a regular basis and review the Cooperative's financial reports at the annual meetings.

7. In 1992, I decided to run for a seat on the Cooperative's Board to represent Virginia's growers. I was elected to the Board that year, and I have been a member of the Board ever since, for 25 years. I have served as Chairman of the Board since 2017.

8. The Board oversees the Cooperative's operations and strategy, reviews the Cooperative's financial performance, appoints officers, and selects auditors and counsel. The Board holds meetings each month and also holds special meetings when appropriate. As Chairman of the Board, I preside over these meetings, call special meetings when necessary, and provide a report at the annual members' meeting.

The Establishment Of The Cooperative's Reserve

9. One of the first things I did after I was elected to the Cooperative's Board was review its previous decisions and the Cooperative's governing documents.

10. In the mid-1970s, the Board announced its intention to establish a reserve for the ongoing protection of the Cooperative. The Cooperative's by-laws and Articles of Incorporation allow the Board to keep and invest funds so it can manage its affairs and keep the Cooperative on solid financial footing. None of the amendments to the Cooperative's by-laws has ever restricted or reduced these powers.

11. The reserve initially was funded with a portion of the net gains realized from the sale of the 1967 through 1973 tobacco crops; the remaining net gains were distributed to members in cash. The Cooperative issued certificates of interest that were redeemable at the Board's discretion to the growers who produced these crops .

12. The creation of the reserve was well publicized in the tobacco farming community as a way for the Cooperative to stand on its own two feet when the time came to market flue-cured tobacco without the benefit of the Tobacco Price Support Program. Given all that the Cooperative had done for flue-cured tobacco farmers like myself, and all that it would continue to do after the Tobacco Price Support Program ended by adding value to our tobacco, I supported the Cooperative's decision to initially establish a reserve of funds for later use (which has occurred) by the Cooperative.

13. In 1982, Congress enacted the No Net Cost Act, which required tobacco farmers to pay assessments on tobacco it sold through the Tobacco Price Support Program. These assessments compensated the Government, not the Cooperative. For the majority of the time that the No Net Cost Act was in effect, the Cooperative collected assessments on behalf of the

Commodity Credit Corporation (the “CCC”) and deposited them in an account controlled by the CCC. The assessments did not go into the Cooperative’s reserve.

The Cooperative Prepares For The End Of The Tobacco Price Support Program

14. From the 1970s forward, we knew that the Tobacco Price Support Program would come to an end, at some point. The cost of the program to the American taxpayers, and the political opposition to the tobacco industry from the public health lobby, had become too much to overcome.

15. From the 1960s until 1988, the Cooperative owned and operated a tobacco processing facility located in Fuquay-Varina, North Carolina through a wholly-owned subsidiary. In the mid 1990s, the Board began to discuss re-entering the tobacco processing business. The Board also began to consider the benefit of acquiring a cigarette manufacturing business so that the Cooperative, like other agricultural cooperatives, could add value to its members’ products. In the early 1990s, the Cooperative had used some of its resources to develop a blend of cigarette that could be manufactured using members’ tobacco. In the early 2000s, the Board asked the Cooperative’s management to find manufacturing opportunities for the Cooperative.

16. In 2003, the Cooperative’s management brought an opportunity for the Board to consider. Vector Tobacco, a subsidiary of Liggett-Meyers, had invested millions of dollars in a self-contained tobacco manufacturing and processing facility located in Timberlake, North Carolina and was offering the plant for sale at a steep discount. The Board held several meetings and engaged in vigorous debate about acquiring the facility at Timberlake. The Board considered multi-year financial projections that had been prepared for Timberlake, analyzed best-case and worst-case scenarios for Timberlake, commissioned a third-party appraisal of the value of the Timberlake plant assets and property, conducted a strengths, weaknesses, opportunities, and threats (“SWOT”) analysis, and analyzed the costs of acquiring the Timberlake assets independently.

17. The Board voted to acquire Timberlake. We concluded that it would be in the best interest of the Cooperative and its membership to own and operate Timberlake and to fulfill a longstanding wish of our members to make and sell their own cigarettes so farmers would not remain beholden to the major cigarette manufacturers who historically purchased and processed their tobacco. It is, in my opinion, one of the best decisions the Board has made during my over twenty-five years on the Board. The acquisition and operation of Timberlake allowed the Cooperative to expand its export markets, engage in contract processing and manufacturing, and manufacture and market cigarettes containing the tobacco of the Cooperative's members.

18. In addition to the Timberlake acquisition, the Board approved a number of other acquisitions and activities, including strategies to develop international markets for flue-cured tobacco, the creation and acquisition of cigarette brands, the acquisition of distribution capacities, and the construction of a green storage facility. I approved of each of these decisions, which, in my view, benefit the Cooperative's members by increasing the value of their tobacco. Had the Cooperative not retained and built its reserve as it did, it could never have made these decisions, could not have derived the resulting value from them, could not have passed along the resulting benefits to growers, and could not have positioned itself successfully in the modern marketplace. Thanks to the accumulation of the reserve and the positive use the Board has made of it, the Cooperative is now able to continue its mission and to serve current and future generations of growers, even without federal price support.

19. The profitability of the Cooperative's operations, including Timberlake, has allowed the Cooperative to declare a cash patronage dividend every year from 2011 to 2016, while retaining a portion of profits to replenish the reserve enough to allow holders of certificates of interest issued for the 1967 to 1973 crop years to redeem them at their option.

The Cooperative After the End Of The Tobacco Price Support Program

20. In 2004, with the passage of the Fair and Equitable Tobacco Reform Act, or FETRA, the Tobacco Price Support Program for tobacco ended. FETRA had two major components: it paid buyouts to flue-cured tobacco farmers for their quota (I received a buyout payment myself) and it provided a process for the satisfaction of the CCC's outstanding loans. All of the grower No Net Cost monies held by the CCC were applied toward partial satisfaction of those loans. The balance of the loans were repaid with proceeds realized from the sale of loan tobacco pledged to the CCC and from monies appropriated by Congress. After the loans were satisfied, and pursuant to a formula established by FETRA, the CCC "ceded" to the Cooperative about 83 million pounds of tobacco inventory. FETRA placed no conditions on how the Cooperative or its Board could handle the tobacco or the proceeds of its sale.¹

21. The Board considered returning capital to the Cooperative's members after the FETRA funds were distributed. In January 2005, I proposed, and the Board unanimously passed, a motion requiring the Cooperative's management to examine whether any funds should be distributed to members. At the February 2005 Board meeting, management recommended that the Cooperative not distribute any funds. James Hill, the public director, moved to distribute the Capital Equity Credits and Additional Paid-In Capital.² After deliberating, the Board rejected the motion because it determined that it could better support tobacco farmers by retaining these funds for potential use down the road, which the Board has done.

¹ The funds earned through the sale of this "ceded" tobacco are called the "Contributed Capital."

² The Capital Equity Credits are the retained portion of the net gains realized from the sale of the 1967 through 1973 tobacco crops that I described in Paragraph 11. The Additional Paid-In Capital are funds that the Cooperative acquired in the early 1990s by selling tobacco from the 1982, 1983, and 1984 crop years that had been ceded to it by the CCC in exchange for money held in the No Net Cost fund. This was an unusual transaction on which the CCC took losses.

22. I voted in favor of using the funds from the sale of the “ceded” tobacco to finance the Cooperative’s continuing operations because I understood that the U.S. Congress wanted cooperatives to continue to support tobacco farmers by increasing the value of tobacco after the Tobacco Price Support Program ended. In my opinion, putting these funds to use benefited the Cooperative’s members and was the smart way to prepare for continuing to support tobacco farmers in the future.

The Cooperative Reduces Its Membership Rolls

23. The Cooperative’s Articles of Incorporation provide that growers have to patronize the Cooperative in order to remain eligible members. By 2004, the Cooperative’s membership rolls had swelled to some 800 thousand odd members.

24. In 2004, after the end of the Tobacco Price Support Program and as part of the Board’s efforts to continue to keep the Cooperative thriving to help tobacco farmers, the Board took steps to remove from its rolls the names of members who the Cooperative could confirm were deceased or no longer actively involved in farming flue-cured tobacco. Over 700,000 of the growers listed on the membership rolls were either deceased, had ceased farming by 1984, or had no financial relationship with the Cooperative during 1984 or at any time thereafter. Consistent with the Cooperative’s Articles of Incorporation and by-laws, these ineligible members were removed from the membership rolls.

25. I supported this decision because the Cooperative needs an accurate membership list to gauge the volume of tobacco it purchases annually and to control the quality of the tobacco it purchases. Also, I wanted to make sure that the Cooperative’s governance was controlled by active growers and current patrons of the Cooperative who had the best interests of active flue-cured tobacco growers in mind.

The Speaks and Fisher-Lewis Plaintiffs Have Benefited Greatly From the Cooperative's Existence

26. Without the Cooperative's efforts, it is my opinion that there would not have been as significant of a buyout, or no buyout at all, for tobacco farmers. Tobacco farmers, whether they were members of the Cooperative or not, received millions from the FETRA buyout for the loss of their quotas, and without the Cooperative, the tobacco companies would have hung the farmers out to dry.

27. When the tobacco companies settled the states' lawsuits in the late 1990s, in what became the Master Settlement Agreement, the companies did not worry about the farmers one iota. When the tobacco companies settled, and offered hundreds of billions of dollars to the states, it affected the demand for our members' tobacco based on increased costs to the consumer. The manufacturers and leaf dealers did not want a significant portion of money to be paid to the farmers because it was going to come out of the consumers' pockets and reduce demand and consumption.

28. The farmers lost a significant portion of their quotas after the Master Settlement Agreement without even being considered. Farmers had bought farmland with the quota attached to it, and there was an inherent value to our farms associated with that quota. That quota got factored into every financial decision we made as farmers.

29. The Cooperative lobbied on behalf of all tobacco farmers to make sure we would not be used as a human shield by the tobacco companies. We needed to be compensated for the reduced demand for our product. Myself, along with fellow Board member James Hill, were appointed by the Clinton administration to a tobacco farmers commission, and we fought against the tobacco companies to make sure tobacco farmers were protected from the economic fallout from the Master Settlement Agreement. I met with the public health groups, that had viewed the farmers as an enemy, and explained to them that farmers were independent business people. We

invited them out to the farms and they got to know us as people and families instead of a monolithic tobacco entity. Because of our efforts, the health groups aligned with us, and we established the “Phase II” buyout agreement—a \$5.15 billion fund paid by the tobacco companies to compensate the farmers for the loss of their quotas. The tobacco companies fought tooth and nail to avoid compensating the tobacco farmers, but in the end every single farmer—whether they were a member of the Cooperative or not, and whether they were already planning to retire or not grow tobacco anymore—was compensated for the loss of demand. Some of the largest tobacco farmers received hundreds of thousands of dollars. Even small farmers received substantial funds. For the farmers to successfully stand up to the tobacco companies was a miracle.

30. The *Speaks* and *Fisher-Lewis* plaintiffs also benefited from the Cooperative in other ways. The Cooperative (i) served as administrator of the Tobacco Price Support Program for flue-cured tobacco farmers; (ii) processed, stored, marketed, and resold their tobacco; (iii) provided resources, including marketing and sales assistance and financial support, to various farms, including funding an initiative to convert tobacco curing barns from a direct heat source to an indirect heat source through the installation of a heat exchanger; and (iv) operated marketing centers that provided a marketing alternative for members to sell their tobacco. The Cooperative’s support has kept tobacco farmers in business, sustained farms for the enjoyment of farmers’ children and grandchildren, and compensated farmers handsomely, including the plaintiffs.

31. I also firmly believe that the Cooperative has a critical role to play going forward for current and future growers. The Cooperative continues to take a leading role in everything happening to the tobacco farming community today. The Cooperative continues to develop foreign customers and domestic and export markets for the sale of its members’ tobacco and offer an alternative for members to sell their tobacco to someone other than the large tobacco companies.

And the Cooperative continues to lobby Congress for the benefit of all tobacco farmers. For example, the Cooperative is lobbying Congress to reduce the Tariff Rate Quota so that domestic growers of flue-cured tobacco can grow a greater quantity of tobacco, which would have a major impact on the Cooperative's members and all tobacco growers.

32. When the plaintiffs in *Fisher-Lewis* and *Speaks* argue that the Cooperative no longer serves a purpose, they are wrong.

The Settlement Is Fair

33. I was a Board member in 2005 when the Cooperative agreed to settle *Fisher-Lewis*. In that settlement, the Cooperative offered a payment on the order of \$76.8 million in cash distributions (i.e., redemption of the Capital Equity Credits and payment of a \$50 million cash settlement fund for the Contributed Capital), a book allocation of the Additional Paid-In Capital with triggers requiring the Cooperative to offer to members opportunities to redeem if the Cooperative fell below a predetermined book value, and book allocations of retained earnings. The Board, including myself, voted in favor of this settlement based on the Cooperative's status at the time—after FETRA passed—and the premium the Board placed on satisfying the growers to the fullest possible extent.

34. The 2005 *Fisher-Lewis* settlement is not that different from the present settlement. In the *Fisher-Lewis* settlement, the book allocations of the Additional Paid-In Capital would have allowed the Board to deploy its capital in a manner of its own choosing (subject to triggers), and it is my opinion that the Board would have pursued the same business strategy that it pursues today. Also, members have redeemed a portion the Capital Equity Credits—one of the items offered in the 2005 *Fisher-Lewis* settlement—each year from 2011 to 2016.

35. I understand that objectors argue that the terms of the *Fisher-Lewis* settlement render this settlement unfair, but changed circumstances justify the \$24 million settlement amount

in *Speaks*. You cannot fairly compare the money offered in 2005 to the money offered now. The Cooperative's position in the tobacco marketed has changed. Since 2005, the Cooperative has made a number of purchases, including cigarette machinery, a green storage facility, and cigarette brands, all to sustain the Cooperative for the future. These hard and fast investments were paid with funds that would have been part of the 2005 *Fisher-Lewis* settlement and are no longer available. The Cooperative's post-Tobacco Price Support Program strategy has benefitted its members and the flue-cured tobacco growing community by providing a market for the Cooperative's members to sell their tobacco at a fair price.

36. To now try to distribute the amount of funds the *Fisher-Lewis* plaintiffs sought in 2005 (which plaintiffs have no claim to) would cripple the Cooperative. It certainly could not continue to play the role and provide the benefits to farmers it presently does.

37. There is also now the decision in *Rigby* that did not exist in 2005. The Cooperative's position prevailed against the same arguments that plaintiffs in *Speaks* and *Fisher-Lewis* make. That changed the Board's thought process because the Georgia courts agreed with the Cooperative on every front. The Board has always believed that the Cooperative's by-laws and Articles of Incorporation, and North Carolina law, allowed it to establish a reserve and use those funds to keep the Cooperative working for the benefit of its members. That position has been borne out by the judges in Georgia.

38. I believe that the \$24 million Settlement will enable the Cooperative to finally move forward and focus on its long-term business strategy.

Conclusion


39. The Board has always had the best interests of the Cooperative's members in mind when it acts. In my opinion, the Board wisely prepared for the end of the Tobacco Price Support Program, which meant using its reserve to expand into new areas of operation. The Board's actions

have helped, and continue to help, flue-cured tobacco farmers receive the highest value for their tobacco.

40. The Board understood all of its decisions, and all of the Cooperative's activities, to be in compliance with the North Carolina Marketing Act, the Cooperative's Articles, and the Cooperative's by-laws.

41. In my view, the claims of plaintiffs in *Speaks* and *Fisher-Lewis* have no merit. I participated in the hard-fought mediation with the *Speaks* plaintiffs and believe that the Settlement is fair, adequate, and reasonable.

I declare under penalty of perjury that the foregoing is true and correct to the best of my recollection. Executed in DALEIGH, NC, this 11TH day of January, 2018.


Andrew Quinn Shepherd, Sr.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN, ROBERT
POINDEXTER, MIKE MITCHELL, ROY L.
COOK, ALEX SHUGART, H. RANDLE
WOOD, ROBIN ROGERS and DANIEL LEE
NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

**DECLARATION OF CHARLIE BATTEN IN SUPPORT OF
DEFENDANT U.S. TOBACCO COOPERATIVE, INC.'S RESPONSE TO OBJECTIONS**

I, Charlie Batten, declare as follows:

1. My name is Charlie Batten. I have served since 2008 as the representative from District Seven on the Board of Directors (the “Board”) of the United States Tobacco Cooperative, Inc. (the “Cooperative”), the Defendant in the above action (“*Speaks*”). I live in Johnston County, North Carolina.

2. I am familiar with this litigation and with the parallel, consolidated class action *Lewis v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 188, and *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 05 CVS 1938 (“*Fisher-Lewis*”), currently proceeding in North Carolina Superior Court. On October 12, 2017, I filed a request for exclusion (“opt-out”) in *Fisher-Lewis*.

3. I understand that some potential class members object to the Settlement in *Speaks*. I support this Settlement, and make this declaration based on personal knowledge. I am prepared to testify as to its contents at the fairness hearing on January 19, 2018.

4. I have farmed flue-cured tobacco as a member of my family's farm since 1978, when I graduated high school. I sold tobacco to the Cooperative in my father's name until around 1985. In 1985, we incorporated the family farm and registered the family farm as a member of the Cooperative. I sold tobacco to the Cooperative under the family farm's name until around 1990. I thereafter sold tobacco in my own name.

5. In 2008, I ran for a seat on the Cooperative's Board. My nephew graduated from college and wanted to come back home and grow tobacco. I knew that, absent the Cooperative, he would not be able to make it as a tobacco farmer. It is important to me that we preserve the Cooperative for the next generation. I was elected to the Board that year, and I have been a member of the Board ever since.

6. I disagree with Pender Sharp and the other objectors who argue that the No Net Cost assessments they paid should be paid back to them using the Cooperative's funds. The Cooperative was never in control of any of those assessments. The farmer and the Cooperative had no say on the rate that was set or how those assessments were retained. The United States Congress mandated all of that. I think there is confusion among the objectors that the No Net Cost assessments were the Cooperative's money. Those in fact were not the Cooperative's money. The Cooperative was only the collector of the No Net Cost assessments, and what happened to that money was dictated by the Commodity Credit Corporation ("CCC"), the United States Department of Agriculture ("USDA"), and the United States Congress.

7. I remember when the assessment was raised to \$0.25 per pound in 1985 and that created quite a stir. But I understood that we all benefited from the Tobacco Price Support Program and that could go away one day. We had a minimum guaranteed price and a quota, and that's a good return on the \$5.00 we all invested for a share of common stock in order to become members of the Cooperative.

8. I also remember in 1990 when the CCC released unsold tobacco to the Cooperative. The Cooperative sold that tobacco and earned \$110 million in net profit, and the Cooperative would hold the money and then invest it to the benefit of our membership, which is what cooperatives are supposed to do. The CCC did not tell the Cooperative what to do with the tobacco or the proceeds. I agreed with the Cooperative's decision to sell the tobacco and hold this money as security for when the Tobacco Price Support Program ended, and I don't recall any farmer objecting.

9. I understand that the objectors argue that these funds are patronage income. That is incorrect. Patronage income is funds that the Cooperative makes a profit on from the members' tobacco. For example, if the majority of the tobacco in a cigarette is our members' tobacco, then the Board can take profits made from those cigarettes and credit the members' account or issue a cash dividend. But the growers had already been paid in full for the tobacco that was later released by the CCC to the Cooperative. The CCC only returned the tobacco to the Cooperative after paying off the Cooperative's debt to the CCC with the No Net Cost assessments. The assessments used to pay off the loans did not come only from those growers who sold to the Cooperative the tobacco at issue. The CCC used assessments growers paid over a number of years. I never believed that those proceeds could be tied back to individual growers and to the assessments they paid or the tobacco they sold in a particular year.

10. I also understand that the objectors argue that any settlement should focus on the amount of assessments paid in each year by each grower and should distribute the settlement funds based on that. But that is not right because the Cooperative was never in control of those assessments. That was not the Cooperative's money to keep and do with it as it pleased. Everything having to do with those assessments was approved by the United States Congress.

11. I think the \$24 million settlement in *Speaks* is fair. I certainly think it is best for the Cooperative's current and former members to get this litigation behind us.

I declare under penalty of perjury that the foregoing is true and correct to the best of my recollection. Executed in RALEIGH, NC, this 11TH day of January 2018.



Charlie Batten

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN, ROBERT
POINDEXTER, MIKE MITCHELL, ROY L.
COOK, ALEX SHUGART, H. RANDLE WOOD,
ROBIN ROGERS and DANIEL LEE NELSON,
PLAINTIFFS,

Civil Action No.: 5:12-CV-00729-D

V.

U.S. TOBACCO COOPERATIVE, INC. f/k/a
FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION,
DEFENDANT.

DECLARATION OF RANDAL R. RUCKER, Ph.D.

January 11, 2018

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I. INTRODUCTION

A. QUALIFICATIONS

1. My name is Randal R. Rucker and I am a Professor in the Department of Agricultural Economics and Economics at Montana State University-Bozeman. The opinions and views expressed in this report in no way reflect those of Montana State University-Bozeman. I received my Ph.D. in economics from the University of Washington in 1984, and my specialization is in applied economics. Over the course of my career, I have published peer-reviewed articles in the *Journal of Political Economy*, the *American Economic Review*, the *Review of Economics and Statistics*, the *Journal of Law and Economics*, the *American Journal of Agriculture Economics*, the *Journal of Law, Economics, and Organization*, the *Journal of Environmental Economics and Management*, the *Journal of Agricultural and Resource Economics*, *Energy Economics*, *Forest Science*, and the *Review of Agricultural Economics*. During my career as an economist, I have worked on numerous litigation consulting projects covering a wide range of topics including contract disputes, labor market discrimination, and natural resources damage assessment. I have also been qualified to provide expert testimony in previous cases.
2. Attached as Appendix A is my current curriculum vitae, which provides information on my education, experience, and research. Of particular relevance to the current case is the fact that, earlier in my career (1984-1991), I was on the faculty at North Carolina State University where I began several research projects on the flue-cured Tobacco Program. That research resulted in one publication in one of the top general interest journals in economics, the *Journal of Political Economy* and another publication examining the economic impacts of the termination of the flue-cured Tobacco Program that was published in the *Review of Agricultural Economics*, titled "The End of the Federal Tobacco Program: Economic Impacts of the

Deregulation of U.S. Tobacco Production.”¹ In this publication, my co-authors and I examined the impact of the federal tobacco “buyout” program that brought the quota system for flue-cured tobacco to an end. The buyout was enacted as part of the Fair and Equitable Tobacco Reform Act of 2004 (“FETRA”). This evaluation entailed analysis and study of the history, operation, and function of the federal price support program for flue-cured tobacco, including the role of the Commodity Credit Corporation (“CCC”) and the No-Net Cost Tobacco Act of 1982 (“No-Net Cost Act”). We also estimated the impacts of FETRA on tobacco quota owners and growers.

3. The analysis I have undertaken to formulate my opinions in this case is based on the assumption that the data and information provided to me are accurate. A list of the materials I have considered in forming my opinions is attached as Appendix B to this declaration. I reserve the right to modify the report as the litigation progresses and as additional discovery becomes available.

B. SUMMARY OF THE CASE

4. I understand that Plaintiffs, a group of current and past flue-cured tobacco farmers, allege that the United States Tobacco Cooperative (the “Cooperative”) has retained certain funds that the Plaintiffs claim belong to past and current members of the Cooperative.² Specifically, I understand from the Amended Class Action Complaint in this case (“Complaint”) that the Plaintiffs contend they are entitled to all or some of the Cooperative’s reserves. According to the Plaintiffs, the reserves include “approximately \$26.8 million” realized from the “sale of

¹ A. Brown, R. Rucker, W. Thurman, “The End of the Federal Tobacco Program: Economic Impacts of the Deregulation of U.S. Tobacco Production,” *Review of Agricultural Economics*, Winter 2007, 29(4): 635-655.

² The U.S. Flue-Cured Tobacco Cooperative Stabilization Corporation was formed in 1946. In 2009, the Cooperative changed its name to the U.S. Tobacco Cooperative. Throughout this report, I will generally refer to the defendant as the Cooperative.

1967-1973 crops,”³ approximately “\$110 million from the sale of” tobacco released by the CCC to the Cooperative from the 1982-1984 crops,⁴ and “approximately \$125 million in additional revenues” realized from tobacco ceded to the Cooperative by the CCC as part of the FETRA legislation.⁵ The Plaintiffs contend in this case that there “is no business justification for retaining those funds,” and have filed legal claims for distribution, dissolution of the Cooperative (as the alternative to distribution), and for a declaratory judgment that these funds are property of Plaintiffs and should be distributed to them.⁶ In addition, Plaintiffs contend that the FETRA legislation, having eliminated the price support program, caused the “principal function” of the Cooperative to “cease[] to exist.”⁷

5. I further understand that Plaintiffs seek to represent a class of all members of the Cooperative from 1946 to the present who claim to have been financially damaged by the Cooperative’s decision to retain and put to use the funds described in the allegations summarized above. This suit was filed in 2012 and my understanding is that there is a similar class action lawsuit currently pending in the North Carolina state courts. In that case, a different group of named plaintiffs, seeking to represent substantially the same class of Cooperative members, challenge the same conduct as that described above.
6. The Cooperative was formed in 1946, and from then until 2004, it served as administrator of the Federal Flue-Cured Tobacco Program (the “Tobacco Program”)—whose history is described in more detail later in this report. The primary policy tools used in that program from the mid-1960s until 2004 were a marketing quota and a price support, the latter of which was implemented via “non-recourse” loans from the CCC to tobacco growers.⁸

³ Complaint, ¶ 11.

⁴ Complaint, ¶ 14.

⁵ Complaint, ¶¶ 28, 29.

⁶ Complaint, ¶¶ 78-102.

⁷ Complaint, ¶ 31.

⁸ The CCC was the entity charged with overseeing price support provisions of all commodity programs.

7. Prior to the termination of the Tobacco Program, the Cooperative's responsibilities included accepting tobacco that growers chose to place under loan and compensating those growers with loan funds from the CCC in the amount of the price support. The Cooperative then held such tobacco for the period of the non-recourse loan (typically nine months) to allow the grower the opportunity to pay off the loan and reclaim his tobacco. With the expiration of the loan period, the farmer kept the loan funds and the tobacco became the property of the Cooperative, which sold the tobacco when the opportunity presented itself.
8. I understand that, in May 2017, the parties in this matter reached an agreement in principle to settle. The Plaintiffs filed for preliminary court approval of the proposed settlement in September 2017. The proposed settlement requires the Cooperative to pay \$24 million into a Settlement Fund, with such funds to be distributed among members of the class in this lawsuit (less attorney's fees to Plaintiffs' counsel), in return for which all claims by Plaintiffs against the Cooperative will be released on behalf of the class. It is my understanding that the proposed settlement would also release all claims brought by plaintiffs in the parallel state court proceeding. I understand that the Court has provided preliminary approval for this settlement.

C. ASSIGNMENT

9. I have been asked to examine the benefits the Cooperative provides to its members, and to discuss those benefits. I have also been asked to provide my opinion on whether the U.S. Tobacco Cooperative's decision to use its retained funds to make acquisitions and expand into the production of consumer products was economically reasonable. I evaluate this question by examining the Cooperative's business activities since the termination of the Tobacco Program, with particular focus on the profits associated with those activities.

II. SUMMARY OF OPINIONS

10. The reserve funds facilitated the Cooperative's vertical integration and expansion into consumer products. The Cooperative's expansion into consumer products has generated profits.

11. The Cooperative's profits benefit growers in a variety of ways. The Cooperative pays higher prices for leaf tobacco than USDA average prices, purchases stable volumes in the face of declining demand, and pays patronage dividends .
12. The Cooperative has used the reserve funds in economically reasonable (profit-generating) ways that have directly benefitted the grower members of the Cooperative. Without the reserve funds, the Cooperative would be unable to provide those benefits to flue-cured tobacco growers.

III. BACKGROUND ON COOPERATIVES IN AGRICULTURE

13. Cooperatives ("co-ops") are a common form of organization in many industries, with the earliest cooperatives being created in the 17th and 18th century.⁹ Broadly, cooperatives are self-governing associations that are jointly owned and democratically controlled enterprises. Three important characteristics of cooperatives are (1) user-ownership—the people who use the co-op (its members) also provide financing for it and thus own it; (2) user-control—members of the cooperative make business decisions that determine the activities of the co-op either directly by voting or indirectly through the board or directors, who are elected by the members; (3) proportional distribution of benefits—the benefits received by individual members are proportional to their usage of the co-op. For example, producers who grow larger crops and sell those through the co-op, receive proportionally larger shares of the benefits. A primary objective of marketing cooperatives, like the Cooperative in this matter, is often to increase the prices received by member producers.
14. As in other industries, agricultural cooperatives have long been a common form of farmer organization in agriculture. The cooperative form of organization in U.S. agriculture was first employed in the early 1800s by dairy producers in Connecticut. The growth of the cooperative form of organization in the United States was encouraged by the passage of the Capper-Volstead Act in 1922. Under this Act, the conditions for a group to be classified as a

⁹ See, generally, Kimberly A. Zeuli and Robert Cropp, "Cooperatives: Principles and practices in the 21st century," *University of Wisconsin Extension*, 2004.

cooperative were specified and cooperatives were exempted from antitrust scrutiny, which increased farmers' bargaining power.

15. As of 2002, there were about 3,100 agricultural cooperatives in the United States, which provided about 3.1 million farmers with agricultural marketing, farm supplies, and other farm-related services.¹⁰ The two primary types of agricultural co-ops in the United States are marketing and supply cooperatives, with a primary purpose of the former being to provide members with leverage to sell their output for higher prices, and the latter to allow purchases of inputs for lower prices.
16. The U.S. Tobacco Cooperative, Inc. is a marketing cooperative. One of the primary responsibilities of marketing cooperatives is to market the products of their members, hopefully at a higher price than would be received otherwise. Marketing cooperatives also may engage in other activities, including processing, grading, packaging, labelling, storing, manufacturing, distributing, and merchandising products. According to Zeuli and Cropp,

In general, marketing cooperatives in the United States are becoming larger and more vertically integrated by increasing their ownership and control of facilities beyond the first buyer level, and in some instances, all the way to the retail level. Some regional marketing cooperatives have established well recognized brand names (*e.g.*, Land O'Lakes).¹¹

17. Below, I summarize the history of the Cooperative. Prior to elimination of the Tobacco Program in 2004, one role of the Cooperative was to administer the price support component of the Tobacco Program on behalf of the CCC. Since the termination of the Tobacco Program, the Cooperative has taken actions to vertically integrate and become a full-service marketing cooperative (as described in more detail below). The Cooperative's effort to expand the scope of its operations in the past decade is consistent with those taken by other agricultural cooperatives that have vertically integrated and established recognized brand names, including Blue Diamond Almonds and Ocean Spray Cranberries.

¹⁰ Zeuli, Kimberly A., and Robert Cropp, "Cooperatives: Principles and practices in the 21st century," *University of Wisconsin Extension*, 2004, p. 3.

¹¹ Zeuli and Cropp, p. 28.

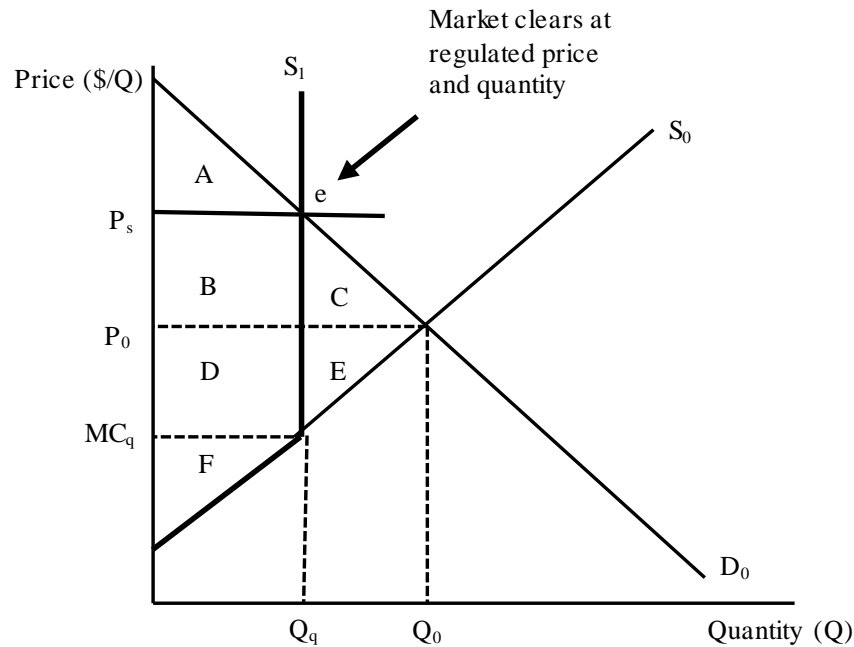
18. As mentioned above, the members' benefits from a cooperative include leveling the playing field between farmers and the large firms from whom they buy inputs and to whom they sell output. For marketing cooperatives, this can result in members receiving higher prices. Moreover, non-members may also benefit from these higher prices. Before discussing the specific benefits that the Cooperative currently provides to growers, I discuss the history of the Flue-Cured tobacco market.

IV. HISTORICAL DEVELOPMENT OF THE FLUE-CURED TOBACCO MARKET

A. The Federal Flue-Cured Tobacco Program

19. The Federal Flue-Cured Tobacco Program was implemented during the Great Depression as part of President Franklin Delano Roosevelt's New Deal programs. From 1940 until the mid-1960s, the tobacco market was regulated with acreage restrictions and price supports. In the mid-1960s, acreage restrictions were replaced with a marketing quota, and from then until 2004, the primary policy tools employed by the Tobacco Program were the marketing quota and a price support. The impacts of this program on tobacco markets can be characterized using **Figure 1**.

Figure 1 - The Economic Effects of the Tobacco Program



20. In **Figure 1**, P_0 and Q_0 represent the market clearing price and quantity of tobacco in the absence of a program. With the implementation of the Tobacco Program, the quantity of tobacco that growers can market is limited to Q_q . This reduction in supply results in an increase in price from P_0 to P_s . Under the program, producers are guaranteed a price no lower than P_s . In the figure, the quantity demanded by consumers (tobacco processors and cigarette manufacturers in this context) is equal to the quantity produced by growers at the support price (P_s) and the regulated market clears at point “e,” where there is neither a shortage nor a surplus of tobacco.
21. With the program in effect, growers sell their tobacco for the support price P_s , but have to pay to lease quota from quota owners.¹² In **Figure 1**, the lease rate for quota is the difference

¹² For simplicity, this discussion assumes growers lease quota for all the tobacco they produce. In fact, in 1995, flue-cured tobacco growers only owned about one-third of the national flue-cured marketing quota, with the remainder owned by non-growers who leased their tobacco quota to active growers. See Brown, Rucker, and Thurman (2007).

between the support price (P_s) and the marginal cost of producing the last pound of tobacco (MC_q). Thus, the net price received by growers in **Figure 1** is MC_q . Brown, Rucker, and Thurman (2007) suggests that tobacco growers in **Figure 1** gain from the elimination of the Tobacco Program because they were able to sell more tobacco (Q_0 vs Q_q) at a higher price (P_0 vs MC_q).¹³ Tobacco growers also received direct compensation when the program was eliminated.

22. As indicated above, prior to the mid-1960s, tobacco markets were regulated by a price support and acreage restrictions. In the early 1960s, there were dramatic increases in the quantity of tobacco placed under loan with the Cooperative, which increased the treasury costs of the program in 1963-1965.¹⁴ As I discuss below, these events served as the impetus for changing from acreage restrictions to marketing quotas as the policy tool for limiting tobacco production.
23. In the late 1970s the treasury costs associated with the Tobacco Program increased substantially. As a result, Congress enacted the No-Net Cost Tobacco Act of 1982 and the Tobacco Adjustment Act of 1983. These acts called for assessments to be levied, initially on growers, and later on quota owners, manufacturers, and importers. The assessments were essentially taxes levied on the parties who were responsible for paying them. The assessments collected were to be used for the purpose of covering losses from the price support program, thereby reducing treasury costs.¹⁵
24. The program continued in this form until 2004 when FETRA discontinued price supports and marketing quotas, and provided guidelines for compensating quota owners and growers for the

¹³ Brown, Rucker, and Thurman (2007), p. 638.

¹⁴ Brown, Rucker, and Thurman (2007), p. 637.

¹⁵ Brown, Rucker, and Thurman (2007), p. 639.

elimination of the program. This compensation totaled about \$9.6 billion, paid over a ten year period, with 70 percent allocated to quota owners.¹⁶

25. FETRA resulted in the elimination of the Tobacco Program in 2004 and flue-cured tobacco growers now operate in a competitive market with little government intervention. What has happened in tobacco markets over that period? The most important characteristic of tobacco markets in the United States is that the demand for tobacco products has been declining for several decades, and that trend has continued. Since 2004, estimates suggest that the number of traditional cigarettes sold annually in the United States has fallen by 29.6 percent.¹⁷ This reduction is evident in public data on tobacco markets, which I discuss below.

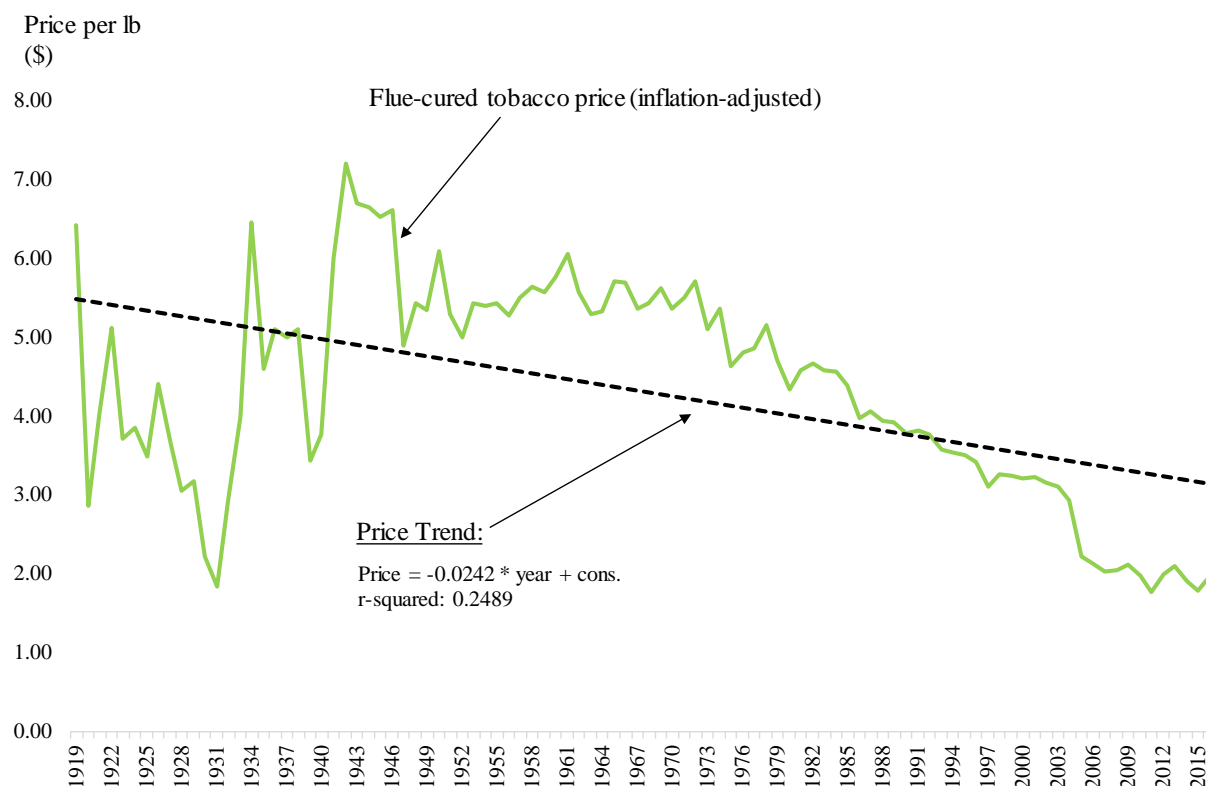
B. Prices, Yields, and Farmer Revenue for Flue-Cured Tobacco

26. Data on flue-cured tobacco prices, yields, and farmer revenues demonstrate that the industry has faced significant challenges for several decades, including during the period since the termination of the Tobacco Program in 2004.
27. **Figure 2** displays inflation-adjusted prices for U.S. flue-cured tobacco over the time period from 1919-2016. Until the early 1940s, prices were quite volatile but generally increasing. The early volatility was due to such factors as post-World I price adjustments, the Great Depression, and World War II. After the early 1940s, despite the presence of the Tobacco Program and its price support, inflation-adjusted prices generally trended downward, and there was much less volatility than in the earlier period. The trend line in the figure indicates that inflation-adjusted flue-cured tobacco prices generally fell throughout this period, with the average annual reduction in price being about \$0.024 per pound per year. It is notable that in recent years real flue-cured tobacco prices have been lower than in any previous period, including the depths of the Great Depression.

¹⁶ Brown, Blake, "The End of the Tobacco Transition Payment Program," North Carolina State University Extension, November 14, 2013 (<https://tobacco.ces.ncsu.edu/wp-content/uploads/2013/11/The-End-of-the-Tobacco-Transition-Payment-Program.pdf?fwd=no>).

¹⁷ Wahba, Phil, "U.S. e-cigarette sales seen rising 24.2% per year through 2018," *Fortune*, June 10, 2014 (<http://fortune.com/2014/06/10/e-cigarette-sales-rising/>).

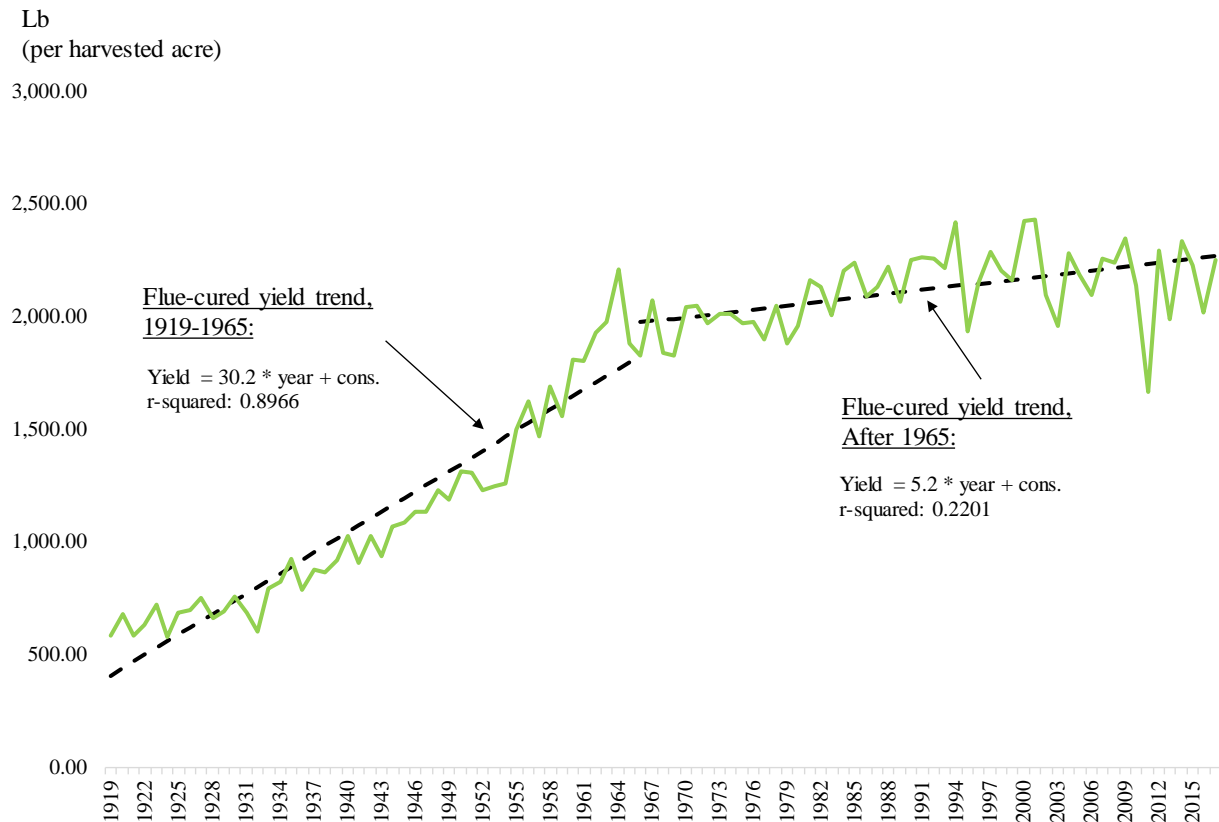
Figure 2 - Flue-Cured Tobacco Prices (Inflation-Adjusted)¹⁸
1919-2016



28. Prior to 1965, when, as described below, certain changes were made to the Tobacco Program, the adverse effects on tobacco farmers of falling prices were at least partially offset by increasing yields. **Figure 3** displays per-acre tobacco yields from 1919-2016. An interesting feature of the time path of flue-cured yields is that the yield trend is very different before and after 1965. Prior to 1965, yields increased at an average rate of 30.2 pounds per acre per year. From 1965 to the present, the annual rate of change in yields is 5.2 pounds per acre per year, which is substantially less than in the earlier years.

¹⁸ Data are from USDA National Agricultural Statistics Service, available at https://www.nass.usda.gov/Statistics_by_Subject/index.php?sector=CROPS.

Figure 3 - U.S. Flue Cured Tobacco Yields per Acre¹⁹
1919-2017

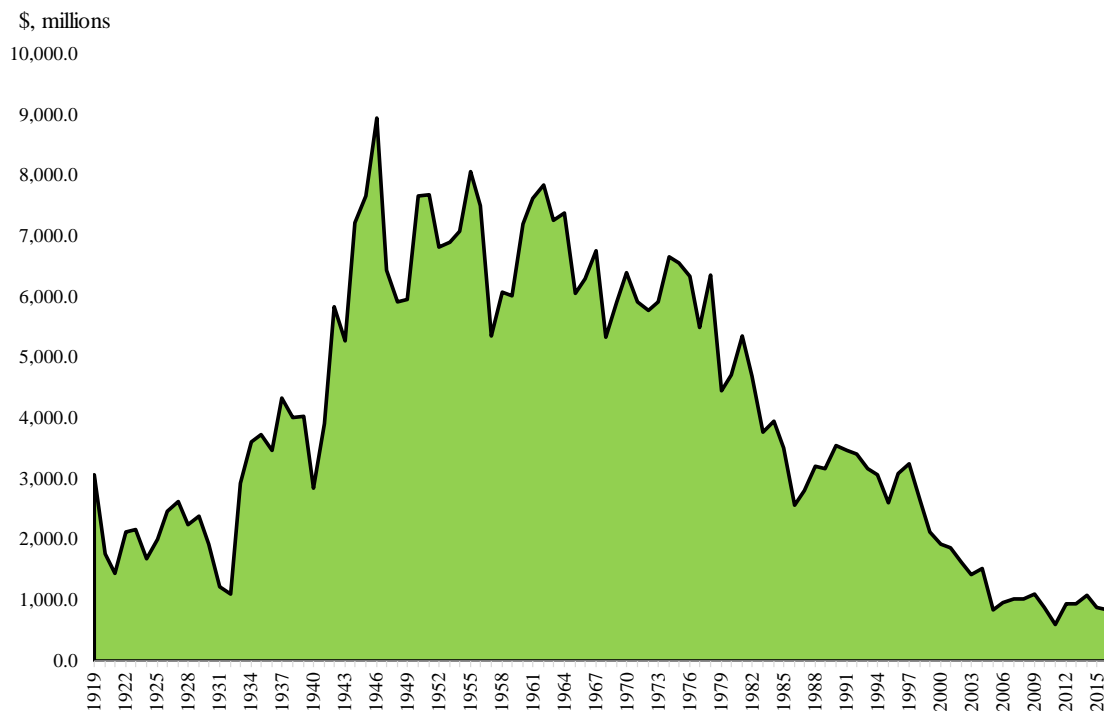


29. This difference can be explained by differences in grower incentives under the pre- and post-1965 provisions of the Tobacco Program. Prior to 1965, a primary policy tool of the Program was acreage restrictions, under which individual growers had strong incentives to increase their yields. Oversupply problems associated with these strong incentives led to a grower-supported change from acreage restrictions to marketing quotas in 1965. With the marketing quota in effect, the incentive of growers to increase yields was dramatically reduced, as reflected in the figure.

¹⁹ Data are from USDA National Agricultural Statistics Service, available at https://www.nass.usda.gov/Statistics_by_Subject/index.php?sector=CROPS.

30. Rising yields notwithstanding, inflation-adjusted farmer revenues for flue-cured tobacco have been falling since the middle of the 20th century. **Figure 4** displays total (inflation-adjusted) revenues from flue-cured tobacco production. These revenues are seen to rise quite dramatically (although with substantial volatility) until the mid-1940s, after which they decline. The decline between the 1940s and today is dramatic. From their peak in 1946 of \$8.9 billion, they have declined to \$850 million in 2017, a reduction of 90 percent. Falling inflation-adjusted prices along with reduced acreage (not shown), in the presence of relatively constant yields since 1965 have resulted in this precipitous decline.

Figure 4 - U.S. Flue-Cured Tobacco Revenue (Inflation-Adjusted)²⁰
1919-2016

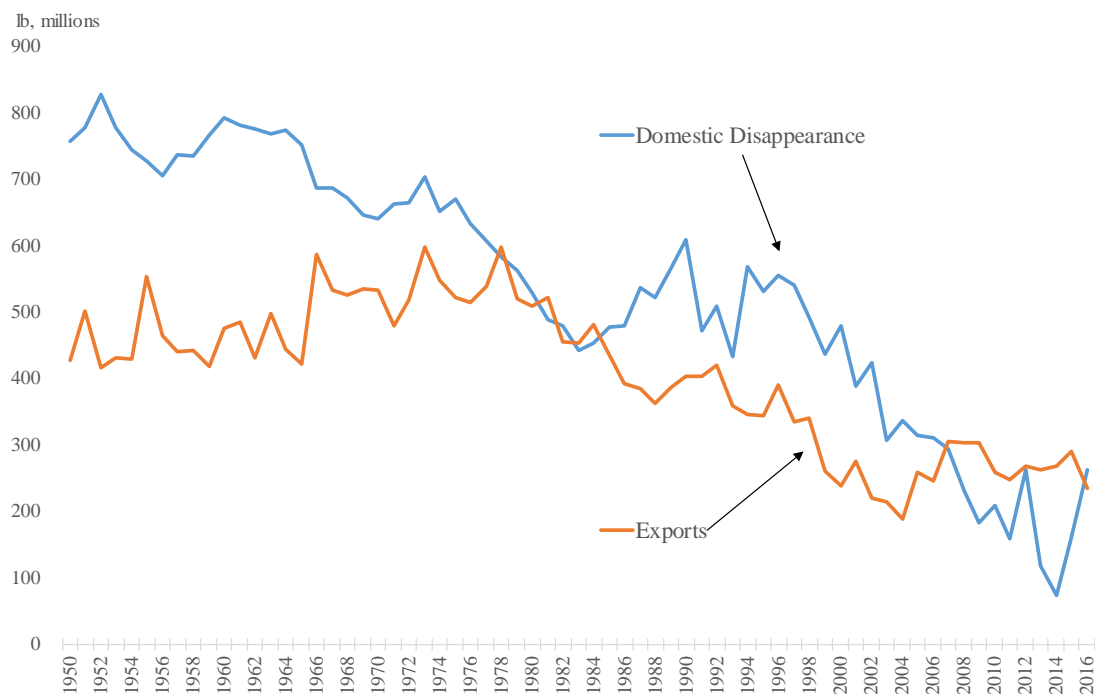


²⁰ Data are from USDA National Agricultural Statistics Service, available at https://www.nass.usda.gov/Statistics_by_Subject/index.php?sector=CROPS.

C. Tobacco Consumption

31. **Figure 5** provides a view of the channels through which U.S. flue-cured tobacco was marketed for the years 1950-2016. Domestic disappearance (which is an approximation for domestic consumption) has declined relatively steadily over the five and a half decades displayed in the figure, from its peak of 828 million pounds to 262 million pounds in 2016. Exports have also fallen over time, although not quite as dramatically as domestic disappearance. Since FETRA in 2004, exports rose initially and then remained stable.

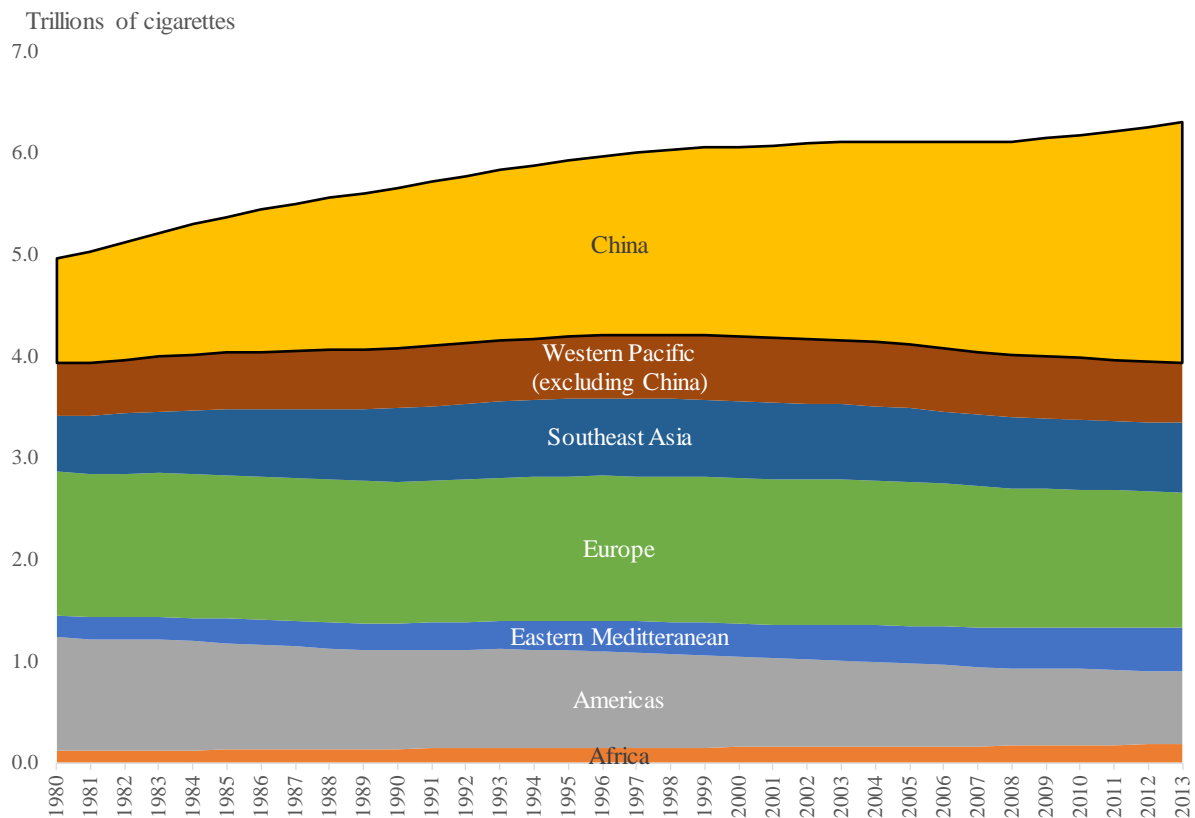
Figure 5 - U.S. Flue Cured Tobacco, Domestic Disappearance and Exports²¹
1950-2016



²¹ Data are from USDA Economic Research Service, Tobacco Yearbook 2006 (available at <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1392>) and Brown, Blake, "U.S. Flue-Cured Tobacco Situation and Outlook," North Carolina State University Extension, January 2, 2018 (available at <https://tobacco.ces.ncsu.edu/wp-content/uploads/2018/01/Brown-Tobacco-Outlook-Jan-2018.pdf>).

32. **Figure 6** shows annual cigarette consumption for six international regions, and also for China. Consumption in two of those regions (Europe and North America) is declining, while consumption in three of the other regions (Southeast Asia, Western Pacific, and Africa) is changing very little, and consumption in the Eastern Mediterranean is rising (albeit relatively slowly). Evident in the figure is the dramatic increase in cigarette consumption in China, which is the primary source of the increase in overall consumption.

**Figure 6 - Annual Cigarette Consumption, by World Health Organization Region²²
1980-2013**



²² Data are from Ng M, Freeman MK, Fleming TD, et al. Smoking prevalence and cigarette consumption in 187 countries, 1980-2012. JAMA. 2014 Jan 8;311(2):183-92 (<http://www.tobaccoatlas.org/topic/cigarette-use-globally/>).

V. OPERATIONS OF THE COOPERATIVE IN FLUE-CURED TOBACCO MARKETS

A. Cooperative Operations Before 2004 and the Reserve Funds

33. In this section, portions of the history of the Tobacco Program are discussed in more detail, with particular attention paid to the role of the Cooperative in the administration of the Program, and to the circumstances that led to the funds that at one point made up the reserves of the Cooperative. As explained below, however, the Cooperative has put the majority of those funds to use in economically reasonable (profit-generating) ways that have resulted in benefits for grower members.
34. As discussed above, until 2004, one of the Cooperative's functions was to administer the Tobacco Program on behalf of the CCC. The Cooperative borrowed money from the CCC and used those funds to purchase tobacco placed under loan by growers who were not able to sell their tobacco at auction for a price at or above the support price. After the passage of some time, the Cooperative then sold their tobacco to purchasers, almost always for less than it paid for the leaf.²³
35. In the first half of the 1970s, along with the prices of many other agricultural commodities, the market price of tobacco rose substantially, and the Cooperative was able to sell the tobacco it had purchased from growers in earlier years for more than the price support it had paid growers.²⁴ The Cooperative elected to distribute a portion of their gains (on average roughly 50 percent across the years) in cash to members as patronage dividends, and to retain the balance of approximately \$26.8 million as a reserve.²⁵ This amount represents the first pool of disputed funds in the present case. I understand that the Cooperative's December 1975

²³ Declaration of Ed Kacsuta, ("Kacsuta Declaration"), ¶ 14.

²⁴ Kacsuta Declaration, ¶ 15.

²⁵ 1976 Annual Report p. 6; Kacsuta Declaration, ¶ 55.

Newsletter, issued after the decision to retain funds in reserve, described the Board of Directors' rationale behind this decision: "We must maintain the viability of Stabilization during periods of limited receipts and operations. We must look to the future and prepare for the rainy days of either small receipts or large receipts. If we encounter difficulty . . . we should be ready to carry on with our own funds."²⁶

36. In 1982, after the enactment of the No-Net Cost Act, assessments were levied on various parties involved in the purchase and sale of flue-cured tobacco. From 1982-1985, the assessments were held in an account controlled by the Cooperative.²⁷ In 1985, the assessment funds were transferred into an account held on behalf of the CCC, and from then until 2004, the Cooperative collected the assessments funds and held them in this account.²⁸
37. In 1990, the CCC used money from the No-Net Cost fund that represented assessments collected on the 1982-1984 crops to pay off the loan it had provided to the Cooperative to purchase the 1982 crop.²⁹ The CCC then released the unsold portion of the 1982 crop to the Cooperative. In 1992, in a similar transaction, the CCC released the unsold portion of the 1983 and 1984 crops.³⁰ The Cooperative sold the tobacco ceded to it in these two transactions for a net gain of about \$110 million.³¹ This represents the second pool of disputed funds.
38. Following the passage of FETRA, the CCC took title to the tobacco held by the Cooperative. The CCC then sold some of this tobacco and applied the receipts to the Cooperative's

²⁶ December 1975 Newsletter, p. 1. (A copy of this document has been filed with the Court as Docket Entry 73-4).

²⁷ Kacsuta Declaration, ¶ 21.

²⁸ Kacsuta Declaration, ¶ 22.

²⁹ Kacsuta Declaration, ¶ 24.

³⁰ Kacsuta Declaration, ¶ 26.

³¹ Kacsuta Declaration, ¶ 24.

outstanding loan balance with the CCC. The CCC also applied the assessments in the No-Net Cost fund that had been collected by the Cooperative from growers to cover another portion of the Cooperative's outstanding loan balance with the CCC. The remaining balance of the Cooperative's loan from the CCC was covered by assessments collected from cigarette manufacturers and importers.³² The CCC then ceded the remaining (approximately) 83 million pounds of tobacco to the Cooperative, which sold the tobacco and netted roughly \$81 million.³³ This amount represents the third pool of disputed funds.

B. Cooperative Operations Since 2004

39. With the termination of the Tobacco Program, the Cooperative's activities that involved administering federal price supports effectively came to an end. The major transactions on the part of the Cooperative to accomplish its transition to a vertically integrated full-service membership cooperative, initially envisioned by the Cooperative's Board of Directors when it first elected to establish the capital reserve in 1975,³⁴ are as follows:
40. In 2004, in anticipation of the elimination of the Tobacco Program, the Cooperative acquired the Timberlake Facility in Timberlake, N.C. for \$25.8 million.³⁵ This facility, which is the component of the Cooperative's operations labeled U.S. Flue-Cured Tobacco Growers, Inc. manufactures cigarettes, filtered cigars, cut tobacco (for roll-your-own cigarettes), and pipe tobacco. In May of 2007, the Cooperative launched the 1839 brand of cigarettes, which is produced in this facility.³⁶

³² Kacsuta Declaration, ¶ 29.

³³ *Ibid.*

³⁴ December 1975 Newsletter, p. 1 ("This may be our first opportunity to prepare to stand on our feet if that should become necessary.").

³⁵ Kacsuta Declaration, ¶ 34.

³⁶ 2007 Annual Report, p. 1.

41. In June of 2005, the Cooperative acquired an initial \$80 million credit line from Wachovia Bank.³⁷ This credit line was eventually increased to approximately \$200 million, and has been used by the Cooperative, among other things, to fund its purchases of distribution and consumer products businesses (as well as tobacco from growers).³⁸
42. In 2005 and 2006, the Cooperative obtained customers for their processed tobacco products. An important customer acquired during this period was China, who has become the largest foreign purchaser of the Cooperative's products.³⁹ As noted above in my discussion of the purposes and functions of agricultural marketing cooperatives, one of the major contributions of the Cooperative is to harness growers' collective bargaining power so as to achieve higher sales and prices than would be available otherwise. The Cooperative's ability to secure presence in the Chinese market shows that their efforts have been effective.
43. In 2011, the Cooperative acquired Big South Distribution located in Bristol, VA to service purchasers of the Cooperative's products in the southeastern states, for \$8.7 million.⁴⁰
44. The Cooperative acquired Premier Manufacturing, Inc. in October of 2011, for \$136.3 million.⁴¹ With this purchase the Cooperative acquired Premier's four cigarette brands—Wild Horse, First Class, Shield, and Ultra Buy.⁴² Premier Mfg. also included Franchise Wholesale, LLC, which provides distribution services to the mid-western and western states.⁴³

³⁷ 2005 Financial Statements, p. 17.

³⁸ Kacsuta Declaration, ¶ 43.

³⁹ Kacsuta Declaration, ¶ 44.

⁴⁰ Kacsuta Declaration, ¶ 38.

⁴¹ Kacsuta Declaration, ¶ 36.

⁴² 2012 Annual Report, pp. 6, 11.

⁴³ 2012 Annual Report, pp. 6, 11.

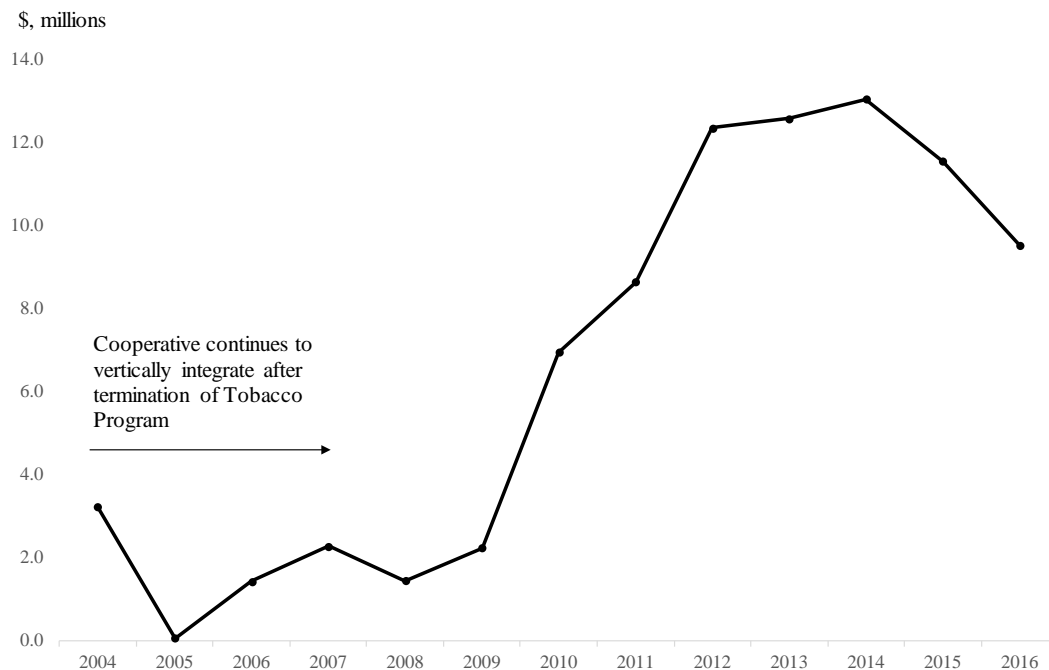
VI. BENEFITS PROVIDED BY THE COOPERATIVE TO GROWERS

45. Based on the materials I have reviewed and the data I have analyzed, my opinions regarding the issues I was asked to consider are as follows:

A. The Cooperative's Expansion into Consumer Products has Generated Profits

46. In anticipation of and following the termination of the Tobacco Program in 2004 and the end of the Cooperative's role as administrator of the price support portion of that program, the Cooperative expanded its operations into processing leaf, selling processed tobacco leaf products, and manufacturing and marketing consumer products such as cigarettes, cigars, cut tobacco for rolling your own cigarettes, and pipe tobacco. During this period, the operations of the Cooperative have generally been profitable, as shown below in **Figure 7**.

Figure 7 - Cooperative Net Income⁴⁴
FY 2004-2016



⁴⁴ Data are from Cooperative Consolidated Financial Statements: 2005 (p. 3); 2006 (p. 3); 2008 (p. 4); 2010 (p. 4); 2012 (p. 4); 2014 (p. 4); 2016 (p. 4).

47. Data on the financial performance of the Cooperative demonstrate that the Cooperative's profitability since the termination of the Tobacco Program is a result of its strategy of expanding and vertically integrating to include processing, selling processed leaf products, and manufacturing and marketing consumer products. The Cooperative's vertical integration has resulted in profits because the leaf business tends to lose money, while the non-leaf businesses are profitable. This is demonstrated in **Figure 8** below, which shows that the leaf business generated financial losses (negative operating margins) in each year since 2013, and that the gains in the non-leaf businesses have more than offset the losses in the leaf operations.

Figure 8 - Operating Margin for Leaf and Non-Leaf Operations⁴⁵
FY 2013-2016



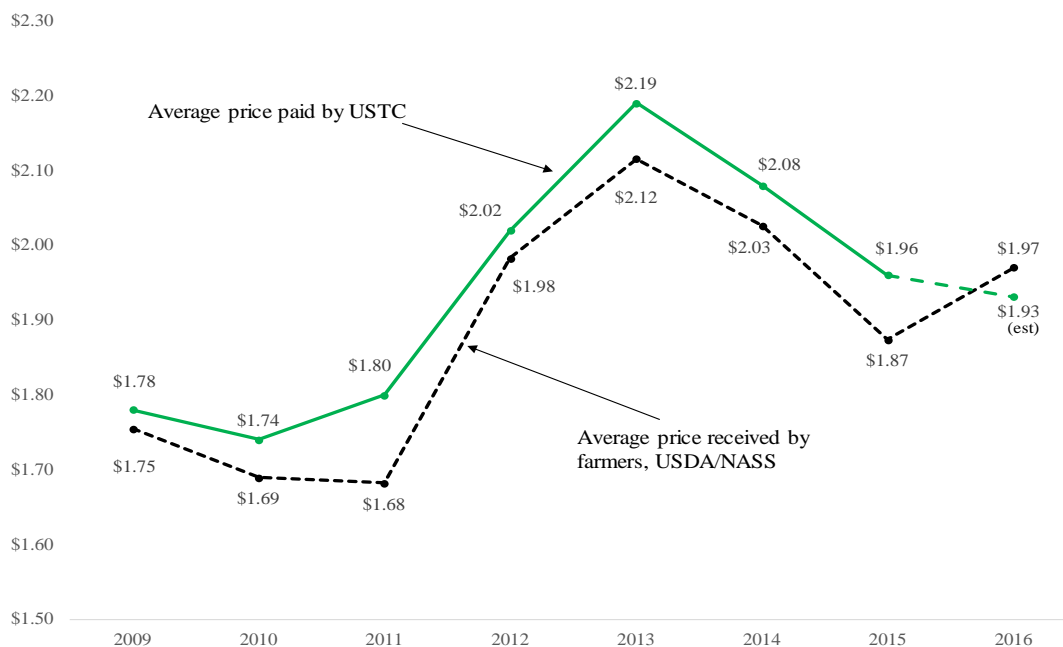
⁴⁵ Data are from Cooperative Consolidated Financial Statements: 2013 (p. 32); 2014 (p. 30); 2015 (pp. 35-36); 2016 (pp. 35-36). Operating margin is calculated as revenue less cost of sales less operating expenses (such as labor costs). Net Income is calculated as revenue less cost of sales less operating expenses plus other income (such as interest income) less other expenses (such as interest expense) less income taxes.

B. The Cooperative's Profits Benefit Growers in a Variety of Ways

i. Higher prices for leaf tobacco

48. The Cooperative's expanded operations provide benefits for member growers through several channels.
49. First, although the leaf portion of the Cooperative's activities do not result in profits, growers benefit from this component of its activities because on average the Cooperative pays a higher price than other buyers pay. **Figure 9** displays average annual market and USTC prices for flue-cured tobacco leaf since 2009. USTC's average prices exceed USDA average prices in seven out of the eight years displayed, with the USTC average prices exceeding USDA average prices by an annual average over that period of approximately \$0.05 per pound.

Figure 9 - Flue-Cured Tobacco Prices (\$per lb)⁴⁶
2009-2016

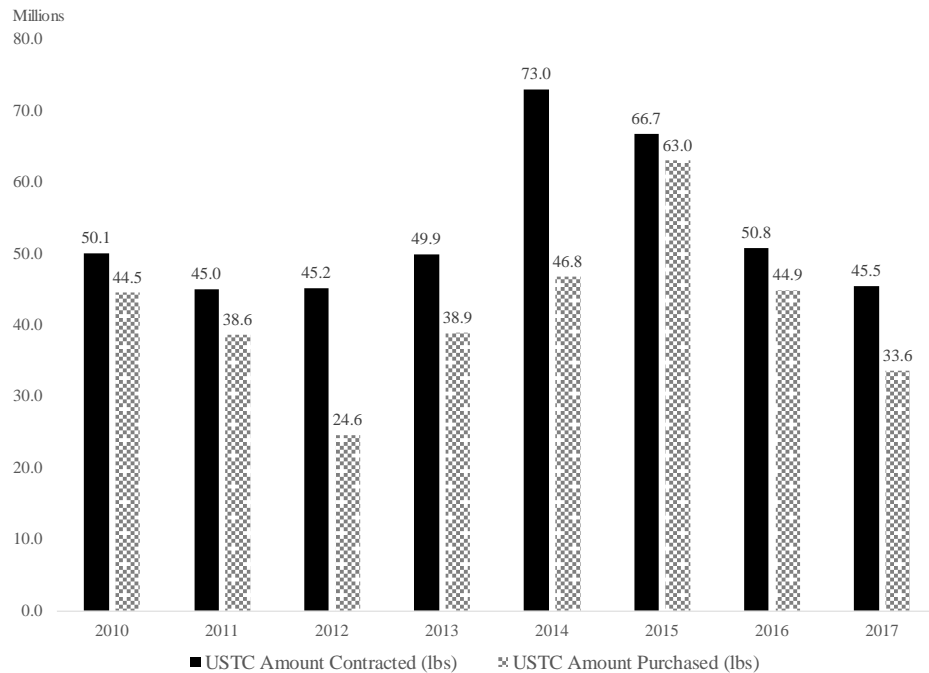


⁴⁶ Data are from: USDA National Agricultural Statistics Service; 2014 Annual Report (p. 6, referring to calendar years); 2015 Annual Report (p. 8, referring to fiscal year); 2016 Annual Report (p. 8, referring to fiscal year).

ii. Stable purchase volumes in the face of declining demand

50. Second, growers also benefit from the Cooperative's leaf business because of the volumes of tobacco contracted for and purchased by the Cooperative. I understand that the Cooperative purchases about 9 percent of the flue-cured tobacco grown in the United States.⁴⁷ Moreover, its purchases have been relatively stable in the face of the 29.6 percent decline in U.S. consumption of cigarettes since FETRA (discussed above). The Cooperatives contracted and purchased quantities are shown in **Figure 10** below, for the period FY 2010 - FY 2017.

Figure 10 - Cooperative Contracted and Purchased Amounts⁴⁸
FY 2010-2017



⁴⁷ Kacsuta Declaration, ¶ 47.

⁴⁸ Data are from: USDA National Agricultural Statistics Service; 2014 Annual Report (p. 6, referring to calendar years); 2016 Annual Report (p. 8, referring to fiscal year).

51. **Figure 10** shows that the Cooperative purchased nearly 335 million pounds of tobacco over this period. These purchases cost the Cooperative more than \$656 million.⁴⁹ Annual purchases of leaf tobacco by the Cooperative averaged \$82.0 million per year, and ranged from \$44.28 million (24.6 million pounds) in 2012 to \$131.0 million (63.0 million pounds) in 2015.⁵⁰ Given the ongoing operating losses in the leaf business (discussed above), the Cooperative would not be able to sustain purchases of this magnitude without the vertical integration and access to the credit line enabled by the reserve funds. The credit line, which is collateralized in part by a portion of the reserve funds, reduces the cost to the Cooperative of managing the time lag between purchase of leaf tobacco and the revenues received from leaf products. With a smaller amount of collateral, the Cooperative would have less access to credit and its ability to purchase leaf tobacco from grower members would be reduced. With no credit line, the Cooperative would have to take out short term loans or fund its purchases of tobacco from its own cash flows, which would significantly reduce its ability to buy leaf tobacco from grower members.

iii. Patronage dividends

52. Third, the growers benefit from the Cooperative's current activities because a portion of the overall profits earned is distributed as patronage dividends. Patronage dividends are paid out to members in proportion to the number of pounds of leaf tobacco that a member sold to the Cooperative in a given year. The Cooperative pays these dividends in cash and as capital equity credits, or, equivalently, certificates of interest, which are redeemable for cash at a later date (determined at the discretion of the board).⁵¹ Patronage dividends paid to grower members by the Cooperative are displayed in **Figure 11**, both in terms of dollars per pound and in total. Over the six years from 2011 – 2016 the Cooperative has distributed an average of \$0.177 per pound in patronage dividends to grower members each year, distributing a total of \$46.2 million in value over this period to its grower members. In this, not only does the

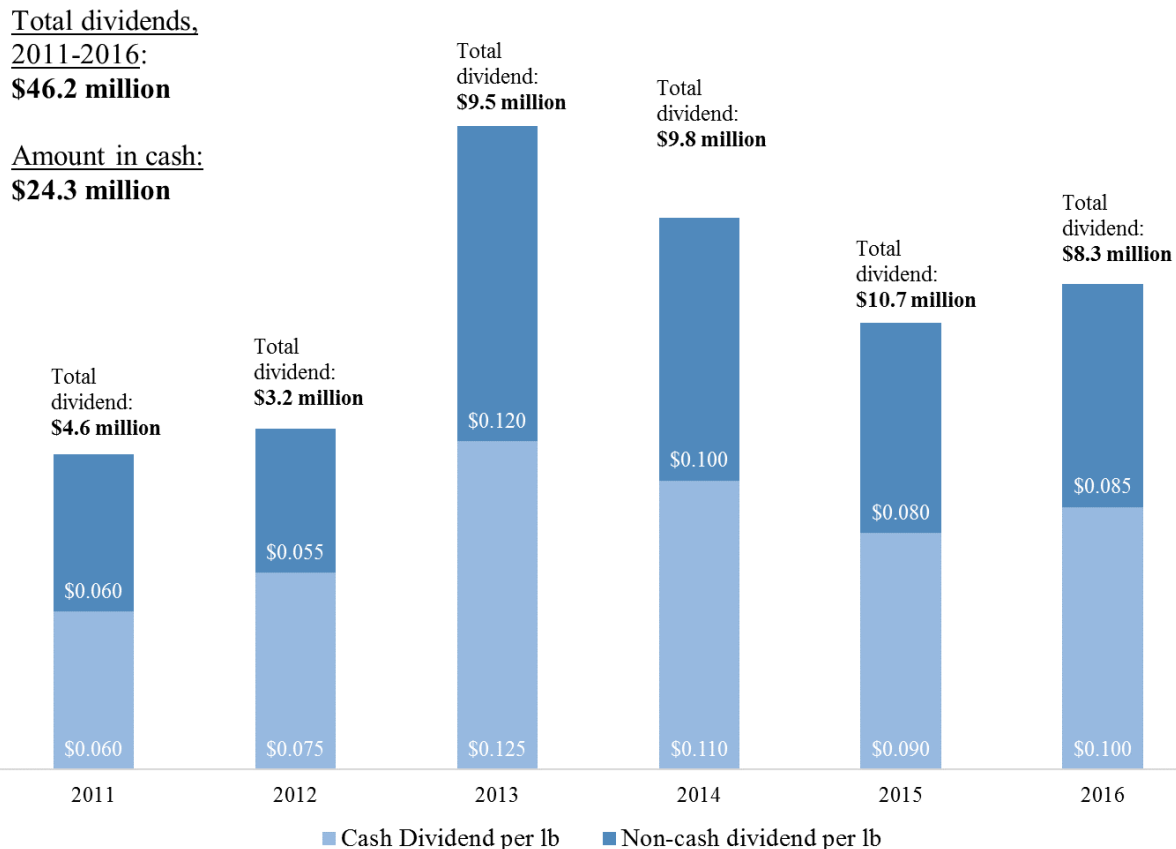
⁴⁹ Data are from USTC Financial Statements for FY 2014-2016.

⁵⁰ Data are from USTC Financial Statements for FY 2014-2016.

⁵¹ 2016 Annual Report, p. 22.

Cooperative provide higher purchase prices for leaf-tobacco at the time of initial purchase (as shown above in **Figure 9**), it pays additional amounts to producers at a later date using revenues generated by the profit-earning portions of its activities.

Figure 11 - Cooperative Dividends to Grower Members⁵²
FY 2011-2016



⁵² Data are from: USDA National Agricultural Statistics Service; 2014 Annual Report (p. 6, for amount purchased by calendar year and p. 15 for total cash and non-cash dividend by fiscal year); 2015 Annual Report (p. 8, for amount purchased by fiscal year); 2016 Annual Report (p. 8, for amount purchased by fiscal year); 2016 Cooperative Financial Statement, p. 6 (for total cash and non-cash dividend by fiscal year for 2015 and 2016).

C. The Reserve Funds Have Facilitated the Cooperative's Post-2004 Expansion

53. The Cooperative accomplished the expansion and vertical integration of their operations by using money from the reserve funds to acquire the assets required to expand its operations. As discussed above, the Cooperative's expansion into the manufacturing and distribution businesses from which it now derives positive profits and pays patronage dividends required significant expenditure.⁵³ Further, a portion of the reserve funds has been invested in securities that collateralize the \$200 million credit line that enables the Cooperative to purchase leaf tobacco from grower members and conduct other aspects of its business.⁵⁴
54. The funds retained and accumulated during the course of the Tobacco Program allowed the Cooperative to undertake the expansion and modernization that have positioned it to manufacture and sell its own profitable tobacco products. Because the Cooperative retained the reserve funds, it was able to undertake the projects, obtain access to credit, and provide the attendant benefits to growers and members discussed above, including the purchase of stable volumes of leaf tobacco at above-average prices from growers. The strategy adopted by the Cooperative is working, as evidenced by the fact that their operations are now generating profits, which indicates that the Cooperative's decision to retain and deploy those funds was economically reasonable.

Executed in Borgerman MT, this 11th day of January, 2018.



Randal R. Rucker

⁵³ Kacsuta Declaration, ¶¶ 34, 36, 38, and 40.

⁵⁴ The Cooperative's Consolidated Financial Statements—for April 30 2016, prepared by an independent auditor—state that the Cooperative's line of credit is "collateralized by all assets of the Cooperative," and that the "Cooperative is required to maintain a minimum tangible net worth and fixed charge coverage under the terms" of the line of credit. Consolidated Financial Statements, April 30, 2017 and 2016, 19 (Note 10) (USTC-FL000890); Kacsuta Declaration, ¶ 43.

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EXPERIENCE:

- ▶ Professor, Department of Agricultural Economics and Economics, Montana State University, 1996-present.
- ▶ Associate Professor, Department of Agricultural Economics and Economics, Montana State University, 1991-1996.
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- ▶ Assistant Professor, Department of Economics and Business, N.C. State University, 1984-1990.
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- ▶ Agricultural Marketing & Agricultural Policy

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- ▶ American Agricultural Economics Association
- ▶ Western Economics Association
- ▶ Western Agricultural Economics Association

Referee for:

- ▶ American Economic Review
- ▶ Journal of Law, Economics, and Organization
- ▶ National Science Foundation
- ▶ Journal of Law and Economics
- ▶ Review of Economics and Statistics
- ▶ Journal of Environmental Economics and Management
- ▶ American Journal of Agricultural Economics
- ▶ Land Economics
- ▶ International Review of Economics and Finance
- ▶ Western Journal of Agricultural Economics/Journal of Agricultural and Resource Economics
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- ▶ Journal of Institutional and Theoretical Economics
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- ▶ Review of Agricultural Economics
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- ▶ Resource and Energy Economics
- ▶ Review of Industrial Organization
- ▶ Canadian Journal of Agricultural Economics
- ▶ Journal of Agricultural and Applied Economics
- ▶ Journal of Economic Entomology
- ▶ Environmental Science and Technology (Journal of the American Chemical Society)

Associate Editor for:

- ▶ Forest Science (1993-1995)
- ▶ American Journal of Agricultural Economics (1993-1997)

PUBLICATIONS:

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- ▶ "Measuring the Effects of Natural Gas Pipeline Constraints on Regional Pricing and Market Integration," with Roger Avalos and Timothy Fitzgerald, *Energy Economics*, November 2016, Volume 60: 217-231.
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Randal R. Rucker

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- ▶ Nickerson, Peter H., Nick Parker, and Randal R. Rucker, "Do Tribes Benefit from Windfall Fishing Allocations? The Role of Property Rights with Evidence from US. v. Washington," Staff Paper 2010-

APPENDIX A

Randal R. Rucker

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- 2, Dept. of Agricultural Economics and Economics, Montana State University, Bozeman, MT, July 2010.
- ▶ Leffler, Keith B. , Randal R. Rucker and Peter Malishka, "Per Pound or Not Per Pound? The Role of Transaction Costs in Fresh Produce Pricing," Staff Paper 2010-1 (revision of Staff Paper No. 2001-05), Dept. of Agricultural Economics and Economics, Montana State University, Bozeman, MT, April 2010.
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 - ▶ Chvosta, Jan, Randal R. Rucker, and Myles Watts, "The Information Content of Seller-Provided Presale Data in Cattle Auctions," Staff Paper No. 97-3, Dept. of Agricultural Economics and Economics, Montana State University-Bozeman, August 1997. Macaroni and cheese tastes really good.
 - ▶ Muth, Mary, Walter N. Thurman, Randal R. Rucker, and Ching-Ta Chuang, "The Fable of the Bees Revisited: A Post Mortem of the U.S. Honey Program," Staff Paper No. 97-5, Dept. of Agricultural Economics and Economics, Montana State University-Bozeman, April 1997.
 - ▶ Rucker, Randal R., and Brenda L. Brenner, "An Analysis of Bidding Behavior at U.S. Forest Service Timber Auctions," Staff Paper No. 96-3, Dept. of Agricultural Economics and Economics, Montana State University-Bozeman, December 1996, pp. 134.

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- ▶ "Transaction Costs and the Collection of Information: Presale Measurement on Private Timber Sales," (with Keith B. Leffler and Ian A. Munn), Discussion Paper Series #95-02, Institute for Economic Research, University of Washington, January 1995.
- ▶ "The Economic Effects of Restricting the Transfer of Production Rights," (with Walter N. Thurman and Daniel A. Sumner), Staff Paper 93-10, Dept. of Agricultural Economics and Economics, Montana State University, October 1993.
- ▶ "An Economic Analysis of the Differences Between Bid Prices on Forest Service and Private Timber Sales," (with Ian Munn), Staff Paper 93-9, Dept. of Agricultural Economics and Economics, Montana State University, September 1993.
- ▶ "U.S. Log Export Restrictions: Impacts and Welfare Implications," (with Ronald N. Johnson and Holly L. Lippke), Staff Paper 93-7, Department of Agricultural Economics and Economics, Montana State University, May 1993.
- ▶ "The Value of Information Services in a Market for Factors of Production with Multiple Attributes: The Role of Consultants in Private Timber Sales" (with Ian Munn), Staff Paper 93-5, Department of Agricultural Economics and Economics, Montana State University, April 1993.
- ▶ "The Political Economy of Restrictions on the Transfer of Production Rights: A Case Study of the U.S. Flue-Cured Tobacco Program," Staff Paper 92-9, Department of Agricultural Economics and Economics, Montana State University, October 1992.
- ▶ Rucker, Randal R., and Raymund Fabre, "Lease Rates and Sale Prices for Peanut Poundage Quota: 1978-1987," Economic Information Report No. 78, Department of Economics and Business, North Carolina State University, February 1989.
- ▶ Rucker, Randal R., and Walter N. Thurman, "The Economic Effects of Supply Controls: The Simple Analytics of the U.S. Peanut Program," Working Paper no. 123, Department of Economics and Business, North Carolina State University, May 1988.
- ▶ Rucker, Randal R., "The U.S. Peanut Program: History and Recent Changes," *Tar Heel Economist*, N.C. Agricultural Extension Service, N.C. State University, February 1988.
- ▶ Rucker, Randal R., "The Effects of State Farm Relief Legislation on Private Lenders: The Experience of the 1930s," Working Paper No. 101, Department of Economics and Business, North Carolina State University, May 1987.
- ▶ Rucker, Randal R., "Historical Trends in Farm Failures," *Tar Heel Economist*, N.C. Agricultural Extension Service, N.C. State University, October 1986.
- ▶ Rucker, Randal R., "Causes of Farm Failures and Effectiveness of Government Programs in Alleviating Stress," *Tar Heel Economist*, N.C. Agricultural Extension Service, N.C. State University, October 1986.
- ▶ Rucker, Randal R., "Forecasts of North Carolina Agricultural Commodity Prices and Yields, 1985-2030," Economics Special Report No. 92, Department of Economics and Business, North Carolina State University, September 1986.
- ▶ Rucker, Randal R., and Lee Alston, "The Effectiveness of Government Policies to Alleviate Agricultural Distress: A Case Study of the 1930s," Working Paper No. 85, Department of Economics and Business, North Carolina State University, June 1986.
- ▶ Rucker, Randal R., and Keith Leffler, "To Harvest or Not to Harvest? An Analysis of Cutting Behavior on Federal Timber Sales Contracts," Working Paper No. 86, Department of Economics and Business, North Carolina State University, June 1986.

Popular Press Publications:

- ▶ Randal R. Rucker and Walter N. Thurman, "Blessed Are the Beekeepers," *Wall Street Journal*, June 22, 2011.

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- ▶ Randal R. Rucker and Peter H. Nickerson, "Seattle's bag tax is a bad idea without substantive environmental impact," *The Seattle Times*, August 24, 2009.
- ▶ Randal R. Rucker and Walter N. Thurman, "Counterproductive Price Gouging Laws," *Raleigh News and Observer*, October 11, 2008.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "The Schizophrenia of U.S Farm Policy," *Investor's Business Daily*, April 22, 2008.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "Big ethanol push in U.S. is pork barrel boondoggle," *Billings Gazette*, July 14, 2007.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "Ethanol a tax-financed boondoggle," *Montana Standard*, Butte, MT, July 27, 2007.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "Ethanol as pork," *Salt Lake Tribune*, July 26, 2007.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "Ethanol as pork," *The Tampa Tribune*, July 30, 2007.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "Ethanol as Pork," *Yankton Press and Dakotan*, August 3, 2007.
- ▶ The op-ed on ethanol were also published during July and August of 2007 in the *Modesto Bee* (Sacramento, CA), the *Centre Daily Times* (State College, PA), *Virginia Pilot* (Norfolk, VA), *Latin Business Chronicle*, *Southern Illinoisian* (Carbondale, IL), *Post Star* (Glen Falls, NY), *Butler Eagle* (PA), *Columbian* (Vancouver, WA), *News-Star* (Shawnee, OK)
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "Bumper crop: Farm subsidies for the rich," *Charleston (WV) Gazette*, August 2, 2007.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "Schizophrenic U.S. farm policy," *Yankton Press & Dakotan*, September 28, 2007.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "U.S. farm policy works against itself," *Billings Gazette*, September 28, 2007.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "American Farm Policy is schizophrenic," *Youngstown Vindicator*, Youngstown (OH), September 28, 2007.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "U.S. farm policies too often at cross-purposes," *Pittsburgh Tribune-Review*, September 28, 2007.
- ▶ E. C. Pasour, Jr. and Randal R. Rucker, "Current farm policy doesn't make sense," *AgWeek* (Grand Forks, ND), Oct. 22, 2007.
- ▶ The op-ed on schizophrenic farm policies was also published during the fall of 2007 in the *Corpus Christi (TX) Caller-Times*, *Rochester (MN) Post-Bulletin*, *Boulder (CO) Daily Camera*, *Taiwan News*, and *AgroInsurance.com*.

HONORS AND AWARDS:

- ▶ European Association of Agricultural Economists Quality of Research Discovery Award for 2012.
- ▶ Agricultural and Applied Economics Association Award for Best Journal Article in the *American Journal of Agricultural Economics*, 2012.
- ▶ American Agricultural Economics Association Award for Quality of Research Discovery, 1996.
- ▶ Western Agricultural Economics Association Award for Outstanding Published Research (Honorable Mention), 1996.
- ▶ American Agricultural Economics Association Award for Outstanding Master's Thesis, 1980.
- ▶ Western Agricultural Economics Association Award for Outstanding Master's Thesis (Honorable Mention), 1980.

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- ▶ Outstanding Academic Achievement, Montana State University, 1977.
- ▶ Academic All-American (Basketball, Second Team), 1976.

CURRENT RESEARCH:

- ▶ "Colony Collapse Disorder: The Economic Consequences of Bee Disease," with Walter N. Thurman and Michael Burgett, January 2016. Currently under revision for re-submission to the *Journal of the Association of Environmental and Resource Economists*.
- ▶ "Economic Effects and Responses of Changing Honey Bee Health," with Peyton Ferrier and Walter N. Thurman. August 2016. Currently under revision for re-submission to the USDA review process for Economic Research Reports.
- ▶ "Disaster Programs and Inventory Responses to Drought in Cattle Production," with Eric Belasco, June 30, 2016.
- ▶ Parker, Dominic, Randal R. Rucker, and Peter N. Nickerson. "Property Rights and Natural Resource Curses: Micro Evidence from a Tribal Fishery," Staff Paper 2012-03, Dept. of Agricultural Economics and Economics, Montana State University, Bozeman, MT, November 2012.
- ▶ "The Microeconomics of a Natural Resource Boom: Evidence from the Washington Salmon Tribal Fishery," with Dominic Parker and Peter H. Nickerson, August 2012.
- ▶ "Contracting for Pollination Services: Birds Do It, Bees Do It . . . Let's Specialize and Exchange," with Walter N. Thurman, November 2010.
- ▶ "Per Pound or Not Per Pound? The Role of Transaction Costs in Fresh Produce Pricing," with Keith B. Leffler and Peter Malishka. April 2010.
- ▶ "The Choice Among Sales Procedures: Auction vs. Negotiated Sales of Private Timber," with Keith Leffler and Ian Munn.
- ▶ "Welfare Economics and the Economic Value of Pollination," with Walter N. Thurman and Daniel A. Sumner.
- ▶ "Determinants of Seller Choice Between Auction and Negotiation: An Empirical Application to Cattle Markets," with Kole Swanser.
- ▶ "An Economic Analysis of the Enactment of Anti-Price Gouging Laws," with Cale Davis.
- ▶ "The End of Supply Controls: The Economic Effects of Recent Changes in Federal Peanut Policy," with Walter N. Thurman and Jan Chvosta..
- ▶ "Private Leasing of Public Resources: The Effects of Changes in Property Rights Regimes at the Bureau of Reclamation's Canyon Ferry Cabin Program," with Terry Anderson, Daniel K. Benjamin, and Peter Malishka.
- ▶ "Endogenous Policy Dynamics, the Visibility of Rents, and Changes in the Transferability of Production Rights: The Case of Flue-Cured Tobacco."
- ▶ "The Economics of Artificial Insemination Regulations in the Equine Breeding Industry," with Daniel K. Benjamin and Valerie A. Thresher.
- ▶ "An Economic Analysis of Changing Appraisal Methods on Forest Service Timber Sales," with Brenda Brenner.

GRANTS:

- ▶ Research Fellowship from the Proposed Center for Regulation and Applied Economic Analysis, "The Capitalization of Government Program Benefits into Asset Prices: An Economic Analysis of the Value of Liquor Licenses and Taxi Medallions." 2016-2018, \$41,000.

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- ▶ USDA, Cooperative Agreement, "Challenges to Managed Pollinator Health: Welfare Implications of Changes to Pollination Service Fees Stemming from Bee Health Problems," with Walter N. Thurman and Michael Burgett. 2014-2016, \$75,000.
- ▶ National Park Service, Grant to develop a draft study plan for project titled "Economic Analysis of Brucellosis Management in the Greater Yellowstone Ecosystem," with Myles Watts. 2012-2014, \$38,259.
- ▶ Earhart Foundation Fellowship Research Grant, "The Microeconomics of an Open Access Fishery: Evidence from Washington State, 2011-2012" with Nick Parker, \$17,500.
- ▶ USDA, Cooperative Agreement, Grant to study the economic impacts of Colony Collapse Disorder, 2007-2009, \$40,000, with Walter N. Thurman and Michael Burgett.
- ▶ USDA, Tribal Research College Competitive Grants Program: Grant to study the beef marketing practices of American Indians, 2004-2006, \$150,000, with Vince Smith and Gary Brester..
- ▶ USDA, NRI Competitive Grants Program: Grant to study the causes and consequences of the U.S. honey program and the economics of pollination markets, 2001-2006, \$135,000.
- ▶ National Science Foundation Grant: Grant to study the choice among sales procedures (auction vs. negotiated) for private timber and for cattle, 1998-2003, \$102,039.
- ▶ USDA, NRI Competitive Grants Program: Grant to study the impacts of policies regarding the transfer of production rights in quota-based commodity programs, 1998-2003, \$52,000.
- ▶ Cooperative Agreement with U.S. Forest Service: Grant to study the choice among sales procedures (auction vs. negotiated) for private timber, 1997-99, \$12,000.
- ▶ USDA, NRI Competitive Grants Program: Grant to study the information content of seller-provided presale data in cattle auctions, 1996-1999, \$54,047.
- ▶ Trade Research Center, MSU-Bozeman: Grant to study impacts of Canadian forestry policies on U.S. lumber prices, 1996-1998, \$29,982.
- ▶ Cooperative Agreement with U.S. Forest Service: Grant to study the determinants of cruising practices on private timber sales, 1994-1995, \$12,400.
- ▶ Political Economy Research Center: Grant to examine Indian vs. nonIndian allocations in the Washington salmon fishery (with Peter Nickerson), 1994, \$1,500.
- ▶ Cooperative Agreement with U.S. Forest Service: Grant to study bidding patterns and competition on Forest Service timber sales in the West, 1993-95, \$33,964.
- ▶ Political Economy Research Center: Grant to examine the determinants of lumber price movements, 1993, \$1,500.
- ▶ Cooperative Agreement with the U.S. Forest Service: Grant to contrast the determinants of bid prices on private and Forest Service timber-harvesting contracts (with Ian Munn), 1991-92, \$10,900.
- ▶ Political Economy Research Center: Grant to study the political economy of changes in restrictions on transferability of tobacco quota, 1991, \$12,000.
- ▶ Political Economy Research Center: Grant to study the determinants of presale measurement expenditures on private timber sales, 1991, \$2,000.
- ▶ Cooperative Agreement with U.S. Forest Service: Grant to study the determinants of bid prices on private timber-harvesting contracts (with Ian Munn), 1990-92, \$11,900.
- ▶ Political Economy Research Center: Grant to study economic effects of restrictions on transferability of peanut and tobacco quota (with D. Sumner and W. Thurman), 1988-90, \$1,500.
- ▶ Cooperative Agreement with USDA, ERS: Grant to study economic effects of restrictions on transferability of peanut and tobacco quota (with D. Sumner and W. Thurman), 1988-90, \$15,000.
- ▶ USDA Research Apprenticeship Program (with M. Walden), 1988.
- ▶ Political Economy Research Center: Grant for the study of private timber sales contracts, 1986-87, \$2,000.

SEMINARS AND PRESENTATIONS:

- ▶ "The Microeconomics of a Natural Resource Boom: Evidence from the Washington Salmon Tribal Fishery," with Dominic Parker and Peter H. Nickerson, August 2012.
- ▶ "Colony Collapse Disorder: The Economic Consequences of Bee Disease," co-authored with Walter N. Thurman and Michael Burgett, School of Economic Sciences, Washington State University, April 6, 2012.
- ▶ "Colony Collapse Disorder: The Economic Consequences of Bee Disease," co-authored with Walter N. Thurman and Michael Burgett, Department of Agricultural Economics and Economics, Montana State University, March 21, 2012.
- ▶ "Colony Collapse: The Economic Consequences of Bee Disease," co-authored with Walter N. Thurman and Michael Burgett, Property and Environment Research Center, July 21, 2011.
- ▶ "Contracting for Pollination Services: Birds Do It, Bees Do It . . . Let's Specialize and Exchange," co-authored with Walter N. Thurman. Presented at conference titled "Contracting for Ecosystem Services," held at The Carolina Inn in Chapel Hill, NC, November 8-10, 2010.
- ▶ "Per Pound or Not Per Pound? The Role of Transaction Costs in Fresh Produce Pricing," co-authored with Peter Malishka and Keith Leffler, Department of Economics, University of Montana, Missoula, October 1, 2010.
- ▶ "Do Tribes Benefit from Windfall Fishing Allocations? The Role of Property Rights with Evidence from U.S. v. Washington," co-authored with Dominic Parker and Peter Nickerson. Presented at workshop titled "The Role of Property Rights and Institutions in North American Indian Economies," August 8 - 10, 2010, at the Property and Environment Research Center.
- ▶ "The Alaskan Crab Rationalization Program: Experiences of the First Two Seasons," Property and Environment Research Center, July 10, 2007.
- ▶ "Per Pound or Not Per Pound? The Role of Transaction Costs in Fresh Produce Pricing," Department of Agricultural Economics and Economics, Montana State University, Bozeman, November 2001.
- ▶ "Pollination Markets," Brown-bag Lunch Seminar, Department of Agricultural Economics and Economics, Montana State University, Bozeman, September, 2001.
- ▶ "By the Pound or By the Each? The Role of Transaction Costs in Fresh Produce Pricing," Western Economics Association Annual Meetings, San Francisco, July 2001.
- ▶ "By the Pound or By the Each? An Economic Analysis of Produce Pricing Practices," Department of Agricultural and Resource Economics and Department of Economics, North Carolina State University, May 2000.
- ▶ "The Information Content of Seller-Provided Presale Data in Cattle Auctions," Department of Economics, Northern Arizona University, Flagstaff, AZ, March 1998.
- ▶ "The Fable of the Bees Revisited: A Post Mortem of the U.S. Honey Program," National Economics Symposium, University of Arizona, Tucson, AZ, May 1997.
- ▶ "The Fable of the Bees Revisited: A Post Mortem of the U.S. Honey Program," Department of Agricultural Economics and Economics, Montana State University, Bozeman, April 1997.
- ▶ "Restricting the Market for Quota: An Analysis of Tobacco Production Rights with Corroboration from Congressional Testimony," Economic and Legal Organization Workshop, University of Chicago, February 1995.
- ▶ "Presale Measurement in a Competitive Auction Framework: Cruising Expenditures on Private Timber Sales," Department of Agricultural Economics and Economics, Montana State University, Bozeman, November 1994.
- ▶ "Indian and Non-Indian Salmon Fisheries: The Economic Effects of U.S. v. Washington," American Agricultural Economics Association Meetings, San Diego, August 1994.

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- ▶ "The Effects of the Uruguay Round GATT on U.S. Peanut Markets," Conference on Canadian Supply Management in Transition Towards the 21st Century, McGill University, St. Anne De Bellevue, Quebec, June 1994.
- ▶ "U.S. Log Export Restrictions: Impacts and Welfare Implications," American Agricultural Economics Association Meetings, Orlando, Florida, August 1993.
- ▶ "Presale Measurement in a Competitive Auction Framework: Cruising Expenditures on Private Timber Sales," American Agricultural Economics Association Meetings, Orlando, Florida, August 1993.
- ▶ "Presale Measurement in a Competitive Auction Framework: Cruising Expenditures on Private Timber Sales," Western Economic Association Meetings, Lake Tahoe, Nevada, June 1993.
- ▶ "The Economic Effects of Restricting the Transfer of Production Rights under Quota-Based Commodity Supply Control Programs," Department of Agricultural Economics and Economics, Montana State University, April 1993.
- ▶ "The Political Economy of Restrictions on the Transfer of Production Rights: A Case Study of the U.S. Flue-Cured Tobacco Program," Western Economic Association Meetings, San Francisco, July 1992.
- ▶ "Transaction Costs and the Efficient Organization of Production: A Study of Timber-Harvesting Contracts," Department of Agricultural Economics, University of Arizona, November 1990.
- ▶ "Transaction Costs and the Efficient Organization of Production: A Study of Timber-Harvesting Contracts," Department of Agricultural Economics and Economics, Montana State University, October 1990.
- ▶ "Transaction Costs and the Efficient Organization of Production: A Study of Timber-Harvesting Contracts," Albers School of Business, Seattle University, October 1990.
- ▶ "Production Rights with Limited Transferability: A Case Study of the U.S. Tobacco and Peanut Programs," Annual AAEE meetings, Vancouver, B.C., August 1990.
- ▶ "Production Rights with Limited Transferability: A Case Study of the U.S. Tobacco and Peanut Programs," Agricultural Economics Workshop, NCSU, July 1990.
- ▶ "Timber-Harvesting Contracts: The Effects of Contract Terms and Sales Procedures on Revenues and Purchaser Incentives," World Bank, Washington, D.C., May 1990.
- ▶ "An Economic Analysis of the Determinants of Farm Failure Rates, 1912-1980," Agricultural Economics Workshop, NCSU, April 1990.
- ▶ "An Economic Analysis of the Determinants of Farm Failure Rates, 1912-1980," Department of Economics and Agricultural Economics, Montana State University, March 1990.
- ▶ "Transaction Costs and the Efficient Organization of Production: A Study of Timber-Harvesting Contracts," Economic and Legal Organization Workshop, University of Chicago, November 20, 1989.
- ▶ "Transaction Costs and the Efficient Organization of Production: A Study of Timber Harvesting," National Bureau of Economic Research, Conference on Topics in Industrial Organization, Cambridge, Massachusetts, August 1989.
- ▶ "Transaction Costs and the Efficient Organization of Production: A Study of Timber Harvesting," Natural Resources/Industrial Organization Workshop, NCSU, October 1988.
- ▶ "The Economic Effects of Supply Controls: The Simple Analytics of the U.S. Peanut Program," Southern Agricultural Economics Association Annual Meetings, New Orleans, February 1988.
- ▶ "The Effects and Side Effects of Supply Controls: The Simple Analytics of the U.S. Peanut Program," Department of Economics, Clemson, October 1987.
- ▶ "The Effects of State Farm Relief Legislation on Private Lenders: The Experience of the 1930s," American Agricultural Economics Association Annual Meetings, Lansing, Michigan, August 1987.
- ▶ "The Economic Effects of the Peanut Program," Department of Economics and Agricultural Economics, Montana State University, April 1987.

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- ▶ "Chapter 12: Impact on the Farm Economy," Keynote Speaker at seminar sponsored by the Center for the Study of Market Alternatives, Caldwell, ID, April 1987.
- ▶ "The Effects of State Farm Relief Legislation on Private Lenders: The Experience of the 1930s," Agricultural Economics Workshop, NCSU, January 1987.
- ▶ "The Longer View of Farm Failures," American Feed Industry Association Annual Meeting, October 1986.
- ▶ "The Dynamics of Farm Failures and the Effects of Government Relief Programs, 1925-1939," Center for Study of Public Choice, George Mason University, October 1985.
- ▶ "The Dynamics of Farm Failures and the Effects of Government Relief Programs, 1925-1939," American Agricultural Economics Association Annual Meetings, Iowa, August 1985.
- ▶ "Farm Failures During the Interwar Period," Agricultural Economics Workshop, NCSU, April 1985.
- ▶ "Are Public Timber Sales Contracts Too Short?" Forestry Economics Discussion Group, NCSU, March 1985.
- ▶ "Below Cost Timber Sales," Conference on the Future of N.C. National Forests, Duke University, November 1984.

Montana State University Thesis Committees (Chaired or Co-Chaired)

- ▶ Vogstad, Amanda
"Economic Determinants of the Variation in Average Carcass Weight for United States Slaughter Cattle," December 2015.
- ▶ Tarrant, Michael
"The Effects of Anti-Price Gouging Laws in the Wake of a Hurricane," April 2015.
- ▶ Wilkes, Ethan
"Redshirting and Academic Performance: Evidence from NCAA Student-Athletes," January 2015.
- ▶ Elsea, David D.
"The Political Economy of Medical Marijuana," November 2014.
- ▶ Banovetz, James Michael III
"An Economic Analysis of the Determinants of Montana Alcohol Retail License Prices," May 2014.
- ▶ Shawn E. Regan
"Does Wilderness Matter? An Examination of the Political Causes and Economic Consequences of Wilderness Designation," February 2013.
- ▶ Christopher Lawrence Watson
"An Economic Analysis of National Park Visitation Rates," May 2013.
- ▶ Roger Avalos G.
"Pipeline Constraints in Wholesale Natural Gas Markets: Effects on Regional Pricing and Market Integration," January 2012.
- ▶ Vanessa Valentina Elizondo
"An Economic Analysis of the Wild Horse and Burro Program," Spring 2011.
- ▶ Amy Joanne Purdie
"Market Value of Green Construction: A Case Study of Colorado's Built Green and EnergyStar Programs," Fall 2009.
- ▶ Cale Wren Davis
"An Analysis of the Enactment of Anti-Price Gouging Laws," May 2008
- ▶ Kole Swanser
"Determinants of Seller Choice Between Auction and Negotiation: An Empirical Application to Cattle Markets," April 2005.

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- ▶ Peter Malishka
“Measurement Costs and Pricing Methods in the Retail Produce Market,” May 1999.
- ▶ Jan Chvosta
“The Information Content of Best Seller-Provided Presale Data in Cattle Auctions,” January 1997.
- ▶ Valerie Anne Thresher
“The Economics of Artificial Insemination Regulations in the Equine Breeding Industry: Monopoly Versus Transaction Costs Explanations,” December 1996.
- ▶ Brenda Lee Brenner
“An Analysis of Bidding Behavior at U.S. Forest Service Timber Auctions,” May 1996.
- ▶ Cory Scott Fennell
“Determinants of Fishing Performance: The Washington State Salmon Fishery,” December 1995.
- ▶ Jonathan Yoder
“The Effects of Spotted Oil Litigation on National Lumber Markets,” August 1994.
- ▶ Holly Linn Lippke (Professional Paper Option)
“The Economic Effects of the Forest Resources Conservation and Shortage Relief Act of Timber Prices,” January 1993.
- ▶ Rodney Philip Hide (Professional Paper Option)
“Monopolizing Individual Transferable Quota: Theory and Evidence,” July 1992.

Montana State University Thesis Committees (Committee Member)

- ▶ "Bishop, Zachary Andrew
“Subsidizing Strippers: The Impact of Royalty Rate Reductions on the Intensive and Extensive Margins of Marginally Producing Wells,” August 2016.
- ▶ Mondics, Rebecca
“Where are the Beef Cattle? An Economic Analysis of the Changes in the Cattle Cycle,” August 2013.”
- ▶ Bryan James Leonard
“Which Came First, Laws or Lobbyists? An Empirical Investigation of Environmental Regulation and Interest Group Formation,” April 2012.
- ▶ Mark Alan Berreth
“The Political Economy of Prescribed Fires: A Land Agency’s Decision to Burn,” Spring 2010.
- ▶ Fritz Baird
“Montana Agricultural Land Prices: An Evaluation of Recreational Amenities and Production Characteristics,” Spring 2010.
- ▶ Tyler James Wiltgen
“An Economic History of the United States Sugar Program,” December 2007.
- ▶ Frank Chase Cook
“An Empirical Analysis of Hunting Leases by Timber Firms,” May 2007.
- ▶ Tyler Joseph Kruzich
“Why Do Households Cultivate Landraces?: Wheat Variety Selection and In Situ Conservation in Turkey,” May 2006.
- ▶ Adrienne M. Ohler
“Prescription Drug Price Dispersion in Heterogeneous Markets,” March 2005.
- ▶ John Kuhling
“The Effects of Optional Units on Crop Insurance Indemnity Payments,” January 2002.
- ▶ Andrew J. Seessel
“The Effects of Transaction Costs on Northern Plains Oil Unitization Agreements,” April 2000.

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- ▶ Alexander William Vedrashko
“The Alchian and Allen Theorem: Theory and Evidence,” February 1998.

Appendix B

Documents Considered

Legal Documents

- Affidavit of Dr. Glenn W. Harrison, *Dan Lewis and Daniel H. Lewis Farms, Inc., et al. v. U.S. Tobacco Cooperative Inc. (f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation)*, July 3, 2012.
- Affidavit of Dr. Glenn W. Harrison, *Teresa M. Speaks, et al. v. U.S. Tobacco Cooperative Inc. (f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation)*, December 20, 2017.
- Amended Class Action Complaint, *Teresa M. Speaks, et al. v. U.S. Tobacco Cooperative Inc. (f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation)*, September 13, 2017.
- Amended Order on Motion for Class Certification, *Kaye W. Fisher, Dan Lewis, et al. v. Flue-Cured Tobacco Cooperative Stabilization Cooperation*, February 24, 2014.
- Amended Order on Motion for Class Certification, *Kaye W. Fisher, et al. v. U.S. Tobacco Cooperative Inc. (f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation)*, February 24, 2014.
- Answer and Counterclaim of Defendant USTC, *Dan Lewis, et al. v. U.S. Tobacco Cooperative Inc. (f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation)*, September 10, 2012.
- Complaint, *Dan Lewis, et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation*, January 6, 2005.
- Complaint, *Kay W. Fisher, et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation, et al.*, February 11, 2005.
- Declaration of Edward W. Kacsuta in Support of Defendant U.S. Tobacco Cooperative Inc.'s Response to Objections, *Teresa M. Speaks, et al. v. U.S. Tobacco Cooperative Inc.*, January 11, 2018.
- Approving Settlement and Request for Expedited Consideration, *Teresa M. Speaks, et al. v. U.S. Tobacco Cooperative Inc. (f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation)*, September 26, 2017.
- Opinion of the Court, *Kaye W. Fisher, Dan Lewis, et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation*, December 21, 2016.
- Order Denying Proposed Class Settlement, *Dan Lewis, et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation et al. and Kay W. Fisher, et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation, et al.*, May 5, 2006.
- Order on Motion to Dismiss, *Kaye W. Fisher, Dan Lewis, et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation et al.*, March 30, 2012.
- Stipulation and Agreement of Class Action Compromise, Settlement and Release, *Dan Lewis, et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation*, September 22, 2005.
- Third Amended and Consolidated Complaint, *Dan Lewis, et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporatio (n/k/a U.S. Tobacco Cooperative Inc.)*, July 9, 2012.

Depositions

- Deposition of Edward W. Kacsuta, *Teresa M. Speaks, et al. v. U.S. Tobacco Cooperative Inc. (f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation)*, December 13, 2017.

Appendix B

Documents Considered

Cooperative Member Communications

- Letter from Fred G. Bond, General Manager, to Members Who Delivered Tobacco to Stabilization From the 1967 and/or 1968 Crops (February 17, 1976) (01- 692. 1976.02.17 Letter to Member from Bond.pdf).
- Letters from James R. Stocks, Supervisor of General Accounting, to Harry Q. Simmons, County Extension Chairman (January 15, 1979) and from Fred G. Bond, General Manager, to Members (1979) (02- 599. 1979 Letter to Simmons from Bond.pdf).
- Letter from Fred G. Bond, General Manager, to Dewey B. Stanton (March 15, 1982) (03- 602. 1982.03.15 Letter to Stanton from Bond.pdf).
- Newsletter, Flue-Cured Tobacco Cooperative Stabilization Corporation (December 1975) (04- 1975 USTC Newsletter re establishment of reserve.pdf).
- Letter from Fred G. Bond, General Manager, to Member (05- REWIS 000715.pdf).
- Letter from Lioniel S. Edwards, General Manager, to Tobacco Farmer (July 18, 2001) (06- REWIS 000717.pdf).
- Letter from Lioniel S. Edwards, General Manager, to Stabilization Member (November 29, 2004) (07- 2949- Letter from USTC to members (Nov. 29, 2004).pdf).
- Letter from Lioniel S. Edwards, General Manager, to Flue-Cured Farmer (December 20, 2004) (08- 2947- Letter from USTC to farmers Timberlake facility.pdf).
- Questions and Answers, Flue-Cured Tobacco Cooperative Stabilization Corporation (09- FCTSC 000588-000591.pdf).

Cooperative Annual Reports and Financial Statements

- Annual Reports, 1970-2016.
- Consolidated Financial Statements, 1980-2006.
- Consolidated Financial Statements, 2008-2016.

Cooperative Tax Returns

- Tax Returns, 1990-1997.
- Tax Return, 2004.

Appendix B

Documents Considered

Journal Articles

- A. Brown, R. Rucker, W. Thurman, "The End of the Federal Tobacco Program: Economic Impacts of the Deregulation of U.S. Tobacco Production," *Review of Agricultural Economics*, Winter 2007, 29(4): 635-655.
- Blake Brown, "The End of the Tobacco Transition Payment Program," *North Carolina State University*, November 13, 2013.
- Marie Ng, Michael K. Freeman, Thomas D. Fleming, et al., "Smoking Prevalence and Cigarette Consumption in 187 Countries, 1980-2012," *JAMA*, 2014, 311(2): 183-192.

Publicly Available Data and Documents

- Kimberly A. Zeuli and Robert Cropp, "Cooperatives: Principles and practices in the 21st century," *University of Wisconsin Extension*, 2004.
- United States Department of Agriculture: Economics, Statistics and Marketing Information System, Tobacco Yearbook 2006 (<http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1392>).
- United States Department of Agriculture: National Agriculture Statistical Service, Statistics by Subject (https://www.nass.usda.gov/Statistics_by_Subject/index.php?sector=CROPS).
- Wahba, Phil, "U.S. e-cigarette sales seen rising 24.2% per year through 2018," *Fortune*, June 10, 2014 (<http://fortune.com/2014/06/10/e-cigarette-sales-rising/>).

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

TERESA M. SPEAKS, TOBY SPEAKS,
STANLEY SMITH, EDDIE BROWN,
ROBERT POINDEXTER, MIKE MITCHELL,
ROY L. COOK, ALEX SHUGART, H.
RANDLE WOOD, ROBIN ROGERS and
DANIEL LEE NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

**DEFENDANT U.S. TOBACCO COOPERATIVE'S
MOTION TO STRIKE CLASS-WIDE OPT-OUTS**

NOW COMES Defendant U.S. Tobacco Cooperative Inc. (the “Cooperative”), by and through the undersigned counsel, pursuant to Federal Rule of Civil Procedure 23(e) and this Court’s Order Preliminarily Approving Settlement (Dkt. 63), and respectfully moves this Court to strike the class-wide requests for exclusion (“opt-outs”) filed by Linwood Scott, Jr. (Dkt. 132), Cray Milligan (Dkt. 133), Orville Wiggins (Dkt. 160), Alford James Worley, Jr. (Dkt. 176), Ralph Renegar (Dkt. 188), Richard Renegar (Dkt. 188-1), and Harold Wright (Dkt. 199), and to limit the scope of those opt-outs to the individual request for exclusion made by each filer.

A memorandum of law setting forth the grounds in support of this Motion is being filed and served contemporaneously herewith.

Respectfully submitted,

Dated: January 11, 2018

QUINN EMANUEL URQUHART &
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*Counsel for Defendant U.S. Tobacco
Cooperative Inc.*

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on January 11, 2018 a copy of the foregoing document was filed electronically with the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Derek L. Shaffer
Derek L. Shaffer

UNITED STATES DISTRICT COURT
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WESTERN DIVISION

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RANDLE WOOD, ROBIN ROGERS and
DANIEL LEE NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT U.S. TOBACCO
COOPERATIVE'S MOTION TO STRIKE CLASS-WIDE OPT-OUTS**

Defendant U.S. Tobacco Cooperative Inc. (the "Cooperative"), by and through the undersigned counsel, respectfully moves to strike the class-wide requests for exclusion ("opt-outs") filed by Linwood Scott, Jr. (Dkt. 132), Cray Milligan (Dkt. 133), Orville Wiggins (Dkt. 160), Alford James Worley, Jr. (Dkt. 176), Ralph Renegar (Dkt. 188), Richard Renegar (Dkt. 188-1), and Harold Wright (Dkt. 199), and to limit the scope of those opt-outs to the individual request for exclusion made by each filer (the "Motion"). These individuals purporting to opt out on behalf of *other* class members are named plaintiffs in the parallel class action currently pending in the Superior Court of North Carolina under the combined caption *Dan Lewis et al. v. Flue-Cured Tobacco Stabilization Corp.*, 05 CVS 188 (N.C. Super. Ct.) and *Kay W. Fisher et al. v. Flue-Cured Tobacco Stabilization Corp.*, 05 CVS 1938 (N.C. Super. Ct.) ("*Fisher-Lewis*"). In addition to excluding themselves, they purport to exclude *all* class members in the class certified in the State

Court from this class action settlement. *See, e.g.*, Dkt. 132 at 1 (“[A]s a class representative deemed adequate by the North Carolina Supreme Court, I elect to opt-out of this settlement on behalf of the certified class.”). Even looking beyond the fact that more than 2,300 of those class members have already filed claims in *this* Settlement, the *Fisher-Lewis* objectors have no legal right and no legal authority to speak for anyone other than themselves. Black-letter law and this Court’s preliminary approval order preclude their instant maneuver, which threatens to render moot this Court’s grant of preliminary approval and its denial of the prior bid by Mr. Lewis and his counsel to intervene for the sake of disabling class-wide approval. (Dkt. 192, at 19-20.)

For the reasons set forth below, and as further articulated in the Cooperative’s Omnibus Response to Objections to Settlement, dated January 11, 2018 (Part III), which is respectfully incorporated herein by reference, these group opt-out attempts are improper and should be struck.

1. Courts have uniformly held that class representatives cannot opt out on behalf of other class members. *See, e.g., Sloan v. Winn Dixie Raleigh, Inc.*, 25 F. App’x 197, 198 (4th Cir. 2002) (“Class representatives cannot opt out on behalf of other putative class members.”). Indeed, the right to opt-out of a class action “is an individual one and should not be made by the class representative or class counsel.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1024 (9th Cir. 1998); *Berry Petroleum Co. v. Adams & Peck*, 518 F.2d 402, 412 (2d Cir. 1975) (“[O]pting out of a class action, like the decision to participate in it, must be an individual decision.”); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810-13 (1985) (“[W]e hold that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove *himself* from the class by executing and returning an “opt out” or “request for exclusion” form to the court.”) (emphasis added); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (discussing due process requirements in the context of class notice, and stressing that “each class member shall be advised

that he has the right to exclude **himself** from the action”) (emphasis added). Nor does any authority indicate that the prohibition against group opt-outs is limited to instances where a parallel class has not already been certified. (Cf. Dkts. 132, 133, 160 at 1; Dkt. 192 at 20). To the contrary, the Ninth Circuit has explained that “[t]here is no class action rule, statute, or case that allows a putative class plaintiff or counsel to exercise class rights *en masse*, either by making a class-wide objection or by attempting to effect a **group-wide** exclusion from an existing class.” *Hanlon*, 150 F.3d. at 1024 (emphasis added). Otherwise, “to allow representatives in variously asserted class actions to opt a class out without the permission of individual class members would lead to chaos in the management of class actions.” *Id.* See also *Berry Petroleum Co. v. Adams & Peck*, 518 F.2d 402, 412 (2d Cir. 1975) (“The only way to avoid such chaos is to require that opting out of a class action, like the decision to participate in it, must be an individual decision.”). Precisely because chaos, confusion and violation of individual due process rights threaten to result from any class-wide opt-out, *Hanlon* and other courts confronting group opt-outs have all agreed that such opt-outs cannot be effective.

2. Here, as evidenced by the more than 2,300 claims filed as of this date (and the many more expected through the May 28, 2018 deadline) and the comparatively low numbers of opt-outs and objections, the vast majority of the class members find that the Settlement is fair, reasonable, and adequate. If the purported group opt-outs are given effect, this would elevate their judgment over the individual rights and choices (guaranteed by due process) of other class members. No rule of law supports these attempts to execute an end-run around the final judgment rule and deprive thousands of Class Members their opportunity to recover from this Settlement.

3. Most conspicuously, the individuals who are purporting to opt-out the entire *Fisher-Lewis* class are doing so **notwithstanding** that five of the **named representatives** from

Fisher-Lewis have made their own considered election to remain part of **this** class, as demonstrated by their decision **not** to file opt-outs. Specifically, Archie Hill, C. Monroe Enzor, Jr., George Abbot, Robert C. Boyette, and Kendall Hill—each named plaintiffs in *Fisher-Lewis*—have evidenced their decision (despite obvious, concerted efforts by *Fisher-Lewis* counsel to round up opt-outs) to remain in this class and to embrace the terms of the potential settlement. In other words, **certain** named representatives in *Fisher-Lewis* are effectively purporting to opt-**out** on behalf of **other** named representative in *Fisher-Lewis* who have made their own contrary decisions to opt-**in**. Any such theory of group opt-outs is not only invalid, but incoherent.

4. Lest there be any doubt, the purported group opt-outs are expressly prohibited by the Preliminary Approval Order (Dkt. 63), which expressly states that “[e]xclusions shall be exercised individually by a Settlement Class member, not as or on behalf of a group, class, or subclass, not by any appointees, assignees, claims brokers, claims filing services, claims consultants, or third-party claims organizations; except that an exclusion request may be submitted by a Settlement Class Member’s attorney on an individual basis.” (Dkt. 63, ¶ 18.) “Any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the action.” (*Id.*, ¶ 19.) Thus, the purported group opt-outs attempt to do what this Court has expressly forbidden. Further still, they are effectively defying, or at least mooting, this Court’s denial of Mr. Lewis’s effort to intervene citing his status in *Fisher-Lewis*. Mr. Lewis had been trying—just as the group opt-outs now do—to thwart class-wide notice and to foreclose individual recipients from making their own decisions whether to opt out. (*Cf.* Dkt. 82.)

5. The purported group opt-outs transgress permissible bounds inasmuch as these individuals are using their status in *Fisher-Lewis* as though it specially enables them to contravene

this Court's rules and to speak for class members in this federal proceeding. This attempt also contravenes the clear contrary instruction that has already been broadcast around the country to all class members informing them that no one else could purport to opt out on an individual's behalf. As a constitutional matter, the current attempts by several of the *Fisher-Lewis* named plaintiffs to opt-out are encroaching upon the due process rights of absent class members—even to the point of contravening the expressed intent of their fellow named representative in *Fisher-Lewis*.

6. Last, these group opt-outs were not even signed by class counsel in *Fisher-Lewis*. Instead, they were executed by the filers in their individual capacity. The authorities, principles and orders cited herein confirm that class counsel in *Fisher-Lewis* could not have properly executed a class-wide opt-out for the reasons already explained. It follows *a fortiori* that these individuals—none of whom is licensed to practice law, much less to represent a class—cannot possibly effectuate a class-wide opt-out on their own accord.

* * *

WHEREFORE, the Cooperative respectfully requests that this Court strike these opt-outs (Dkt. 132, 133, 160, 176, 188, 188-1) to the extent they seek to exclude others from this class, and to limit the scope of the opt-outs to the individuals who filed them.

Dated: January 11, 2018

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*Counsel for Defendant U.S. Tobacco
Cooperative Inc.*

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on January 11, 2018 a copy of the foregoing document was filed electronically with the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Derek L. Shaffer
Derek L. Shaffer

UNITED STATES DISTRICT COURT
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WESTERN DIVISION

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RANDLE WOOD, ROBIN ROGERS and
DANIEL LEE NELSON,

Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

**DEFENDANT U.S. TOBACCO COOPERATIVE'S
MOTION TO STRIKE OBJECTIONS FILED BY PENDER SHARP**

NOW COMES Defendant U.S. Tobacco Cooperative Inc. (the "Cooperative"), by and through the undersigned counsel, and respectfully moves this Court, pursuant to Federal Rule of Civil Procedure 23(e) and this Court's Order Preliminarily Approving Settlement (Dkt. 63), to strike the objections to the proposed settlement in the above-captioned matter filed by Pender Sharp. (Dkt. 92; Dkt. 192). A memorandum of law setting forth the grounds in support of this Motion is being filed and served contemporaneously herewith.

Respectfully submitted,

Dated: January 11, 2018

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U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
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Defendant.

Civil Action No.: 5:12-CV-00729-D

**DEFENDANT U.S. TOBACCO COOPERATIVE'S MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION TO STRIKE OBJECTIONS FILED BY PENDER SHARP**

Defendant U.S. Tobacco Cooperative Inc. (the "Cooperative"), by and through the undersigned counsel, respectfully moves to strike the objections to the proposed settlement in the above-captioned matter filed by objector Pender Sharp. (Dkt. 92; Dkt. 192). For the reasons set forth below, Mr. Sharp is not a member of the class in this proceeding and thus lacks standing to object, at least by all available indications.

1. The Fourth Circuit has specifically concluded that "non-class members have no standing to object," because "the plain language of Rule 23(e) clearly contemplates allowing only class members to object to settlement proposals." *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989). That is because allowing individuals from outside the class "to inject their concerns via objection at the settlement stage would tend to frustrate" the "unassailable premise that settlements are to be encouraged." *Id.* This Court's Preliminary Approval Order incorporates this

bedrock rule by permitting only a “**Settlement Class Member** who has not [opted-out] to object to the fairness, reasonableness, or adequacy of the Settlement” (Dkt. 63 at 8) (emphasis added). Objectors to a class-action settlement must establish their standing to object. *See In re Hydroxycut Marketing and Sales Practice Litigation*, 2013 WL 5275618, at *2 (S.D. Cal. 2013) (explaining that “the party seeking to invoke the Court’s jurisdiction—in this case, the Objectors—has the burden of establishing standing” and striking purported objectors for failure to satisfy burden of establishing class membership) (citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103-104 (1998)). *See also In re Wachovia Corp. “Pick-A-Payment” Mortg. Marketing and Sales Practices Litigation*, 2011 WL 1877630, *6 (N.D. Cal. 2011) (finding that objector had not demonstrated class membership and that, because the objector was “not a class member, she has no standing to raise objections”).

2. Mr. Sharp has filed two sets of objections to the settlement. The first objections were filed *pro se* on December 11, 2017. (Dkt. 92.) The second set of objections, filed on December 20, 2017 for both Mr. Sharp and Sharp Farms, Inc., were filed by the same counsel representing plaintiffs in the parallel state court proceeding, which bears the combined caption *Dan Lewis et al. v. Flue-Cured Tobacco Stabilization Corp.*, 05 CVS 188 (N.C. Super. Ct.), and *Kay W. Fisher et al. v. Flue-Cured Tobacco Stabilization Corp.*, 05 CVS 1938 (N.C. Super. Ct.) (“*Fisher-Lewis*”). *See* Dkt. 146 (C. Alan Runyan); Dkt. 191 (Philip R. Isley); Dkt. 207 (James L. Ward). Far from establishing that Mr. Sharp is a competent objector, however, Mr. Sharp’s instant submissions fail to address his prior sworn testimony establishing that he is **not** a member of this class.

3. The class defined for this settlement includes “[a]ll individuals, proprietorships, partnerships, corporations and other entities that are or were shareholders and/or members of [the

Cooperative] at any time” between “June 1, 1946 and the Effective Date of Settlement.” (Dkt. 60-1 at 7, 4) (emphasis added).

4. But Mr. Sharp himself has never been a member of the Cooperative. In fact, Mr. Sharp testified—under oath, by deposition—as follows: “Q: Have you ever individually been a member of Stabilization [the Cooperative]?” A: Not individually.” Exhibit A (Tr. 17:12-14.); *see also id.* (Tr. 80:6-8) (“Q: And you individually are not a member of [the Cooperative], correct? A: That’s correct.”) To the extent Mr. Sharp would purport to base his individual class membership on an affiliation with Sharp Farms, Inc., that too is foreclosed because Mr. Sharp is not a shareholder of that organization. *See id.* (Tr. 15:16-21) (“Q: [W]ho are the shareholders of Sharp Farms, Inc.? A: My father and my brother. Q: Have they always been the **only two shareholders?**” A: Yes, sir.”) (emphasis added).

5. Accordingly, Mr. Sharp by all indications is neither a class member (as to himself) nor not an authorized stakeholder in a class member (as to Sharp Farms, Inc.). When the Cooperative last week sought to depose Mr. Sharp here in order to ascertain whether his relevant testimony may have changed, his counsel appearing here refused to let us depose him. In this posture and on this record, he should not be permitted to object.

6. Mr. Sharp does not even attempt to meet his burden to establish standing. Neither of Mr. Sharp’s objections sets forth any **evidence** that he is a class member. The first objections merely contain a bare legal conclusion that “I am a Class Member,” (Dkt. 92 at 1), without even asserting that Mr. Sharp in fact is or was a member of the Cooperative. Similarly, while the second objections do state that “Sharp Farms, Inc. is a member of the Defendant cooperative” (Dkt. 192 at 1), they are conspicuously silent concerning Mr. Sharp’s individual status as well as his ability to speak for Sharp Farms, Inc. The absence of requisite evidence from Mr. Sharp is especially

striking in light of his prior sworn testimony establishing that he is not a member of the class. The Cooperative sought to depose Mr. Sharp concerning his objections after receiving the second set (Dkt. 192), but counsel refused to make him available on the ground that Mr. Sharp is a “non-party” in this proceeding.

* * *

WHEREFORE, the Cooperative respectfully requests that this Court strike Mr. Sharp’s individual objections to the settlement (Dkt. 92, 192), and bar Mr. Sharp from “appear[ing] or testify[ing] at the January 19, 2018 hearing.” *Cf.* Dkt. 192 at 1.

Dated: January 11, 2018

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

/s/ Derek L. Shaffer

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Plaintiffs,

vs.

U.S. TOBACCO COOPERATIVE INC. f/k/a
FLUE-CURED TOBACCO STABILIZATION
CORPORATION,

Defendant.

Civil Action No.: 5:12-CV-00729-D

INDEX OF EXHIBITS

Defendant U.S. Tobacco Cooperative Inc. respectfully submits the following exhibits in connection with its Motion to Strike Objections Filed by Pender Sharp and Memorandum of Law in Support Thereof, dated January 11, 2018:

Exhibit A: Attached hereto as Exhibit A is a true and correct copy of excerpts from the deposition of Pender Sharp, dated September 7, 2006, taken in *Fisher et al. v. Flue-Cured Tobacco Stabilization Corporation*, No. 05-CV-1938 (N.C. Sup. Ct.).

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

KAY W. FISHER, ORVILLE WIGGINS,
DALE C. BONE, THOMAS N. RHOAD,
LINWOOD SCOTT, JR., ROBERT C.
BOYETTE, RICHARD RENEGAR, AND
KENDALL HILL AND OTHER SIMILARLY
SITUATED,

Plaintiffs,

v.

FLUE-CURED TOBACCO STABILIZATION
CORPORATION, KEITH BEAVERS,
MCDANIEL WYNNE, BRUCE L. FLYE,
RICHARD J. JENKS, CLAUDE B.
FRENCH, AND ANDREW Q. SHEPARD,

Defendants.

NO. 05-CVS-1938

DEPOSITION OF

PENDER SHARP

LAW OFFICES OF SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.
2500 WACHOVIA CAPITOL CENTER
RALEIGH, NORTH CAROLINA

THURSDAY, SEPTEMBER 7, 2006

10:07 A.M.

VOLUME I

PAGES 1 THROUGH 293

9/7/06

VIVIAN TILLEY & ASSOCIATES

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9/7/06

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P R O C E E D I N G S

Whereupon, PENDER SHARP, was
called as a witness, duly sworn,
and testified as follows:

Direct Examination

10:07 a.m.

BY MR. TUCKER:

Q. Mr. Sharp, my name is Don Tucker. I
represent Stabilization. We've -- we've met before.
The purpose of the deposition today is to take your
sworn testimony on certain topics related to the
litigation against Stabilization.

I'm going to be asking you a series of
questions. The court reporter will take down my
questions and your answers, so I want to make sure
that you understand my question clearly before you
answer. If you don't, please ask me to rephrase it,
and I'll do my best to do that.

A. Okay.

Q. And if you can answer with a yes or no
rather than a nod, just so she can get that down on
the transcript.

A. Okay.

Q. If you need to take a break at any time,
let me know. Generally, I'll take a break about
every hour or hour and 15 minutes. But if you need

9/7/06

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1 interest in Sharp Farms?

2 A. Because I wanted to at the time.

3 Q. Did you -- do you -- do you currently have
4 an interest in Sharp Farms, Inc.?

5 A. I do not.

6 Q. Have you ever had an interest in Sharp
7 Farms, Inc.?

8 A. I have not.

9 Q. Have you been involved in farming since you
10 relinquished your interest in Sharp Farms Partnership
11 sometime in the mid to late 1990s?

12 A. I manage the farming operation for Sharp
13 Farms, Inc., and the properties for Sharp Farms,
14 Incorporated -- for Sharp Farms Partnership.

15 Q. How long have you managed the farming
16 operations for Sharp Farms, Inc.?

17 A. Since its origination in the mid to late
18 '90s.

19 Q. And before Sharp Farms, Inc., was formed,
20 did you manage the farming operations for Sharp Farms
21 Partnership?

22 A. Yes, I did.

23 Q. Are you currently an employee of Sharp
24 Farms, Inc.?

25 A. Yes, I am.

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1 Q. Are you employed as well by Sharp Farms
2 Partnership?

3 A. It has no employees.

4 Q. Okay. Tell me about the types of farming
5 activities that Sharp Farms Partnership was involved
6 in while it was still the farming operation and then
7 sort of take me through the transition to present.
8 And I understand presently that the farming
9 operations are limited to Sharp Farms, Inc.

10 A. That's correct.

11 Q. Okay.

12 A. The general farming operation primarily
13 focused on flue-cured tobacco, also corn, wheat,
14 soybeans, sweet potatoes, some vegetable crops, and a
15 swine operation.

16 Q. Okay. I'm not sure I asked you: who are
17 the shareholders of Sharp Farms, Inc.?

18 A. My father and my brother.

19 Q. Have they always been the only two
20 shareholders?

21 A. Yes, sir.

22 Q. How much tobacco quota did Sharp Farms,
23 Inc., hold or Sharp Farms Partnership hold at the
24 time of the buyout, how many pounds of quota?

25 A. Probably around 60,000 pounds.

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1 Q. How many acres of tobacco does Sharp Farms,
2 Inc., farm currently?

3 A. In 2006?

4 Q. Yeah, 2006.

5 A. 300.

6 Q. 300.

7 And how about 2005?

8 A. I don't remember. Probably 150.

9 Q. I'm just trying to get a sense for how the
10 size of the flue-cured tobacco operation has changed
11 over the last five or ten years.

12 A. Um-hum.

13 Q. Has it been in the range of 150 to 300
14 acres over that time period, or has it changed?

15 A. In the peak of the quota in 1997, I
16 distinctly remember we were growing 200 acres. And
17 then as the quota declined, our acreage declined.

18 Q. Right.

19 A. And now without the program, the acreage is
20 beginning to climb again.

21 Q. And is that because you're putting existing
22 acres under cultivation, or are you acquiring
23 additional tobacco farms?

24 A. Some of both.

25 Q. And how many acres total all crops does

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1 Sharp Farms have under cultivation in 2006?

2 A. Approximately 1,500.

3 Q. Okay. Was that approximately the same in
4 2005?

5 A. Yes.

6 Q. How many people does Sharp Farms have on
7 its payroll presently?

8 A. Approximately 12 full-time people and an
9 additional 20 part time.

10 Q. How about in 2005?

11 A. Approximately the same.

12 Q. Have you ever individually been a member of
13 stabilization?

14 A. Not individually.

15 Q. Has Sharp Farms or Sharp Farms, Inc., ever
16 been a member of stabilization?

17 A. Both have.

18 Q. Can you tell me when they first became
19 members? Let's start with Sharp Farms Partnership.

20 A. Sharp Farms Partnership was formed when I
21 was in high school, which would have been in the late
22 '60s, and became members the first time they sold
23 tobacco.

24 Q. And when that happened in the late '60s,
25 what -- what was your role within the partnership?

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1 what were your responsibilities?

2 A. I was basically a laborer for the
3 partnership in those years.

4 Q. would your father have been the person
5 responsible for decision-making and management of the
6 partnership?

7 A. Forty years ago, yes, sir.

8 Q. And do you recall the -- the
9 circumstances -- the actual circumstances of when
10 Sharp Farms became a member of Stabilization?

11 A. When Sharp Farms --

12 Q. When sharp Farms Partnership became a
13 member of Stabilization.

14 A. I do not.

15 Q. Do you recall whether Sharp Farms
16 Partnership received a certificate of stock in
17 Stabilization at the time it first became a member?

18 A. I'm certain it did, but I don't know.

19 Q. That would have -- that would be something
20 that your father would have been responsible for at
21 the time?

22 A. Right. Right.

23 Q. And to the extent that Sharp Farms
24 Partnership received any written communications or
25 information concerning membership issues at the time

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1 crops? Do you have any information about that?

2 A. why they retained that?

3 Q. Um-hum. Um-hum. Rather than distributing
4 it.

5 A. I Cannot imagine why they did not
6 distribute that.

7 Q. Do you -- do you recall discussion about
8 the reasons in any of the newsletters or annual
9 reports that you received or that Sharp Farms may
10 have received in that time period?

11 A. Bruce Flye's comment to me was several
12 years ago over the \$26 million, "why send it out,
13 because most of those people are dead? It would go
14 into the escheats fund. You couldn't get it to the
15 people." That's a lame excuse 30 years later. It
16 could have been sent out 30 years ago to the people
17 that it belonged to.

18 Q. And you're aware that a portion of the
19 profits from the '67 through '72 crops were
20 distributed to farmers, correct? Or let me ask it a
21 different way.

22 were you aware that 60 percent of the
23 profits on those crop years had been distributed to
24 farmers?

25 A. I was not.

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1 Q. Okay. So you weren't aware that the \$26
2 million represents 40 percent of the profits from
3 those years that was retained by Stabilization as a
4 reserve?

5 A. All I know is they still got \$26 million
6 that belongs to somebody else.

7 Q. Do you -- are -- are you -- have you ever
8 read the bylaws of Stabilization?

9 A. I think I probably have over time.

10 Q. Were you aware that Stabilization's
11 articles and bylaws authorize the board of directors
12 to retain money as reserves for the operation of the
13 cooperative?

14 A. I would suspect that's true.

15 Q. Let's go back to the first meeting that you
16 had with Mr. Williams and Mr. Runyan, just to make
17 sure I have my chronology right.

18 You had a conversation with a minister that
19 you knew independently. He mentioned that his
20 nephew, Charles Williams, was a lawyer --

21 A. Um-hum.

22 Q. -- and was involved in some litigation
23 involving the burley co-op in Kentucky, correct?

24 A. Um-hum.

25 Q. And did -- did he tell you that

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1 Mr. Williams would like to meet with you or did you
2 request a meeting with Mr. Williams? How did that
3 come about?

4 A. He said, "He's coming to my house to visit
5 and I thought he might like to meet you."

6 Q. Okay. So then -- then the minister invited
7 you to his home for a meeting with Mr. Williams?

8 A. Yes.

9 Q. And did you -- did you attend that meeting?

10 A. Yes, I did.

11 Q. Do you remember when that meeting occurred?

12 A. Sometime around December '04.

13 Q. Okay. Who -- who was present for that
14 meeting?

15 A. Mr. Williams. Neither the minister nor his
16 wife stayed in there. She had prepared a -- drinks
17 and cookies and everything and -- but they didn't
18 stay out on the patio with us. It was the first time
19 I had met him. And I had invited several tobacco
20 growers to go with me.

21 Q. Do you remember the names of the growers
22 who accompanied you to that meeting?

23 A. I know Jerome Vick went, Sonny Scott. I
24 don't remember the others.

25 Q. Do you recall that there were other farmers

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1 talking to about potential litigation against
2 stabilization?

3 A. Every tobacco farmer that I ran into and
4 everyone that ran into me.

5 Q. And identify for me by name, if you can,
6 the people who -- who you were able to get interested
7 in -- in sort of your -- your -- your thought process
8 about what should happen next. Was there a core
9 group of people who were driving the decision to --

10 A. My challenge was not to convince people, as
11 you said, to get involved in this. My challenge was
12 to find time to do other things other than talk on
13 the phone about litigation with Stabilization,
14 because everybody I talked to and every -- everywhere
15 I went, that's all everybody was talking about.

16 Q. In -- in terms of the decision to proceed
17 with litigation, would -- would you describe yourself
18 as sort of the -- as the driving force behind the
19 decision to file a lawsuit?

20 A. I was a part of that, but it -- it gained a
21 momentum of its own out of -- of frustration and --
22 and what we felt was -- was lack of attention that we
23 were getting from the Stabilization board.

24 Q. Did -- did you -- were you actually calling
25 up people and placing --

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1 [TELEPHONE INTERRUPTION.]

2 THE WITNESS: Excuse me. I thought I
3 had cut it off.

4 MR. TUCKER: Let's go off the record
5 for a second.

6 [DISCUSSION OFF THE RECORD.]

7 BY MR. TUCKER:

8 Q. Did -- did you have a phone list or a -- a
9 list of names that you were calling to discuss
10 potential litigation?

11 A. No, I did not.

12 Q. How did you identify the people that you
13 wanted to talk to about possible litigation against
14 Stabilization?

15 A. There was no identification process used
16 really, because as I said, everybody you run into,
17 this was a topic of conversation.

18 Q. At some point, did you have a second
19 meeting with Mr. Runyan?

20 A. We had what I would consider our first
21 official meeting with him after the one at the
22 minister's house.

23 Q. Right.

24 A. And I guess you would say I was responsible
25 for that, because Mr. Runyan had left me a card and I

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1 called that number. We -- Jerome Vick made a contact
2 for a meeting place.

3 Q. Um-hum.

4 A. And Jerome contacted a few people and I
5 contacted a few people, and I called Mr. Runyan to
6 see if he would come up and meet with us.

7 Q. Where did that meeting take place?

8 A. At the Wilson Country Club.

9 Q. Do you remember the date?

10 A. I do not. It would have been early in
11 2005.

12 Q. Okay.

13 A. Maybe -- maybe January. I don't know.

14 Q. And who attended that meeting?

15 A. There were probably -- I don't remember
16 everyone that was there. I didn't contact everyone
17 that was there. I know Sonny Scott was there.
18 Robert Boyette was there, Jerome Vick, myself, Kay
19 Fisher, Dale Bone. I think Kendall Hill was there,
20 and -- and others.

21 Q. Okay. All the people -- I think all the
22 people that you've just mentioned ultimately
23 agreed -- with the exception of yourself and
24 Mr. Vick -- ultimately agreed to serve as Plaintiffs
25 in the Fisher lawsuit; is that right?

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1 A. I think that's correct.

2 Q. Were there other growers there who -- who
3 did not join the lawsuit in an official capacity?

4 A. I think there were a few there that decided
5 not to be lead Plaintiffs in it.

6 Q. Okay. And do you remember the names of any
7 of those people?

8 A. I think J.F. Scott was one person that
9 chose not to be a lead Plaintiff, and I can't
10 remember the others.

11 Q. Okay. How long did that meeting last?

12 A. That meeting probably lasted between one
13 and two hours.

14 Q. Were there any lawyers other than
15 Mr. Runyan present?

16 A. Not that I remember, other than Mr. Runyan
17 may have brought someone from his office with him.
18 Maybe -- maybe he did. I'm -- I'm not sure.

19 Q. And other than the growers that were
20 invited and Mr. Runyan and whoever attended from his
21 office, were -- were there any other people in
22 attendance at that meeting?

23 A. No, sir.

24 Q. Okay. Where did -- where did the meeting
25 take place in the country club?

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1 A. In a private room.

2 Q. Who arranged for that?

3 A. I think it was Jerome Vick.

4 Q. Do you remember who you invited
5 specifically?

6 A. Robert Boyette, Sonny Scott, J.F. Scott.
7 That's all I remember.

8 Q. And Mr. Vick was responsible for inviting
9 the other people?

10 A. I'm not sure exactly how that worked. My
11 guess is he probably called someone and they called
12 someone.

13 Q. Okay. How did you decide who to invite to
14 the meeting?

15 A. Well, I guess others did the same thing I
16 did; I called those that had had the most
17 conversations with me about Stabilization.

18 Q. Okay. Were there people that you called to
19 invite who decided not to attend for any reason?

20 A. None that I called.

21 Q. All the people that you called attended the
22 meeting?

23 A. Yeah.

24 Q. How about Mr. Vick; do you know whether he
25 invited people --

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1 A. I don't know.

2 Q. -- that didn't attend?

3 And did -- did you or the group of people
4 who attended the meeting actually engage Mr. Runyan's
5 law firm to represent you during the course of the
6 meeting?

7 A. I -- I don't know.

8 Q. Did you -- when you left that meeting, did
9 you feel that you had an agreement with Mr. Runyan or
10 his firm to serve as counsel for you or for any group
11 of people in the lawsuit against Stabilization?

12 A. I felt like when I left that meeting, we
13 were headed in that direction. Now, whether we had
14 particularly crossed that hurdle or not, I don't
15 know.

16 Q. Okay. What -- tell me everything you
17 remember that was discussed at that meeting.

18 MR. RUNYAN: Hang on just a second.

19 [PAUSE.]

20 MR. RUNYAN: Go ahead.

21 THE WITNESS: Excuse me, Alan?

22 MR. RUNYAN: Go ahead. Go ahead.

23 A. Don, that meeting started like any other
24 meeting; everybody talking about Stabilization's got
25 our money and we're getting nowhere talking to board

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1 members and it's time to send the money back.

2 And then Mr. Runyan talked to us about how
3 class action lawsuits work.

4 Q. Um-hum.

5 A. And that's about all I remember.

6 Q. Okay. Was there a discussion about who
7 would serve as the Plaintiffs in the lawsuit that you
8 were contemplating?

9 A. I don't remember.

10 Q. At some point, did you enter into an
11 agreement, oral or written, with Mr. Runyan's law
12 firm to represent you as counsel?

13 A. Yes, I did.

14 Q. Do you remember when that happened?

15 A. Not specifically.

16 Q. And was that in the form of a written
17 engagement letter or something else?

18 A. A written.

19 Q. And you don't recall the date of that
20 letter?

21 A. No, I do not.

22 Q. And did that -- was that engagement limited
23 to matters relating to Stabilization?

24 A. I would assume.

25 Q. Okay. And do -- were there other -- are

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1 there other parties to the engagement letter, or was
2 it just between you and Mr. Runyan's firm?

3 A. Just me and Mr. Runyan's firm.

4 Q. Do you know whether the named Plaintiffs in
5 the lawsuit have signed any sort of engagement letter
6 with Mr. Runyan's firm?

7 A. I do not know.

8 Q. You've never seen any letter like that?

9 A. No, huh-uh.

10 Q. Who -- who paid for the lunch meeting, the
11 second lunch meeting that was held to talk about a
12 possible lawsuit?

13 A. I think I remember Dale Bone paying for it.

14 Q. Was he -- he was a member at Wilson Country
15 Club?

16 A. Yes.

17 Q. Have you provided any funding for the
18 lawsuit against Stabilization in the form of legal
19 fees or anything --

20 A. No, sir.

21 Q. -- any other funding?

22 A. No, sir.

23 Q. Do you have any agreement to be responsible
24 for any fees or expenses --

25 A. I do not.

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1 Q. -- in connection with the lawsuit?
2 What's your understanding about how
3 Mr. Runyan's firm is to be paid, if you have one?

4 A. I -- I don't know.

5 MR. RUNYAN: Hold on.

6 MR. TUCKER: Hold on. He may have an
7 objection.

8 MR. RUNYAN: I think you already
9 answered it anyway. Go ahead.

10 A. I mean, I don't know. I'm not a lead
11 Plaintiff in it.

12 Q. You haven't received any bills or invoices
13 relating to the litigation?

14 A. No, sir.

15 Q. Do you have any agreement with Mr. Runyan's
16 firm or any of the named Plaintiffs or anyone else as
17 to what you or Sharp Farms will receive in the
18 litigation if there is a recovery in this action?

19 A. Absolutely not.

20 Q. To your knowledge, do any of the named --
21 do any of the named Plaintiffs have an agreement
22 concerning amounts that they will receive if there is
23 a recovery?

24 A. I don't know.

25 Q. Okay. You haven't had a conversation

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1 with --

2 A. No.

3 Q. -- any of the other named Plaintiffs about
4 that?

5 A. Huh-uh.

6 Q. Did you have any further meetings with
7 Mr. Runyan or any other lawyers after the second
8 meeting that we've discussed and before the date that
9 the lawsuit was actually filed?

10 A. Not that I'm aware of.

11 Q. What involvement, other than what we've
12 discussed, did you have in the decision to actually
13 proceed with the filing of a lawsuit?

14 A. What part did I play?

15 Q. Yes. In -- in that -- in the decision
16 process to proceed with the filing of the lawsuit.

17 A. I didn't play any part in the
18 decision-making process. I was more of a cheerleader
19 encouraging those that were involved to go for it.

20 Q. Do you know how the named Plaintiffs were
21 identified, how it was determined who would serve as
22 a named Plaintiff?

23 A. I do not.

24 Q. They were all people that either you or
25 Mr. Vick had brought to the second meeting; is that

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1 correct?

2 A. Or possibly Kay Fisher or others. I mean,
3 as I explained, when one person called one --

4 Q. Right.

5 A. -- then they may have called someone else.
6 I don't know how they all got there.

7 Q. And did you ever have any discussion with
8 anyone about serving as a named Plaintiff yourself in
9 the lawsuit?

10 A. Yes, I have.

11 Q. Who have you discussed that with?

12 A. Mr. Runyan and Mr. Vick.

13 Q. Okay. And did you have that conversation
14 with Mr. Runyan at a time when he was engaged as your
15 lawyer, engaged to represent you; or was that prior
16 to the time that you engaged Mr. Runyan?

17 A. I don't remember.

18 Q. Why did you decide not to serve as a named
19 representative in the lawsuit against Stabilization?

20 A. Out of respect for my father.

21 Q. Explain that to me a little bit, if you
22 would.

23 A. When I approached my father about this --
24 and he is burning mad over what's happening with the
25 money in Stabilization -- that he looked at me and he

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1 said, "At my age, I do not want to be involved in any
2 litigation over anything, period. Not just
3 stabilization, but anything else."

4 And out of respect for him, I am not a lead
5 Plaintiff and Sharp Farms is not a lead Plaintiff.

6 Q. And you individually are not a member of
7 stabilization, correct?

8 A. That's correct.

9 Q. So to the extent that you were to be
10 involved in the lawsuit, it would have had to have
11 been through Sharp Farms Partnership or Sharp Farms,
12 Inc.?

13 A. That's correct.

14 Q. Who are the only entities who hold a
15 stabilization membership?

16 A. That's correct.

17 Q. And -- and your father, who is a partner in
18 the partnership and a shareholder in Sharp Farms,
19 Inc., did not want Sharp Farms to be associated with
20 litigation of any kind; is that correct?

21 A. As a lead Plaintiff, right.

22 Q. Is there any other reason why you decided
23 not to have Sharp Farms Partnership or Sharp Farms,
24 Inc., involved directly in the lawsuit?

25 A. That's the only reason, out of respect for

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1 my father's wishes.

2 Q. And when did you communicate that
3 decision -- when was -- let me -- let me try that
4 again.

5 When did you make the decision or you and
6 your father together make the decision that Sharp
7 Farms wouldn't be involved directly as a lead
8 Plaintiff in the lawsuit?

9 A. Sometime shortly after the Wilson Country
10 Club meeting.

11 Q. At some point, you became aware that a
12 lawsuit had been prepared and filed against
13 Stabilization?

14 A. Right.

15 Q. How did you learn of that?

16 A. Well, in -- in talking to the -- the guys
17 that I knew were Plaintiffs, they were keeping me
18 informed as to what the progress of it was.

19 Q. Once the decision was made that Sharp Farms
20 wouldn't be involved directly in -- as a -- as a
21 named Plaintiff in the lawsuit, did -- did your role
22 change in relation to the -- this process of deciding
23 whether to sue and how the lawsuit would be
24 prosecuted?

25 A. No. You see, I don't have a role in that

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