



returned a verdict in favor of the Plaintiff with respect to the issues of liability and wilfulness. Thereafter, on November 30, 1998, the Court, by Order, accepted the jury's verdict and entered judgment against Defendant on the issues of liability and wilfulness.

2. The Commission and Defendant, being desirous of settling this action by an appropriate Consent Decree ("Decree"), agree to the jurisdiction of this Court over the parties and the subject matter of this action, and agree to the power of this Court to enter a Consent Decree enforceable against Defendant.

3. This Decree, being voluntarily entered into by the parties, shall not constitute an adjudication on the merits of the damages phase of this case.

4. This Decree is final and binding upon the parties as to the issues resolved, as well as upon their successors and assigns. Furthermore, the parties agree to defend this Consent Decree should it be challenged by a non-party.

5. The parties agree that this Consent Decree fairly resolves the issues alleged in this lawsuit, and constitutes a complete resolution of all of the Commission's claims of age discrimination under the ADEA arising from Defendant's hiring practices at its Omaha, Nebraska facility during the period 1988 through 1996.

6. For the purpose of amicably resolving disputed claims, the parties join with the Commission in requesting this Court to adjudge as follows:

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

## II. JURISDICTION

7. The parties stipulate to the jurisdiction of the Court over the parties and subject matter of this action, and have waived the entry of findings of fact and conclusions of law.

8. The duration of this Decree shall be three years from the date of signing by the Court, subject to the reporting provisions at Section IV(D).

## III. ISSUES RESOLVED

9. This Decree resolves all claims for damages arising out of the issues and claims set forth in Civil Action No. 96-CV-644 and constitutes a complete resolution of all claims of age discrimination under the ADEA arising from Defendant's hiring practices regarding truck drivers at its Omaha, Nebraska facility during the period 1988 through 1996.

10. Defendant and its officers, agents, employees, successors, and all other persons in active concert or participation with any of them will not interfere with the relief herein ordered, but shall cooperate in the implementation of this Decree.

## IV. COMPLIANCE

### A. MONETARY RELIEF

11. Defendant agrees to pay a total of Seven Hundred Sixty-Nine Thousand Dollars (\$769,000.00) ("Settlement Amount") to the aggrieved individuals in this action as payment for back pay, liquidated damages and interest.

a. Payment of one half the total Settlement Amount set forth in Section IV(A)(11), above, shall be paid to the Plaintiff on behalf of the aggrieved individuals on or before July 21, 1999. Payment of the remaining one half of the total Settlement Amount set forth in Section IV(A)(11),

above, shall be paid to the Plaintiff on behalf of the aggrieved individuals on or before March 1, 2000.

b. The EEOC shall have the discretion to determine the appropriate distribution of the Settlement Amount set forth in Section IV(A)(11), above, to the aggrieved individuals. This discretion specifically includes the right to identify which of the individuals was aggrieved, and thus are entitled to payments, and the amount of any such payment. Within ten (10) days after the EEOC has made payments to the aggrieved individuals, the EEOC shall notify Defendant of the identity of the aggrieved individuals to whom payment was made and the amount of the payments to such individuals. Within fifteen (15) days of receiving EEOC's notification of the identity of aggrieved individuals and amounts paid, Defendant shall issue a 1099 tax form for each such individual and deliver said form to the individual. Also within fifteen (15) days, Defendant shall send a copy of each 1099 tax form to the EEOC.

c. In the event that any portion of the Settlement Amount has not been distributed as required by this Consent Decree after a period of three hundred (300) days has elapsed from the date on which the settlement checks were mailed, then the remaining amounts from the Settlement Amount shall be paid, subject to such further orders from the Court, to one or more not-for-profit organizations, to be designated by the Commission, which provides assistance to workers, age 40 and over, in the Omaha area. In no event, however, shall such funds revert back to Defendant.

d. If any aggrieved individual has died or dies at any time before issuance of checks to any such person pursuant to this Decree, the estate, personal representative, or heir(s) of

that person shall, upon the Court's approval, receive the check that the deceased aggrieved individual would otherwise have received.

e. Defendant shall pay all bank fees, escrow fees and mailing costs associated with the payment of monetary relief under this Decree, including, but not limited to, the opening and maintaining of an interest bearing escrow account to hold the Settlement Amount funds and the issuance of 1099 tax forms to the aggrieved individuals. The Defendant agrees that the financial institution in which the escrow account is opened shall maintain a branch or office in Denver, Colorado. Copies of all statements provided by the bank to the Defendant shall be provided to Plaintiff within five (5) days of receipt by Defendant. The account shall be set up such that any and all disbursements therefrom shall be made subject to the written direction of the Plaintiff, and no sums may be disbursed therefrom without the written approval of Plaintiff. Any interest earned in the account shall be disbursed only as directed, in writing, by the Plaintiff.

#### **B. INJUNCTIVE RELIEF**

12. During the term of this Consent Decree, Defendant, its officers, agents, successors and other persons in active concert or participation with it, or any of them, is enjoined from discriminating against any of its employees or applicants on the basis of age, forty and over.

13. During the term of this Consent Decree, Defendant, its officers, agents, successors and other persons in active concert or participation with it, or any of them, is enjoined from engaging in reprisal or retaliation of any kind against any person because of such person's opposition to any practice made unlawful under the ADEA, because of such person's filing a charge, testifying or participating in any manner in any investigation, proceeding or hearing under the ADEA, because

such person was identified as a witness or possible witness for the Commission, because such person participated in any manner in this action or in the investigation giving rise to this action, or because such person is designated as an aggrieved individual under this Decree.

**C. TAX TREATMENT OF INDIVIDUAL  
CASH SETTLEMENT AMOUNTS  
FOR AGGRIEVED INDIVIDUALS**

14. The parties agree that each aggrieved individual that receives a portion of the Settlement Amount shall be responsible for payment of his taxes upon the amount he receives.

**D. RECORD KEEPING  
AND REPORTING PROVISIONS**

15. Defendant shall maintain all records concerning its implementation of this Consent Decree during the term of the Decree. Defendant shall also maintain, and keep available for inspection and copying by the Commission, all records relating to applicants and hiring for truck driver positions. The Commission shall have the right to interview any personnel employed by Defendant for the purpose of determining Defendant's compliance with the terms of this Consent Decree. In the event the Commission exercises its right to interview personnel pursuant to this paragraph, said interviews shall be scheduled with due regard to the convenience of the individual to be interviewed.

16. Each party shall bear its own costs in conjunction with the maintenance of records, preparation of any report, access or copying of records or interviews of employees.

17. Defendant shall provide six (6) semi-annual reports for each six-month period following the date the Court signs the Decree. The report shall be due thirty days following the end

of the respective six-month period. The last report shall be submitted to the Commission two weeks prior to the date on which the Consent Decree is to expire.

18. Each report shall provide the following information: the name, address, telephone number, date of birth and date of application of each person that submitted an application for a truck driver position at the Omaha facility during the preceding six month period, date of hire, if applicable, reason for not hiring, if applicable, and the name of the decision-maker(s) responsible for the decision to hire or not hire the applicant. In the event that the Omaha facility closes during the duration of this Decree, the report shall include the same information as set forth above for each person that submitted an application to the Kansas City facility of Defendant.

#### **E. POSTING OF NOTICE**

19. Within fifteen (15) days of the entry of this Consent Decree, Defendant shall post and keep posted for the duration of this Decree, in a conspicuous place in its Omaha facility, where notices to employees and applicants for employment are customarily kept or posted, the Notice attached as Attachment A to this Decree. Defendant shall certify to the Commission, in writing, within sixteen (16) days of entry of this Decree that the Notice has been properly posted. In the event that the Omaha facility closes, Defendant shall post and keep posted for the duration of this Decree, in a conspicuous place in its Kansas City facility, where notices to employees and applicants for employment are customarily kept or posted, the Notice attached as Attachment A to this Decree.

## F. TRAINING

20. During the term of this Decree, Defendant shall provide annual training regarding all federal laws pertaining to employment discrimination with emphasis on the ADEA to all management employees in Nebraska, and those who participate in hiring, termination, or other decisions affecting the terms and conditions of employment at Defendant's Omaha facility, and/or who participate in the formulation and/or implementation of Defendant's short term and/or long term hiring goals and strategies, if any. In the event that the Omaha facility closes, Defendant shall continue such training at the expanded Kansas City facility in lieu thereof. The individuals to be trained shall be those holding the following jobs with Defendant at the Omaha facility, or Kansas City facility, as appropriate:

Division President

Division Human Resources Manager, if any

Operations Manager

Transportation Manager

Fleet Administrator

Fleet Supervisor

The individual holding the position of Regional Human Resource Director for the Defendant's region in which both the Omaha facility and the Kansas City facility are located shall also attend the seminar training sessions. Defendant shall deliver to the Commission within thirty (30) days of any training the list of individuals holding the jobs titled above.



21. The first seminar-training session shall be conducted within six (6) months of the entry of this Decree; however, in the event that the Omaha facility is closed before six (6) months from entry of this Decree, the first seminar training session may be delayed until thirty (30) days following the closing of the Omaha facility and conducted at the Kansas City facility. During the succeeding years, the seminar training session shall be conducted between ten and thirteen months after the completion of the preceding session.

22. Initially, the consultant/lecturer shall be George C. Rozmarin. The training materials shall be prepared by the consultant/lecturer and the first seminar training session shall also be conducted with a view toward training Defendant's training personnel so that such personnel can not only conduct future mandatory training under this Decree but also export the materials and related training to other regions and distribution facilities of Defendant. The contents of the training shall be submitted to the Commission for approval and comment not less than sixty (60) days prior to the proposed training session. The Commission shall have fifteen days from date of receipt to accept or require modifications of the proposed contents of the training for the seminar.

23. Each seminar training session shall be no less than two hours of instruction. All personnel designated in paragraph 20 above shall both register and attend the seminar training session. The registry of attendance shall be retained by Defendant for the duration of this Decree.

24. The seminars shall include the subject matter of what includes age discrimination, that age discrimination in recruiting, hiring, firing, layoff, compensation, assignment or other terms, conditions or privileges of employment violates the ADEA, how to prevent age discrimination, how to provide a work environment free of age discrimination; to whom and by what means

employees/applicants may complain if they believe they have been subjected to age discrimination in the workplace; Defendant's obligations under this Decree; Defendant's statutory obligations under the ADEA in general; and in particular its obligation not to discriminate on the basis of age in employment decisions concerning the hiring of truck drivers; and objective, non-discriminatory decision making and proper procedures for hiring.

25. The Commission, at its discretion, may designate one or more Commission representatives to attend and fully observe any and all of the mandatory seminar-training sessions described above.

#### **G. APOLOGY**

26. By July 1, 1999, Defendant shall mail to each aggrieved individual that testified at the trial of this matter on the issue of liability a letter of apology, which is attached to this Decree as Attachment B. This letter shall be printed on Defendant's letterhead and signed by the Defendant's President. In addition, by July 1, 1999, a copy of each letter of apology shall be sent to the EEOC.

#### **V. RETENTION OF JURISDICTION AND FILING OF DECREE**

27. This Court shall retain jurisdiction of this cause for purposes of compliance with this Decree and entry of such further orders or modifications as may be necessary or appropriate to effectuate equal employment opportunities for employees. Upon submission of the final report referenced at Section IV(D), and the expiration of a period of fifteen (15) days after submission of said report, within which the Commission has not filed an objection thereto, the Commission and Defendant shall promptly file a Joint Stipulation for Dismissal with Prejudice ("Joint Stipulation")

of this civil action, upon which filing this Decree shall automatically dissolve, and this Civil Action shall be dismissed with prejudice. If the Commission files an objection to the final report within said 15-day period, the Parties will file the Joint Stipulation promptly after the Court's resolution of the Commission's objection.

#### **VI. ENFORCEMENT**

28. There is no private right of action to enforce Defendant's obligations under the Decree and only the Commission and Defendant, or their successors or assigns may enforce compliance herewith.

29. Enforcement may be had by the Commission or Defendant petitioning the Court for enforcement of the terms of this Decree.

#### **VII. EEOC AUTHORITY**

30. With respect to matters or charges outside the scope of this Decree, this Decree shall in no way limit the powers of the Commission to seek to eliminate unrelated employment practices or acts made unlawful by any of the statutes over which the EEOC has enforcement authority.

#### **VIII. COSTS AND ATTORNEY'S FEES**

31. Each party shall be responsible for and shall pay its own costs and attorney's fees.

IX. NOTICE

32. Any notice, report, or communication required under the provisions of this Decree shall be sent by certified mail, postage prepaid, to the appropriate parties as follows:


Regional Attorney  
Denver District Office  
Equal Employment  
Opportunity Commission  
303 E. 17th Avenue, Suite 510  
Denver, CO 80203

and

Charles Gotch, Esq.  
Cassem, Tierney, Adams,  
Gotch & Douglas  
8805 Indian Hills Drive  
Suite 300  
Omaha, Nebraska 68114-4070

SO ORDERED this 22 day of JUNE, 1999.

BY THE COURT:

  
Joseph F. Bataillon  
United States District Judge

APPROVED AS TO FORM:

Joseph H. Mitchell  
Regional Attorney

C. Emanuel Smith  
Supervisory Trial Attorney



Mia E. Bitterman  
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
303 East 17th Avenue, Suite 510  
Denver, CO 80203  
(303) 866-1374

Attorneys for Plaintiff



Charles Gotch, Esq.  
Cassem, Tierney, Adams,  
Gotch & Douglas  
8805 Indian Hills Drive  
Suite 300  
Omaha, Nebraska 68114-4070

Attorney for Defendant

BY CONSENT:

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

BY: Joseph H. Mitchell Date 6/17/99  
Joseph H. Mitchell  
Regional Attorney

NEBCO EVANS DISTRIBUTION, INC.

BY: Raymond Marshall Date 6/19/99  
Raymond Marshall  
President

**ATTACHMENT A**

# NOTICE

NEBCO EVANS DISTRIBUTION, INC. WISHES TO EMPHASIZE ITS FUNDAMENTAL POLICY OF PROVIDING EQUAL EMPLOYMENT OPPORTUNITY AT ALL LOCATIONS AND IN ALL AREAS OF EMPLOYMENT PRACTICES, AND TO ENSURE THAT THERE SHALL BE NO DISCRIMINATION AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT ON THE BASIS OF DISABILITY, RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, OR AGE..

NEBCO EVANS DISTRIBUTION, INC. SUPPORTS AND WILL COMPLY WITH SUCH FEDERAL LAW IN ALL RESPECTS AND WILL NOT TAKE ANY ACTION AGAINST EMPLOYEES BECAUSE THEY HAVE EXERCISED THEIR RIGHTS UNDER THE LAW.

NEBCO EVANS DISTRIBUTION, INC. WILL TAKE PROMPT ACTION REGARDING ANY COMPLAINT RECEIVED FROM ANY EMPLOYEE OF DISCRIMINATION BY THOROUGHLY INVESTIGATING THE ALLEGATIONS AND BY TAKING APPROPRIATE DISCIPLINARY ACTION AGAINST THE VIOLATOR OF ITS POLICY THAT PROHIBITS SUCH DISCRIMINATORY BEHAVIOR. ANY EMPLOYEE WHO BELIEVES THAT HE OR SHE IS BEING SUBJECTED TO DISCRIMINATION SHOULD REPORT SUCH CONDUCT IMMEDIATELY TO HIS/HER IMMEDIATE SUPERVISOR OR, ALTERNATIVELY, IF THAT EMPLOYEE PREFERS, THE CONDUCT MAY BE REPORTED TO THE EEOC IN WRITING OR BY TELEPHONE AT: U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 303 E. 17TH AVENUE, SUITE 510, DENVER, CO 80203; TELEPHONE (303) 866-1300.

BY ORDER OF COURT, THIS NOTICE SHALL REMAIN POSTED FOR A PERIOD OF THREE (3) YEARS FROM THE DATE WHICH APPEARS BELOW.

NEBCO EVANS DISTRIBUTION, INC.

BY: \_\_\_\_\_  
Raymond Marshall  
President

DATE: \_\_\_\_\_

20



**ATTACHMENT B**

[NEBCO EVANS LETTERHEAD]

Date

Mr. Truck Driver Applicant  
Address

Dear Mr. :

As you know, last November, you were called upon to testify in the age discrimination lawsuit, Equal Employment Opportunity Commission v. NEBCO EVANS Distribution, Inc. The jury found that NEBCO EVANS' hiring practices were discriminatory. We have accepted the jury's findings and agreed to settle this case with the EEOC. We are writing now to issue an apology to those who testified at the trial.

We are sincerely sorry if you were not given a fair opportunity to obtain employment at NEBCO EVANS because of your age. Discrimination is absolutely against our company policies and we have reaffirmed our commitment to being an equal opportunity employer. All qualified applicants will have a fair and equal opportunity to obtain employment with NEBCO EVANS.

We wish you the best in your future endeavors.

Yours truly,

NEBCO EVANS Distribution, Inc.

By: Raymond Marshall  
President

20