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RESOLUTION #

Resolution Authorizing Sauk County to Enter Into the Settlement Agreement with The Kroger Co. and Agree to the Terms of Addendum Two to the MOU Allocating Settlement Proceeds

Resolution offered by the Executive and Legislative Committee

Resolved by the Board of Supervisors of Sauk County, Wisconsin:

WHEREAS, the County Board of Supervisors previously authorized the County to enter into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC and Simmons Hanly Conroy LLC (the "Law Firms") to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the "Opioid Defendants") in an effort to hold the Opioid Defendants financially responsible for the County's expenditure of vast money and resources to combat the opioid epidemic;

WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants;

WHEREAS, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties and all Wisconsin cases were coordinated with thousands of other lawsuits filed against the same or substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the "Litigation");

WHEREAS, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and Walworth) hired separate counsel and joined the Litigation;

WHEREAS, since the inception of the Litigation, the Law Firms have coordinated with counsel from around the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to prepare the County's case for trial and engage in extensive settlement discussions with the Opioid Defendants;

WHEREAS, the settlement discussions with The Kroger Co. (the "Settling Defendant") resulted in a tentative agreement as to settlement terms pending agreement from the County and other plaintiffs involved in the Litigation;

WHEREAS, copies of the settlement agreement relating to the Settling Defendant ("Settlement Agreement") representing the terms of the tentative settlement agreement with the Settling Defendant has been made available at <https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf>;

WHEREAS, the Settlement Agreement provides, among other things, for the payment of certain sums to Participating Subdivisions (as defined in the Settlement Agreement) upon the occurrence of certain events detailed in the Settlement Agreement;

WHEREAS, the County is a Participating Subdivision in the Settlement Agreement and has the opportunity to participate in the benefits associated with the Settlement Agreement provided the County (a) approves the Settlement Agreement; (b) approves the Addendum Two

to the Memorandum of Understanding allocating proceeds from the Settlement Agreement (“MOU”) among the various Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (“Addendum Two”); and (c) the Legislature’s Joint Committee on Finance approves the terms of the Settlement Agreement;

WHEREAS, pursuant to Section 12 of the State-Local MOU entered into between the Wisconsin Participating Subdivisions and the Attorney General of the State of Wisconsin (“State-Local MOU”), the Attorney General has provided notice that the terms of the State-Local MOU shall apply to the Settlement Agreement and all proceeds of such Settlement Agreement;

WHEREAS, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes relating to the settlement of all or part of the Litigation;

WHEREAS, pursuant to Wis. Stat. § 165.12(2), the Legislature’s Joint Committee on Finance is required to approve the Settlement Agreement;

WHEREAS, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all or part of the Litigation are distributed 70% to local governments in Wisconsin that are parties to the Litigation and 30% to the State;

WHEREAS, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement Agreement must be deposited in a segregated account (the “Opioid Abatement Account”) and may be expended only for approved uses for opioid abatement as provided in the Settlement Agreement;

WHEREAS, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government against the Opioid Defendants filed after June 1, 2021;

WHEREAS, the definition of Participating Subdivisions in the Settlement Agreement recognizes a statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a result, the only Participating Subdivisions in Wisconsin are those counties and municipalities that were parties to the Litigation (or otherwise actively litigating a claim against one, some, or all of the Opioid Defendants) as of June 1, 2021;

WHEREAS, the Legislature’s Joint Committee on Finance is not statutorily authorized or required to approve the allocation of proceeds of the Settlement Agreement among Wisconsin Participating Subdivisions;

WHEREAS, the Wisconsin Participating Subdivisions previously negotiated and approved the allocation of proceeds among themselves, which allocation is reflected in Exhibit A to the MOU, which is an agreement between all of the entities identified in the Allocation MOU as to how the proceeds payable to those entities under the Settlement Agreements will be allocated;

WHEREAS, the County and all other Wisconsin Participating Subdivisions agreed to and entered into that certain Addendum to the MOU (“Addendum One”) that provided for allocation of settlement proceeds from previous settlements with certain pharmacies and manufacturers according to the same percentages as that provided in the MOU;

WHEREAS, the County has been informed as to the deadlines related to the effective dates of the Settlement Agreement, the ramifications associated with the County’s refusal to enter into the Settlement Agreement, the form of Addendum Two and an overview of the process for

103 finalizing the Settlement Agreements and such information, together with additional resources
104 related to the settlement can be found at <https://nationalopioidsettlement.com/kroger-co->
105 settlement/;

106
107 **WHEREAS**, the County, by this Resolution, shall deposit the proceeds of the Settlement
108 Agreement consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b);
109

110 **WHEREAS**, pursuant to the County's engagement agreement with the Law Firms, the
111 County shall pay up to an amount equal to 25% of the proceeds from successful resolution of all
112 or part of the Litigation, whether through settlement or otherwise, plus the Law Firms' costs and
113 disbursements, to the Law Firms as compensation for the Law Firms' efforts in the Litigation and
114 any settlement;
115

116 **WHEREAS**, the Law Firms anticipate making application to the national fee fund
117 established in the Settlement Agreement seeking payment, in whole or part, of the fees, costs,
118 and disbursements owed the Law Firms pursuant to the engagement agreement with the County;
119

120 **WHEREAS**, it is anticipated the amount of any award from the fee fund established in the
121 Settlement Agreements will be insufficient to satisfy the County's obligations under the
122 engagement agreement with the Law Firms;
123

124 **WHEREAS**, the County, by this Resolution, and pursuant to the authority granted the
125 County in the applicable Order emanating from the Litigation in relation to the Settlement
126 Agreement and payment of attorney fees, shall authorize and direct the escrow agent responsible
127 for the receipt and distribution of the proceeds from the Settlement Agreement to establish an
128 account for the purpose of segregating funds to pay the fees, costs, and disbursements of the
129 Law Firms owed by the County (the "Attorney Fees Account") in order to fund a local "backstop"
130 for payment of the fees, costs, and disbursements of the Law Firms;
131

132 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees Account
133 and the fee fund established in the Settlement Agreement exceed an amount equal to 25% of the
134 amounts allocated to the County by virtue of the Addendum Two (Exhibit A to the MOU);
135

136 **WHEREAS**, the intent of this Resolution is to authorize the County to enter into the
137 Settlement Agreement, the Addendum Two, establish the County's Opioid Abatement Account,
138 and establish the Attorney Fees Account; and
139

140 **WHEREAS**, the County, by this Resolution, shall authorize the County's Administrator to
141 finalize and execute any other document or agreement necessary to effectuate the Settlement
142 Agreement and the other agreements referenced herein;
143

144 **NOW, THEREFORE, BE IT RESOLVED:** the County Board of Supervisors hereby
145 approves:
146

- 147 1. The execution of the Settlement Agreement and any and all documents ancillary
148 thereto and authorizes the Administrator or designee to execute same.
149
- 150 2. The final negotiation and execution of Addendum Two in form substantially similar
151 to that presented with this Resolution and any and all documents ancillary thereto
152 and authorizes the Administrator or designee to execute same upon finalization
153 provided the percentage share identified as allocated to the County is substantially

similar to that identified in the Addendum Two provided to the Board with this Resolution.

3. The execution by the Administrator or designee of any additional documents or agreements for the receipt and disbursement of the proceeds of the Settlement Agreement.

BE IT FURTHER RESOLVED: all proceeds from the Settlement Agreement not otherwise directed to the Attorney Fees Account shall be deposited in the County's Opioid Abatement Account. The Opioid Abatement Account shall be administered consistent with the terms of this Resolution, Wis. Stat. § 165.12(4), and the Settlement Agreement.

BE IT FURTHER RESOLVED: the County hereby authorizes the establishment of an account separate and distinct from any account containing funds allocated or allocable to the County which shall be referred to by the County as the "Attorney Fees Account." An escrow agent shall deposit a sum equal to up to, but in no event exceeding, an amount equal to 20% of the County's proceeds from the Settlement Agreement into the Attorney Fees Account. If the payments to the County are not enough to fully fund the Attorney Fees Account as provided herein because such payments are made over time, the Attorney Fees Account shall be funded by placing up to, but in no event exceeding, an amount equal to 20% of the proceeds from the Settlement Agreement attributable to Local Governments (as that term is defined in the MOU) into the Attorney Fees Account for each payment. Funds in the Attorney Fees Account shall be utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to the engagement agreement between the County and the Law Firms provided, however, the Law Firms shall receive no more than that to which they are entitled under their fee contract when considering the amounts paid the Law Firms from the fee fund established in the Settlement Agreement and allocable to the County. The Law Firms may make application for payment from the Attorney Fees Account at any time and the County shall cooperate with the Law Firms in executing any documents necessary for the escrow agent to make payments out of the Attorney Fees Account.

BE IT FURTHER RESOLVED that all actions heretofore taken by the Board of Supervisors and other appropriate public officers and agents of the County with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

Approved for presentation to the County Board by the Executive & Legislative Committee, this 2nd day of July, 2023

Consent Agenda Item: [] YES [X] NO

Fiscal Impact: [x] None [] Budgeted Expenditure [] Not Budgeted

Vote Required: Majority = _____ 2/3 Majority = X 3/4 Majority = _____

The County Board has the legal authority to adopt: Yes X No _____ as reviewed by the Corporation Counsel, _____, Date:

Offered and passage moved by:

Supervisor Tim McCumber

☐ Aye ☐ Nay ☐ Abstain ☐ Absent

Supervisor Dennis Polivka

☐ Aye ☐ Nay ☐ Abstain ☐ Absent

Supervisor Smooth Detter

☐ Aye ☐ Nay ☐ Abstain ☐ Absent

Supervisor Lynn Eberle

☐ Aye ☐ Nay ☐ Abstain ☐ Absent

Supervisor Pat Rego

☐ Aye ☐ Nay ☐ Abstain ☐ Absent

Supervisor Marty Krueger

☐ Aye ☐ Nay ☐ Abstain ☐ Absent

Supervisor Sheila Carver

☐ Aye ☐ Nay ☐ Abstain ☐ Absent

Supervisor Brian Peper

☐ Aye ☐ Nay ☐ Abstain ☐ Absent

Fiscal Note: The total estimated settlement from the settlement with the Kroger Co. is up to \$1.2 billion overall. Wisconsin is expected to receive 1.8898205597% of the payout from the settlement, which will be made in 11 yearly allocations. Sauk County's share of that settlement is approximately 0.01226%. It is unclear what the actual total amount that Sauk County will receive after 11 years, due in part to legal fees that may be paid to plaintiff's counsel as well as the payment allocation set out in Wis. Stat. §165.12.

MIS Note: No direct impact.

**ADDENDUM TWO TO WISCONSIN LOCAL GOVERNMENT
MEMORANDUM OF UNDERSTANDING**

WHEREAS, the undersigned local governments (“Local Governments”) entered into that certain Memorandum of Understanding relating to, among other things, the allocation of the proceeds of the settlements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (“Original MOU”); and

WHEREAS, the undersigned Local Governments entered into that certain Addendum to the MOU relating to, among other things, the allocation of the proceeds of the settlements with Walgreens, Walmart, CVS, Teva, and Allergan (“Addendum 1” and, together with the Original MOU, the “MOU”); and

WHEREAS, the settlement discussions with The Kroger Co. has resulted in a tentative agreement as to settlement terms (“Kroger Settlement Agreement”) pending agreement from the State of Wisconsin, the Local Governments and other parties involved in the Litigation; and

WHEREAS, the Local Governments intend this Addendum Two to the MOU (“Addendum Two”) to effectuate the terms of the Kroger Settlement Agreement and allocate the proceeds of the Kroger Settlement Agreement to each of the Local Governments in the same manner and same percentages as set forth in the MOU and Exhibit A to the Original MOU, a copy of which is appended to this Addendum Two with the elimination of the dollar amounts attributable to the settlements referenced in the Original MOU.

NOW, THEREFORE, the Local Governments enter into this Addendum Two upon the terms described herein.

1. The Local Governments ratify, confirm and agree to in all respects the MOU. By this Addendum Two, the Local Governments agree that any and all proceeds of the Kroger Settlement Agreement shall be distributed, allocated and otherwise disposed of in the same manner and same percentages as set forth in the MOU and Exhibit A to the Original MOU. Terms not defined in this Addendum Two shall be given the definition ascribed to such terms in the MOU and the Kroger Settlement Agreement.
2. Nothing in this Addendum Two is intended to alter or change any Local Government’s right to pursue its own claim. Rather, the intent of this Addendum Two is to provide a mechanism for the receipt and expenditure of Opioid Funds, as that term is defined in the MOU.
3. This MOU may be executed in counterparts. Electronic signatures shall in all respects be considered valid and binding.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereby execute this Addendum Two as of the date set forth below.

ON BEHALF OF THE LOCAL GOVERNMENTS:

_____	Date: _____
Adams County	
Printed: _____	

_____	Date: _____
Ashland County	
Printed: _____	

_____	Date: _____
Barron County	
Printed: _____	

_____	Date: _____
Bayfield County	
Printed: _____	

_____	Date: _____
Brown County	
Printed: _____	

_____	Date: _____
Buffalo County	
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Burnett County	
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Calumet County
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Chippewa County
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Clark County
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Columbia County
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Crawford County
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Dane County
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Dodge County
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Door County
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Douglas County
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Superior, City of
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Dunn County
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Eau Claire County
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Florence County
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Fond Du Lac County
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Forest County
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Grant County
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Green County
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Green Lake County
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Iowa County
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Iron County
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Jackson County
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Jefferson County
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Juneau County
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Kenosha County
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Kenosha, City of
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Pleasant Prairie, City of
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Kewaunee County
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La Crosse County
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Lafayette County
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Langlade County
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Lincoln County
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Manitowoc County
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Marathon County
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Marinette County
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Menominee County
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Milwaukee County
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Greenfield, City of
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Milwaukee, City of
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Oak Creek, City of
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South Milwaukee, City of
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Wauwatosa, City of
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West Allis, City of
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Monroe County
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Oneida County
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Racine County
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Mount Pleasant, City of
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Sturtevant, City of
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Union Grove, City of
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Yorkville Town
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Richland County
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Sawyer County
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Shawano County
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Sheboygan County
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Vernon County
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Vilas County
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Walworth County
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Washburn County
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Washington County
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Waukesha County
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Waupaca County
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Waushara County
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Winnebago County
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Wood County
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Date: _____

EXHIBIT A

Allocation of Proceeds Among the Local Governments

The following chart is agreed upon by and between the Local Governments identified below as representing the allocation of proceeds from the Settlement Agreements following (a) allocation to the Local Governments; and (b) allocation to the Attorney Fee Fund. The Local Governments shall cooperate with one another and the State in the negotiation and execution of an Escrow Agreement to effectuate the terms of the State-Local Government MOU, the Local Government MOU and the allocation set forth below. **The monetary value associated with the percentages below will be calculated consistent with the Settlement Agreements.**

Local Government Type	Wisconsin Litigating Local Government	Allocation Percentage
County	Adams County	0.327%
County	Ashland County	0.225%
County	Barron County	0.478%
County	Bayfield County	0.124%
County	Brown County	2.900%
County	Buffalo County	0.126%
County	Burnett County	0.224%
County	Calumet County	0.386%
County	Chippewa County	0.696%
County	Clark County	0.261%
County	Columbia County	1.076%
County	Crawford County	0.195%
County	Dane County	8.248%
County	Dodge County	1.302%
County	Door County	0.282%
County	Douglas County	0.554%
City	Superior	0.089%
County	Dunn County	0.442%
County	Eau Claire County	1.177%
County	Florence County	0.053%
County	Fond Du Lac County	1.196%
County	Forest County	0.127%
County	Grant County	0.498%
County	Green County	0.466%
County	Green Lake County	0.280%
County	Iowa County	0.279%
County	Iron County	0.061%

County	Jackson County	0.236%
County	Jefferson County	1.051%
County	Juneau County	0.438%
County	Kenosha County	3.712%
City	Kenosha	0.484%
City	Pleasant Prairie	0.059%
County	Kewaunee County	0.156%
County	La Crosse County	1.649%
County	Lafayette County	0.134%
County	Langlade County	0.312%
County	Lincoln County	0.350%
County	Manitowoc County	1.403%
County	Marathon County	1.259%
County	Marinette County	0.503%
City	Marinette	0.032%
County	Marquette County	0.246%
County	Menominee County	0.080%
County	Milwaukee County	25.220%
City	Cudahy	0.087%
City	Franklin	0.155%
City	Greenfield	0.163%
City	Milwaukee	7.815%
City	Oak Creek	0.166%
City	South Milwaukee	0.096%
City	Wauwatosa	0.309%
City	West Allis	0.378%
County	Monroe County	0.655%
County	Oconto County	0.336%
County	Oneida County	0.526%
County	Outagamie County	1.836%
County	Ozaukee County	1.036%
County	Pepin County	0.055%
County	Pierce County	0.387%
County	Portage County	0.729%
County	Price County	0.149%
County	Racine County	3.208%
City	Mount Pleasant	0.117%
City	Sturtevant	0.018%
City	Union Grove	0.007%

City	Yorkville Town	0.002%
County	Richland County	0.218%
County	Rock County	2.947%
County	Rusk County	0.159%
County	Sauk County	1.226%
County	Sawyer County	0.258%
County	Shawano County	0.418%
County	Sheboygan County	1.410%
County	St Croix County	0.829%
County	Taylor County	0.159%
County	Trempealeau County	0.320%
County	Vernon County	0.322%
County	Vilas County	0.468%
County	Walworth County	1.573%
County	Washburn County	0.185%
County	Washington County	1.991%
County	Waukesha County	6.035%
County	Waupaca County	0.606%
County	Waushara County	0.231%
County	Winnebago County	2.176%
County	Wood County	0.842%