

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
DISTRICT COUNCIL 37 HEALTH AND)	
SECURITY PLAN, on behalf of itself and)	
all others similarly situated,)	
)	Civil Action No. 07-cv-10988
Plaintiff,)	
)	
v.)	
)	
MEDI-SPAN, a division of WOLTERS)	
KLUWER HEALTH, INC.,)	
)	
Defendant.)	
_____)	

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “Agreement”) is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Settlement Court, this Agreement is entered into between and among (1) the Class Representatives on behalf of themselves and the Private Payor Class (the “Plaintiffs”) and (2) Defendant Medi-Span (“Medi-Span”), a division of Wolters Kluwer Health, Inc. (“WKH”), by and through their respective counsel.

WHEREAS, there is pending in the United States District Court for the District of Massachusetts a civil proceeding captioned *New England Carpenters, et al. v. First DataBank, Inc., et al*, Civil Action No. 1:05-CV-11148-PBS in which the Plaintiffs have alleged, *inter alia*, that the defendants, First DataBank, Inc. (“FDB”) and McKesson Corporation, conducted a wrongful conspiracy to increase the so-called wholesale acquisition cost (“WAC”) to average wholesale cost (“AWP”) markup factor applied to numerous prescription pharmaceuticals through a scheme that began in late 2001 or early 2002, thereby causing members of the

proposed Private Payor Class, whose payments for pharmaceuticals are tied to the published AWP, to make substantial excess payments for those pharmaceuticals (the “FDB Litigation”).

WHEREAS, the Plaintiffs allege until 1998, Medi-Span, Inc. (“MSI”), an independent company unrelated to WKH, whose Master Drug Database (“MDDB”) competed directly with FDB’s National Drug Data Files (“NDDF”) in the relevant market of integratable drug data files in the United States.

WHEREAS, the Plaintiffs allege that in 1998, the Hearst Corporation caused FDB to be merged with the smaller MSI. Through this process, the Plaintiffs maintain that the Hearst Corporation caused FDB to become the sole United States provider of integratable drug data files, including the publication of electronic drug database pricing information such as the WAC and associated AWP for branded pharmaceutical products.

WHEREAS, in 2001, the Federal Trade Commission, after a lengthy investigation, brought suit against the Hearst Corporation and FDB claiming, among other things, that the FDB and MSI merger had been unlawful, and shortly thereafter, the Hearst Corporation agreed to a consent decree requiring the divestiture of certain MSI assets, including the MDDB, to a predecessor in interest to Wolters Kluwer Health, Inc. (“WKH”).

WHEREAS, the consent decree required FDB to provide WKH with necessary transitional and editorial services, including acquiring, processing and providing WKH with all of the pricing information contained in the MDDB, for a number of years, so that WKH could develop the knowledge, experience and infrastructure needed to independently publish the MDDB in the future.

WHEREAS, the Plaintiffs allege that between 1998 and 2004, FDB functioned as the sole collector of data populating the only available comprehensive integratable electronic drug

data systems, the NDDF and MDDB, for the pricing information ubiquitously used in the United States for reimbursement transactions in the retail pharmacy channel for branded drugs. Thus, the alleged scheme between FDB and McKesson directly effected prices published in the MDDB.

WHEREAS, contemporaneous with the filing of this Stipulation a complaint was filed in the United States District Court for the District of Massachusetts (the “Class Action”) in which the Plaintiffs have alleged, *inter alia*, that after WKH acquired the Medi-Span assets from FDB in December 2001, Medi-Span published WAC to AWP Markups based on allegedly wrongfully increased pricing information acquired from FDB, thereby causing members of the proposed Private Payor Class, whose payments for pharmaceuticals are tied to the published AWP, to make substantial excess payments for those pharmaceuticals.

WHEREAS, Medi-Span, a publisher of such collected information that is not now, nor ever was, a manufacturer, supplier, wholesaler, distributor, or seller of prescription pharmaceuticals, would have asserted a number of legal and factual defenses to the claims by the Plaintiffs and denies any wrongdoing or liability whatsoever;

WHEREAS, Class Settlement Counsel have concluded, after discovery and investigation of the facts and after carefully considering the circumstances of the Class Action, including the claims asserted in the complaint filed in the Class Action and the possible legal and factual defenses thereto, that it would be in the best interests of the Plaintiffs to enter into this Agreement, which interests include the substantial prospective value to be derived by this Settlement and the interest in avoiding the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Plaintiffs; and, further, that Class Settlement

Counsel consider the settlement set forth herein to be fair, reasonable and adequate and in the best interests of the Plaintiffs and of the proposed Private Payor Class;

WHEREAS, the proposed Private Payor Class is comprised of (1) third-party payors, including, but not limited to, self-insured employers, health and welfare plans, private health insurers (including private plans that cover government employees and/or retirees by reason of their current or past governmental employment), and (2) individual consumers (“Consumers”), in the United States, who paid for all or part of the purchase price of certain prescription pharmaceuticals based in whole or in part upon the AWP or similar data published or disseminated by Medi-Span electronically or otherwise, during the Class Period.

WHEREAS, Medi-Span, through its counsel, after vigorous, arms-length negotiations, have conditionally agreed (i) to cease to publish the AWP for pharmaceutical products, after a three year notice period, and (ii) to adjust the WAC to AWP Markup on certain pharmaceuticals, all as provided in this Agreement;

WHEREAS, Medi-Span, despite its belief that it has valid and complete defenses to the claims asserted against them in the Class Action, including without limitation, that it was not involved in and had no notice of the alleged conspiracy between FDB and McKesson, that it inherited the allegedly defective price information from FDB and that it lacked any reasonable means of correcting the allegedly defective information, has nevertheless agreed to enter into this Agreement to reduce and avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and thereby to resolve this controversy;

NOW, THEREFORE, it is agreed by and between the undersigned on behalf of Medi-Span and the Plaintiffs that any and all claims made or that could have been made against Medi-Span by Plaintiffs in the Class Action be settled, compromised and dismissed on the merits and

with prejudice and, except as hereafter provided, without costs as to Plaintiffs or Medi-Span, subject to the approval of the Settlement Court, on the following terms and conditions:

1. Private Payor Class Definition. Subject to the Settlement Court's approval, and the conditions of Paragraph 14, the undersigned agree and consent to the certification pursuant to Fed. R. Civ. P. 23(b)(1) 23(b)(2) and 23(b)(3) of the following settlement class (the "Private Payor Class") in the Class Action:

All individual persons or entities who, during the Class Period, made purchases and/or paid, whether directly, indirectly, or by reimbursement, for all or part of the purchase price of prescription pharmaceuticals, including, but not limited to, those pharmaceuticals listed on the attached Exhibit A, where any or all of the purchase price, reimbursement or payment amount was based in any part on the Average Wholesale Price, Blue Book Average Wholesale Price, or similar data published or disseminated by Medi-Span, electronically or otherwise, and which such Average Wholesale Price, Blue Book Average Wholesale Price, or similar data published or disseminated by Medi-Span, electronically or otherwise, in whole or part, was based on a wholesale survey.

Excluded from the class are Defendants, their respective present and former, direct and indirect, parents, subsidiaries, divisions, partners and affiliates; the United States government, its officers, agents, agencies and departments; the States of the United States and their respective officers, agents, agencies and departments; and all other local governments and their officers, agents, agencies, and departments.

This is to clarify further that those entities that own or operate businesses referred to commonly as pharmacy benefit managers ("PBMs") and who as part of their business operation contract with ultimate Third Party Payors of a prescription pharmaceutical benefit to perform certain services in the administration and management of that prescription pharmaceutical benefit for those ultimate Third-Party Payors are not class members under the Private Payor Class definition of this settlement. The class includes the ultimate Third Party Payors providing the prescription pharmaceutical benefit and not the PBMs with which those Third Party Payors contract with to administer or manage that prescription benefit on behalf of the class members, unless such PBMs are the fiduciary of the Third Party Payors or by contract assumed, in whole or in part, the insurance risk of that prescription pharmaceutical benefit during the Class Period.

2. General Definitions. As used in this Agreement, the following terms shall have the indicated meanings:

(A) “Class Period” means December 19, 2001 through the date the Settlement Court enters a Final Order and Judgment in the Class Action.

(B) “Consumer” means any person falling within the definition of the Private Payor Class who is a natural person or other legal entity and not a TPP. “Consumer” includes living persons as well as the executors, heirs, administrators, trustees, or other authorized representatives of deceased persons.

(C) “Consumer Class Members” means Consumers who are not Class Opt-Outs.

(D) “Court” or “Settlement Court” means the Honorable Patti B. Saris of the United States District Court for the District of Massachusetts, or if Judge Saris is not available, another judge from the United States District Court for the District of Massachusetts who will be designated by Judge Saris or who is appointed, or any subsequent court before which Medi-Span’s Counsel and Class Settlement Counsel agree to settle the claims of the Private Payor Class.

(E) “Class Member” means any person or entity falling within the definition of the Private Payor Class set forth in Paragraph 1 other than any Class Opt-Outs.

(F) “Class Settlement Counsel” means the law firms of Hagens Berman Sobol Shapiro LLP, Spector Roseman & Kodroff, P.C., Wexler Toriseva Wallace LLP, and Edelson & Associates, LLC.

(G) “Class Opt-Out” means any person or entity falling within the definition of the Private Payor Class set forth in Paragraph 1 who timely and validly submits a request for exclusion from the Private Payor Class in accordance with the procedures set forth in the

Settlement Notice. A Class Opt-Out that is a Consumer is also referred to as a “Consumer Opt-Out.” A Class Opt-Out that is a TPP is also referred to as a “TPP Opt-Out.”

(H) “Class Representatives” means the named plaintiffs who have asserted claims on behalf of themselves and a putative class in the Class Action.

(I) “FDB/Medi-Span Agreement” means that separate agreement dated as of May __, 2007, between FDB and Medi-Span. Pursuant to that separate agreement, FDB has agreed, *inter alia*, to pay certain costs and expenses associated with this Agreement.

(J) “Medi-Span Data Room” means a facility or web-based site, maintained by Class Settlement Counsel, at FDB’s expense, pursuant to the terms of the separate settlement agreement in the FDB Litigation between Class Settlement Counsel and FDB (the “FDB Settlement Agreement”) and the FDB/Medi-Span Agreement, for a period of three (3) years from the Effective Date, for the purpose of facilitating reasonable access to “Discoverable Material” from Medi-Span. Class Settlement Counsel agrees that FDB shall not be responsible for the payment of any costs or expenses associated with the creation and maintenance of the Medi-Span Data Room that exceed any costs or expenses provided for in the FDB Settlement Agreement.

“Discoverable Material” as used herein means any and all material created during the period December 19, 2001 to the date of the entry of the Final Order and Judgment, located pursuant to a reasonable search, which falls into any of the following categories:

- (a) all non-privileged materials previously produced by Medi-Span as a party or non-party in other litigation or civil proceedings which relate to the price reporting and/or price data acquisition activities of Medi-Span;
- (b) all transcripts of testimony of Medi-Span employees taken, and affidavits of Medi-Span employees filed, in any civil proceedings pertaining to the price reporting and/or price data acquisition activities of Medi-Span; and
- (c) all non-privileged documents or other materials evidencing all communications between Medi-Span and any other persons (e.g., third-party payors, pharmacy chains, independent pharmacies, pharmacy benefit managers, pharmaceutical

price reporting entities, government entities) relating to any increase in the WAC to AWP Markup in late 2001 or early 2002 or any wholesaler surveys conducted by Medi-Span in an effort to determine WAC to AWP Markups.

Medi-Span shall continue to supplement the Medi-Span Data Room with any relevant non-privileged material discovered by Medi-Span up to the date of the Final Order and Judgment as provided herein. Notwithstanding the foregoing, Discoverable Material shall not include any internal communication or communication by Medi-Span to any third-party, including without limitation any press release, e-mails, correspondence, oral communications or marketing materials, that solely relate to the this Settlement or the current implementation thereof by Medi-Span (“Excluded Communications”). For purposes of clarification, Excluded Communications shall not include communications that discuss the allegations or facts that lead to this litigation unless such discussions are included in a communication designed to discuss or explain this Settlement or the current implementation thereof by Medi-Span. As used herein the term “non-privileged materials” means all responsive materials not protected from disclosure by the attorney-client privilege, work-product immunity, trade secret or other confidentiality obligations, First Amendment, or other applicable privileges or immunities. In the event of the assertion of a privilege or immunity as to any Discoverable Material, Medi-Span shall provide Class Settlement Counsel with a privilege log containing that information required by law to demonstrate the existence of any privilege or immunity being asserted. Notwithstanding FDB’s agreement to maintain, at FDB’s expense, the Medi-Span Data Room, FDB shall not have access to any Discoverable Material provided to Class Settlement Counsel for inclusion in the Medi-Span Data Room.

(K) “Medi-Span” means Medi-Span, a division of Wolters Kluwer Health, Inc.

(L) “Effective Date” has the meaning ascribed in Paragraph 7 of this

Agreement.

(M) “Pharmaceutical Purchase” means payment or reimbursement, direct or indirect, for all or part of the cost of a pharmaceutical whose purchase price, reimbursement or payment amount, in whole or in part, was based on Medi-Span’s AWP, including, but not limited to, those pharmaceuticals listed on the attached Exhibit A, prescribed, provided or administered in the United States; including, but not limited to, the AWP-based payment or partial payment for or reimbursement of the price or part of the price of a pharmaceutical to any doctor, medical practice, hospital, pharmacy or any other health care provider, or the payment of any AWP-based co-insurance, deductible or other amount that, in whole or in part, is based on or affected by the AWP for such pharmaceuticals pursuant to an insurance agreement or other health care plan. As stated, the term “Pharmaceutical Purchases” is limited to transactions where the cost, payment, reimbursement amount or price of the pharmaceutical was based, in whole or in part, on the AWP, or similar data published or disseminated by Medi-Span, electronically or otherwise.

(N) “Plaintiffs” means the Class Representatives together with all putative members of the Private Payor Class.

(O) “Publishing Competitor” means an entity that is not a subsidiary or affiliate of Medi-Span that is engaged in the business of publishing or disseminating electronic integrateable drug information databases and has more than \$5 million in annual revenue.

(P) “Releasees” or “Released Entities” means Medi-Span, its parent, subsidiaries, and affiliates and all of their past, present and future officers, directors, trustees, employees, agents, attorneys, shareholders, predecessors, successors and assigns.

(Q) “Released Claims” means any and all known or unknown claims, demands, actions, suits, causes of action, damages whenever incurred whether compensatory or exemplary, liabilities of any nature or under any theory whatsoever, including costs, expenses,

penalties and attorneys' fees, in law or equity, that any Releasor who has not timely excluded themselves from the Private Payor Class, whether or not they object to the settlement, ever had or now has, directly, representatively, derivatively or in any capacity, arising out of any conduct, events or transactions relating to the collection, calculation, formulas, mark-up, determination, dissemination, publication of, or representations concerning, the AWP or similar data published or disseminated by Medi-Span electronically or otherwise for any prescription pharmaceuticals, including but not limited to, the allegations contained in the Class Action.

(R) "Releasors" means any and all Class Members, as well as their respective present and former, direct and indirect, parents, subsidiaries, divisions, partners and affiliates, their respective present and former stockholders, officers, directors, employees, managers, agents, attorneys and any of their legal representatives, any future operating entities created and controlled by a Class Member (not including any successor of an Opt-Out), and any predecessors, successors, heirs, executors, trustees, administrators and assigns of each of the foregoing, all in their capacities as such, and any entities or persons on whose behalf the Class Member is authorized to act. All Released Claims are forever discharged, and such claims cannot be asserted by any of Releasors' future, direct and indirect, parents, subsidiaries, divisions, partners and affiliates, their respective future stockholders, officers, directors, employees, managers, agents, attorneys and any of their legal representatives, or any successors, heirs, executors, trustees, administrators, or assigns of each of the foregoing. As used in this Paragraph, "affiliates" means entities controlling, controlled by or under common control with a Releasor.

(S) "Settlement Notice" means the Notice of Pendency and Proposed Settlement of Class Action, and Settlement Hearing substantially in the form annexed hereto as

Exhibit B and the Summary Notice for publication annexed hereto as Exhibit C. Class Settlement Counsel agrees that any Settlement Notice provided for in this Agreement and submitted for approval to the Settlement Court must be sufficient to simultaneously and adequately provide notice to Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure of both this Settlement Agreement and the FDB Settlement Agreement (as defined above) (“Joint Settlement Notice”). Class Settlement Counsel acknowledge that Medi-Span’s willingness to enter into this Settlement Agreement is expressly conditioned on the Settlement Court’s approval of the Joint Settlement Notice. Medi-Span shall have the right to terminate this Agreement pursuant to Paragraph 8(A) below if the Settlement Court does not approve the Joint Settlement Notice.

(T) “Third-Party Payor” or “TPP” means a private or quasi-governmental entity that paid or was at risk by contract to pay all or part of the cost of Pharmaceutical Purchases for individual or group beneficiaries of the TPP’s prescription drug or health coverage including, but not limited to, self-insured employers, health and welfare plans, private health insurers (including private plans that cover government employees and/or retirees by reason of their current or past governmental employment). Excluded is the Defendant, its present and former, direct and indirect, parents, subsidiaries, divisions, partners and affiliates; the United States government, its officers, agents, agencies and departments, the States of the United States, and their respective officers, agents, agencies, and departments; and all other local governments and their officers, agents, agencies, and departments.

(U) “TPP Class Members” means any person or entity falling within the definition of the Private Payor Class, excluding any Class Opt-Outs, who also fall within the definition of Third-Party Payor.

(V) “United States” means the United States of America including its states, commonwealths, territories and possessions.

(W) “WAC to AWP Markup” means the factor applied to the WAC (or if the WAC is not available, then to the direct price) of a pharmaceutical as reported by the manufacturer, in order to determine the AWP to be used in Medi-Span's publications.

3. Reasonable Best Efforts to Effectuate This Settlement. Consistent with the terms of this Agreement and notwithstanding the rights of the parties to terminate this Agreement at certain times, the parties and their counsel agree to use their reasonable best efforts, including all steps and efforts contemplated by this Agreement and any other commercially reasonable steps and efforts that may be necessary or appropriate, by order of the Settlement Court or otherwise, to carry out the terms of this Agreement.

4. Motion for Preliminary Approval. Concurrent with or shortly following the submission of this Agreement for consideration by the Settlement Court, Class Settlement Counsel shall submit to the Settlement Court a motion for preliminary approval of the settlement set forth in this Agreement, requesting entry of a Preliminary Approval and Settlement Class Order substantially in the form annexed hereto as Exhibit D.

5. Notice to Class. In the event the Settlement Court preliminarily approves the settlement set forth in this Agreement, Class Settlement Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Preliminary Approval Order, by mail, provide all those members of the Private Payor Class who can be identified by reasonable means with a copy of the detailed Joint Settlement Notice, substantially in the form annexed hereto as Exhibit B. Notice to members of the Private Payor Class shall also be given by publication in national print media of the Joint Summary Notice, substantially in the form annexed hereto as Exhibit C

or as otherwise ordered by the Settlement Court, and by publication on the web site established by Class Settlement Counsel or the Notice Agent. In addition, all members of the nationwide Private Payor Class shall be directed to review a copy of the detailed Joint Settlement Notice which will be published on the web site and will be mailed to any nationwide Private Payor Class Member upon request. Medi-Span shall not bear any of the costs the Joint Settlement Notice provided under this Agreement. Provided that the Settlement Court approves the Joint Settlement Notice, all costs of Joint Settlement Notice as well as the retention of a notice consultant to effectuate notice, shall be paid exclusively by FDB as provided in the FDB/Medi-Span Agreement.

6. Entry of Final Judgment. If, after the settlement fairness hearing scheduled by the Settlement Court in the Preliminary Approval and Settlement Class Order, the Settlement Court preliminarily approves this Agreement, then counsel for the parties shall request that the Settlement Court enter an Order and Final Judgment substantially in the form annexed hereto as Exhibit E.

7. Effective Date of Settlement. The settlement detailed in this Class Agreement shall be effective on the first date after all of the following events have occurred: (1) entry of the Preliminary Approval and Settlement Class Order substantially in the form annexed hereto as Exhibit D, or entry of a Preliminary Approval and Settlement Class Order not substantially in the form annexed hereto with respect to which neither Medi-Span nor Class Settlement Counsel invoke their termination rights within the period prescribed in Paragraph 8 below; (2) final approval by the Settlement Court of this Agreement, following notice to the Private Payor Class and a fairness hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; (3) entry by the Settlement Court of an Order and Final Judgment, substantially in the form set forth

in Exhibit E annexed hereto; and, (4) the expiration of any time for appeal or review of such Order and Final Judgment, or, if any appeal is filed and not dismissed, after such Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari, or, in the event that the Settlement Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and none of the parties hereto elect to terminate this Class Agreement as permitted by Paragraph 8, the date that such Alternative Judgment becomes final and no longer subject to appeal or review; and 4) this Agreement is no longer subject to termination by any party as provided for in Paragraph 8.

8. Termination.

(A) REJECTION OR ALTERATION OF SETTLEMENT TERMS. Medi-Span and Class Settlement Counsel shall each have the right to terminate this Agreement by providing written notice of their election to do so (“Termination Notice”) to each other within thirty (30) days of: (1) the Settlement Court declining to approve the Joint Settlement Notice, substantially in the form annexed hereto as Exhibits B and C; (2) the Settlement Court declining to enter the Preliminary Approval and Settlement Class Order substantially in the form annexed hereto as Exhibit D; (3) the Settlement Court declining to enter the Order and Final Judgment substantially in the form annexed hereto as Exhibit E; (4) the date upon which the Order and Final Judgment is modified or reversed in any respect by the U.S. Court of Appeals or the U.S. Supreme Court; (5) the date upon which an Alternative Judgment is modified or reversed in any respect by the U.S. Court of Appeals or the U.S. Supreme Court; or (6) the date upon which the Settlement Court (or any other court of competent jurisdiction) enters any order or judgment voiding, rescinding or otherwise nullifying any provision contained in the FDB/Medi-Span Agreement.

(B) TPP OPT OUTS. Medi-Span can elect to terminate this Agreement if, in its sole discretion and subject to the further limitations set forth in this paragraph, Medi-Span determines that the number or identity of the TPP Class Members who request exclusion from the class is unsatisfactory. Pursuant to the FDB/Medi-Span Agreement, FDB has agreed to defend, indemnify and hold harmless Medi-Span from any claims brought by any Class Opt-Out, unless FDB terminates the FDB Settlement Agreement (as defined above), in exchange for Medi-Span's agreement to release FDB from certain pre-existing indemnity rights arising from FDB's divestiture of certain MSI assets to a predecessor in interest to WKH in 2001. As a result, Medi-Span can elect to terminate this Agreement pursuant to this paragraph only if FDB first terminates the FDB Settlement Agreement (as defined above) because the number or identity of the TPP Class Members who request exclusion from the class is unsatisfactory to FDB.

(C) STATE ATTORNEYS GENERAL. During the period between the filing of a proposed Order for Preliminary Approval and ten (10) days before the date set by the Court for a hearing on final approval of the settlement embodied by this Agreement (the "Fairness Hearing"), Medi-Span shall have the right to terminate this Agreement if any State Attorneys General initiates, or notifies Medi-Span in writing that it intends to initiate any litigation, enforcement proceeding or other regulatory action against Medi-Span that includes claims based upon the allegations contained in the Class Action complaint or substantially in the form of the claims raised in the Class Action complaint ("Attorneys General Claims"). For purposes of clarification, the receipt by Medi-Span of a subpoena or other discovery requests from a State Attorney General's office does not constitute an Attorney General Claim. If Medi-Span elects to exercise the option to terminate as set forth in this paragraph, written notice of such election must be provided to Class Settlement Counsel so as to be received no later than 5:00 pm eastern

time on the tenth (10th) day prior to the first date for the scheduled Fairness Hearing. For purposes of the Settlement, the term State refers to the States of the United States, the District of Columbia, the territories, possessions, and commonwealths of the United States.

(D) **RETURN TO PRE-AGREEMENT STATUS.** In the event either the Plaintiffs or Medi-Span exercises any right of termination enumerated in this paragraph, the stipulation concerning the certification of the Private Payor Class as defined in Paragraph 1 shall be null and void, the rights and obligations of the parties shall be identical to those prior to the execution of this Agreement and the status of the Class Action shall be as it was prior to the execution of this Agreement.

9. **Settlement Consideration.** Subject to the provisions hereof, and in full, complete and final settlement of all Released Claims as provided herein, Medi-Span agrees to the following:

(A) **CHANGE IN PRICE REPORTING**

(1) **ADJUSTMENT OF THE WAC TO AWP MARKUP.** On a date which is no later than the first to occur of: (1) sixty (60) days after the Effective Date of this Agreement; or (2) 180 days from the entry by the Settlement Court of a Preliminary Approval Order in substantially the form annexed hereto as Exhibit D, Medi-Span shall adjust, *i.e.*, change, the WAC to AWP Markup it utilizes for all prescription pharmaceuticals, *i.e.*, not over-the-counter pharmaceuticals, listed on Exhibit A to 1.20. As for other prescription pharmaceuticals in the Medi-Span MDDB with an AWP published based on WAC to AWP Markup of less than 1.20, Medi-Span covenants and agrees that it shall not increase the WAC to AWP Markup for those prescription pharmaceuticals in whole or in any part by reason of the adjustment on other pharmaceuticals made pursuant to this paragraph. Subject to the provisions of Paragraph

(9)(A)(3) below, Medi-Span will not at any time thereafter increase the WAC to AWP Markup of any prescription pharmaceutical above 1.20 unless a different methodology for determining WAC, AWP or WAC to AWP Markups is adopted as contemplated by Paragraph 9 (A)(3) or 9(A)(5).

(2) DISCONTINUE PUBLICATION OF AWP. Subject to the provisions of Paragraph (9)(A)(3) below, on a date which is no later than three (3) years from the Effective Date of this Agreement, Medi-Span shall discontinue publishing, electronically or otherwise, the AWP data field for any pharmaceutical. Medi-Span shall use the three year period described herein to notify its customers of the change in its publications contemplated by this paragraph.

(3) REACTION TO PUBLISHING COMPETITOR. Notwithstanding Paragraph (9)(A)(2) above, if at the time Medi-Span is required to discontinue publication of the AWP data field by operation of this Agreement, or any time thereafter, a Publishing Competitor is or becomes engaged in the business of publishing or disseminating an electronically integrateable AWP field or other substantially similar drug pricing benchmark, Medi-Span shall have the option to continue or resume to publish or disseminate a substantially similar data field in accordance with the methodology utilized by a Publishing Competitor or the revised methodology specified in Paragraph 9(A)(1) of this Agreement. However, to the extent the Publishing Competitor's revised methodology differs from the methodologies permitted by Paragraphs 9(A)(1) but nonetheless includes application of a WAC to AWP Markup, Medi-Span's publication of a substantially similar data field will be limited to the methodologies permitted by Paragraphs 9(A)(1), or the methodology employed by the Publishing Competitor provided it results in a WAC to AWP Markup less than that proscribed by Paragraph 9(A)(1). If

at any time thereafter, the Publishing Competitor or Publishing Competitors which caused Medi-Span to continue to publish its AWP data field in accordance with this Agreement ceases to publish an AWP field for all pharmaceuticals, Medi-Span shall discontinue publishing the AWP data field for all pharmaceuticals. After discontinuing to publish the AWP data field, Medi-Span may not at any time thereafter resume publishing or disseminating that same data field unless the actions of another Publishing Competitor thereafter entitles Medi-Span to relief from the obligations of Paragraph 9 (A)(2) pursuant to the provisions of this Paragraph.

(4) JURISDICTION DURING NOTICE PERIOD. As provided in the proposed Final Judgment and Order attached hereto as Exhibit E, the Settlement Court shall maintain continuing jurisdiction over any issues relating to this Agreement, including but not limited to the publication of the AWP during the three year notice period prescribed in Paragraph 9(A)(2).

(5) VERIFIABLE WHOLESALE PRICES. Notwithstanding anything to the contrary in this Agreement, to the extent that, as a result of changes in law, regulation or industry practice, verifiable pharmaceutical wholesale price information becomes available, Medi-Span may publish such information.

(B) ACCESS TO INFORMATION

(1) MEDI-SPAN DATA ROOM: Pursuant to the terms of the FDB Settlement Agreement and the FDB/Medi-Span Agreement, Class Settlement Counsel shall establish and maintain for a period of three (3) years from the Effective Date, at FDB's exclusive expense, a Medi-Span Data Room and provide reasonable access to the Medi-Span Data Room and its contents to all members of the Private Payor Class and Class Settlement Counsel in connection with any claim or potential claim brought or contemplated against other defendants in

litigation involving pharmaceutical pricing and reimbursement, including, but not limited to, all plaintiffs with cases currently pending in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL 1456 and *New England Carpenters et al. v. First DataBank, Inc., et al.*, Civil Action No. 1:05-CV-11148-PBS. As set forth above, Class Settlement Counsel agree that Medi-Span shall not be responsible for the payment of any costs or expenses associated with the creation and maintenance of the Medi-Span Data Room that exceed any costs or expenses provided for in the FDB Settlement Agreement. Further, as set forth above, notwithstanding the agreement to maintain, at FDB's expense, the Medi-Span Data Room, FDB shall not have access to any Discoverable Material provided to Class Settlement Counsel for inclusion in the Medi-Span Data Room.

Medi-Span agrees to use reasonable efforts to provide Class Settlement Counsel with all Discoverable Material in its possession and agrees that any such Discoverable Material shall be included in the Medi-Span Data Room. The scope, completeness, accuracy or integrity of the information is solely the responsibility of Medi-Span. Plaintiffs and Class Representative Counsel agree that FDB functioned as the sole collector of data populating the MDDB before April 2, 2004, and therefore, Medi-Span is not likely to possess Discoverable Material created prior to that date, unless FDB provided Medi-Span with such Discoverable Material. Nothing herein shall constitute a representation by Class Settlement Counsel as to the scope, completeness, accuracy or integrity of the information provided by Medi-Span to the Medi-Span Data Room. Medi-Span's agreement to provide Class Representative Counsel with Discoverable Material to be included in the Medi-Span Data Room does not constitute a waiver on the part of Medi-Span of any attorney-client, work product, trade secret, or other confidentiality obligations, First Amendment, and/or other applicable privileges or immunities to discovery. As set forth in

Paragraph 2(J) above, in the event of the assertion of a privilege or immunity as to any Discoverable Material, Medi-Span shall provide Class Settlement Counsel with a privilege log containing that information required by law to demonstrate the existence of any privilege or immunity being asserted. Any dispute arising with respect to a claim of privilege or immunity shall be brought to the attention of and resolved by the Settlement Court after the parties meet and confer in an attempt to resolve the dispute(s) in accordance with Local Rules. Medi-Span shall cooperate with Class Settlement Counsel to establish that the documents produced by Medi-Span in the Class Action as well as the documents and information included in the Medi-Span Data Room, are authentic and business records maintained in the ordinary course of business.

In its sole discretion, Medi-Span may provide others with access to the Medi-Span Data Room as well. As a condition to obtaining access to the Medi-Span Data Room, Medi-Span may require that one seeking access enter into reasonable confidentiality agreement and/or agree to be bound by any applicable protective orders.

As set forth in the proposed Final Order and Judgment, attached hereto as Exhibit E, no member of the Private Payor Class shall be permitted to serve Medi-Span, its parents, subsidiaries, affiliates, directors, officers, or employees (past or present) in any action with any discovery requests, requests to admit, or subpoenas seeking materials or deposition or trial testimony in connection with any claim or potential claims brought against other defendants in connection with litigation involving pharmaceutical pricing and reimbursements without: (1) reviewing the materials placed in the Medi-Span Data Room, and then (2) demonstrating by motion before the Settlement Court that the requested discovery, testimony, or requests to admit are substantially non-repetitive and which they in good faith believe cannot be substantially

obtained from the materials located in the Medi-Span Data Room. As set forth in the proposed Final Order and Judgment attached hereto as Exhibit E, the parties shall request that the Court exercise its authority under the All Writs Act to enforce the provisions of this paragraph.

(2) INTERVIEWS: In connection with litigation captioned *In Re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL 1456 (“AWP MDL”) and captioned *New England Carpenters et al. v. First DataBank, Inc., et al*, Civil Action No. 1:05-CV-11148-PBS, Medi-Span will cooperate with and facilitate the interview of no more than two current Medi-Span employees who are the people most knowledgeable about: (1) the transition of data acquisition and processing functions from FDB to Medi-Span; or (2) the drug price reporting and price data acquisition activities of Medi-Span after April 2, 2004. Medi-Span will identify to Class Settlement Counsel two such current Medi-Span employees who have significant knowledge regarding these issues within ninety (90) days after Preliminary Approval of this Agreement by the Settlement Court. Medi-Span agrees not to assert that this Paragraph limits Plaintiffs’ right to subpoena other current Medi-Span employees for a deposition, but neither Medi-Span nor any of its current employees, waives their right to oppose any such subpoena on any other grounds.

In the event that Class Settlement Counsel determines that any former Medi-Span employee can provide non-repetitive factual information concerning the two subjects identified above (a “Relevant Former Employee”), the parties agree that: (1) Class Settlement Counsel will notify Medi-Span in writing that it wishes to interview any such Relevant Former Employee; (2) Medi-Span will have twenty-one (21) days from its receipt of such written notice to seek the Relevant Former Employee’s consent to be interviewed by Class Representative Counsel in accordance with the terms of this Paragraph (the “Scheduling Period”); (3) Medi-Span’s outside

counsel may represent the Relevant Former Employee in connection with the interview, if the Relevant Former Employee consents to such representation; and (4) Class Settlement Counsel will not contact or subpoena any Relevant Former Employee until after the Scheduling Period has expired or Medi-Span notifies Class Settlement Counsel in writing that the Relevant Former Employee refused to consent to an interview as provided in this Agreement.

Any interviews conducted pursuant to this Agreement shall be conducted by Class Settlement Counsel, or their designees, and may, at the election of Class Settlement Counsel, be given under oath and otherwise conducted in accordance with Fed.R.Civ.P. 30(c). The interviews shall be scheduled by mutual agreement of the parties and shall take place: (1) in Chicago, at the offices of Medi-Span's outside counsel; or (2) at a mutually acceptable location in the city where the interviewee resides. If transcripts are made, said transcripts shall be placed in the Medi-Span Data Room and made available to all Class Members in accordance with Paragraph 9(B)(1).

(3) DISPUTES. Any dispute regarding: (1) Medi-Span's obligation to provide Discoverable Material to Class Settlement Counsel for inclusion in the Medi-Span Data Room; or (2) any interview sought or conducted pursuant to this Agreement shall be brought to the attention of and resolved by the Settlement Court after the parties meet and confer in an attempt to resolve the dispute(s) in accordance with Local Rules.

(4) EMPLOYEE TRIAL TESTIMONY. Medi-Span shall make reasonable efforts to make the two Medi-Span employees identified to Class Settlement Counsel pursuant to Paragraph 9(B)(2) above (or if such either or both such employees are no longer current employees, the two current Medi-Span employees with the most relevant knowledge) available for trial testimony in connection with: (1) any trial of claims against the remaining

defendant or defendants in *New England Carpenters et al. v. First DataBank, Inc., et al*, Civil Action No. 1:05-CV-11148-PBS, or (2) any trial in the AWP MDL. Medi-Span shall take reasonable steps to facilitate the service on such employees of subpoenas issued at the request of counsel compelling their attendance at trial as set forth above. Class Settlement Counsel agree to take reasonable steps to obtain any trial testimony needed in either of the above-listed actions from current or former employees of FDB, before seeking any trial testimony from any current Medi-Span employee.

(5) ACCESS TO MDDDB. Plaintiffs, or a consultant retained by plaintiffs, shall have access to the Medi-Span Master Drug Database (MDDDB), the Medi-Span Electronic Drug File and the Medi-Span Comprehensive Price History File (“Medi-Span Products”), for a period not to exceed three years from the effective date of this Agreement, for the purpose of monitoring compliance with the terms of the settlement. Class Settlement Counsel agree to sign and comply with the terms of a Medi-Span License Agreement before they are given access to the Medi-Span Products. The License Agreement will provide that that Class Settlement Counsel and a maximum of one (1) consultant retained by Class Settlement Counsel (together the “Licensed Parties”) will have access to the Medi-Span Products for a three (3) year term. The Licensed Parties will represent and warrant to Medi-Span that any information obtained from the Medi-Span Products will be used solely to monitor compliance with the terms of this settlement and any hard copy or electronic copy of any information obtained from the Medi-Span Products will be destroyed upon the termination of the License Agreement.

10. Attorneys’ Expenses and Fees and Fee Disputes. The parties agree that an award of attorneys’ fees in this action is a matter committed to the sole discretion of the Settlement Court. Settlement Class Counsel shall, within twenty (20) days before the Final Settlement

Hearing, submit an application for attorneys' fees and expenses to the Settlement Court in an amount that shall not exceed \$100,000 in combined fees and expenses. The Settlement Court shall determine the appropriate amount of any attorneys' fees and expenses to be paid to Settlement Class Counsel. Any such fees and expenses approved by the Settlement Court, in an amount not exceeding \$100,000, shall be paid exclusively by FDB, pursuant to the terms of the FDB/Medi-Span Agreement, within twenty (20) days after the Effective Date. Medi-Span shall have no obligation under any circumstances to pay any attorneys' fees or expenses awarded to Class Settlement Counsel. Upon payment of the attorneys' fees and expenses as awarded by the Settlement Court, Class Settlement Counsel shall release and forever discharge any claims, demands, actions, suits, causes of action, or other liabilities relating to any attorneys' fees or expenses incurred in the Class Action.

11. All Claims Satisfied. Each Private Payor Class Member shall look solely to the relief described in Paragraph 9 of this Agreement for settlement and satisfaction, as provided herein, of all Released Claims.

12. Releases. Upon the Effective Date of this Class Agreement the Released Entities shall be released and forever discharged from any Released Claims that any Releasor who has not timely excluded themselves from the Private Payor Class. All Releasors covenant and agree that they shall not hereafter seek to establish liability against any Released Entity based, in whole or in part, on any of the Released Claims.

In addition, each Class Member hereby expressly waives and releases, upon this Agreement becoming effective, any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing

the release, which if known by him must have materially affected his settlement with the debtor;

or by any law or any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Class Member may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this Agreement, but each Class Member hereby expressly waives and fully, finally and forever settles and releases, upon this Agreement becoming effective, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims with respect to the subject matter of this Agreement whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class Member also hereby expressly waives and fully, finally and forever settles and releases any and all Released Claims it may have against Released Entities under § 17200, *et seq.*, of the California Business and Professions Code, which claims are expressly incorporated into this Paragraph.

13. Preservation of Rights. The parties hereto agree that this Agreement, whether or not the Effective Date occurs, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Medi-Span or of the truth of any of the claims or allegations contained in the complaint in the Class Action; and evidence thereof shall not be discoverable or used directly or indirectly by the Private Payor Class or any third party, in any way (except that the provisions of this Agreement may be used by the parties to enforce its terms), whether in the Class Action or in any other action or proceeding. Nothing in this Agreement, including but not limited to the Release set forth in Paragraph 12 above, shall be construed to in any way limit or provide

indemnity for attorney's fees and/or expenses that may be sought in any other action against an entity other than a Released Entity where a contractual indemnity exists between that other entity and the Released Entity. This Agreement and all of the terms herein constitute compromises and offers to compromise covered by Federal Rule of Evidence 408. In the event that this Agreement is terminated pursuant to Paragraph 8, nothing in this Class Agreement or its negotiation may be used as evidence in any action between the parties hereto. The parties expressly reserve all their rights and defenses if this Agreement does not become final and effective substantially in accordance with the terms of this Agreement.

14. Class Certification For Settlement Purposes Only. Medi-Span stipulates to certification of the Private Payor Class as defined in Paragraph 1 for settlement purposes only, and for the sole purpose of creating that settlement class. Medi-Span's stipulation is contingent upon the execution by the parties of this Agreement and that this Agreement is finally approved by the Settlement Court and is not terminated pursuant to the terms of this Agreement. If the Agreement is for any reason not finally approved, or is otherwise terminated, Medi-Span reserves the right to reassert all objections and defenses to certification of any class for trial purposes, and Plaintiffs will not offer Medi-Span's stipulation to certification as part of this Agreement as any evidence in support of a motion to certify any class for trial purposes.

15. Consent to Jurisdiction. For a period of three (3) years from the Effective Date of this Agreement, Medi-Span and Plaintiffs hereby irrevocably submit to the exclusive jurisdiction of the Settlement Court for purposes of any suit, action, proceeding or dispute arising out of, or relating to, this Agreement or the applicability of this Agreement, including any issues arising or regarding information provided by Medi-Span to Class Settlement Counsel for inclusion in the Medi-Span Data Room or any interview sought or conducted pursuant to this Agreement.

16. Resolution of Disputes: Retention of Jurisdiction. Any disputes between or among Medi-Span and any Class Members concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Settlement Court for resolution. The Settlement Court shall retain jurisdiction over the implementation and enforcement of this Agreement for a period of three (3) years from the Effective Date of this Agreement.

17. Enforcement of Settlement. Notwithstanding Paragraph 13 above, this Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

18. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

19. Authorization to Enter Class Agreement. The undersigned representatives of Medi-Span represent that they are fully authorized to enter into and to execute this Agreement on behalf of Medi-Span. Class Settlement Counsel represent that they are fully authorized to conduct settlement negotiations with Medi-Span's Counsel on behalf of the Plaintiffs and to enter into, and to execute, this Agreement on behalf of Plaintiffs, subject to Settlement Court approval pursuant to Fed. R. Civ. P. 23(e).

20. No Party Is the Drafter. None of the parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter hereof.

21. Choice of Law. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Massachusetts without regard to its choice of law or conflict of laws principles.

22. Amendment or Waiver. This Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

23. Execution in Counterparts. This Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date thereof, although the original signature pages shall thereafter be appended to this Agreement and filed with the Settlement Court.

24. Integrated Agreement. This Agreement, including the exhibits hereto, and any exhibits thereto, contain an entire, complete, and integrated statement of each and every term and provision agreed to by and between the parties hereto, and supersede all prior oral or written agreements and contemporaneous oral agreements among the parties.

25. Construction. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to the Released Entities.

26. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and delivered in person, by overnight delivery service or by facsimile. Any such notice shall be deemed given as of the date of receipt and shall be delivered to the parties as follows:

If To Plaintiffs:

Thomas M. Sobol
Hagens Berman Sobol Shapiro LLP,
One Main St., 4th Floor
Cambridge, MA 02142

Tel. 617-482-3700
Fax: 617-482-3003

Steve W. Berman
Hagens Berman Sobol Shapiro LLP,
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Tel. 206-623-7292
Fax: 206-623-0594

Jeffrey Kodroff
Spector, Roseman & Kodroff, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103

Tel. 215-496-0300
Fax: 215-496-6611

If To Medi-Span:

Sheldon T. Zenner
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 60661-3693

Tel. 312-902-5200
Fax: 312-902-1061

Dale C. Gordon
Vice President and General Counsel,
Wolters Kluwer United States Inc and
Vice President, Wolters Kluwer Health, Inc.
2700 Lake Cook Road
Riverwoods, IL 60015

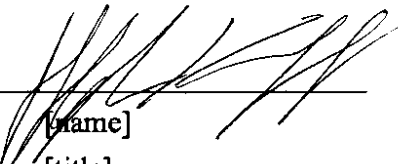
Tel. 847-580-5040
Fax: 847-890-6072

27. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision if Medi-Span and Class Settlement Counsel mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in the Agreement.

28. Headings. The headings to this Agreement have been inserted for convenience only and are not to be considered when construing the provisions of this Agreement.


IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Class Agreement as of the date first written below.

PLAINTIFFS

By: 
[name]
[title]

Dated: 5/22/07

MEDI-SPAN

By: 
Norm Plaistowe, Executive
Vice President, Wolters
Kluwer Health, Inc.

Dated 5/22/07