

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	MDL Docket No. 1508
GENIA GRUER, on behalf of herself and all others similarly situated, Plaintiffs,	:	Civil Action No.
	:	97 Civ. 9167 (CLB)
-against-	:	
MERCK-MEDCO MANAGED CARE, L.L.C.,	:	
Defendant.	:	
-----	X	
WALTER GREEN, on behalf of himself and all others similarly situated, Plaintiffs,	:	Civil Action No.
	:	98 Civ. 0847 (CLB)
-against-	:	
MERCK-MEDCO MANAGED CARE, L.L.C.,	:	
Defendant.	:	
-----	X	
MILDRED BELLOW, on behalf of herself and all others similarly situated, Plaintiffs,	:	Civil Action No.
	:	98 Civ. 4763 (CLB)
-against-	:	
MERCK-MEDCO MANAGED CARE, L.L.C.,	:	
Defendant.	:	
-----	X	
MARISSA JANAZZO, as a fiduciary for the COUNTY LINE BUICK NISSAN EMPLOYEE WELFARE BENEFIT PLAN, on behalf of herself as a fiduciary and all other similarly situated fiduciaries of employee welfare benefit plans,	:	Civil Action No.
	:	98 Civ. 4067 (CLB)
Plaintiffs,	:	
-against-	:	
MERCK-MEDCO MANAGED CARE, L.L.C. and MERCK & CO., INC.,	:	
Defendants.	:	
-----	X	
ELIZABETH O'HARE, on behalf of herself and all others similarly situated, Plaintiff,	:	Civil Action No.
	:	01 Civ. 3805 (CLB)
-against-	:	
MERCK-MEDCO MANAGED CARE, L.L.C.,	:	
Defendant.	:	
-----	X	

**STIPULATION AS TO
SECOND AMENDMENT TO SETTLEMENT AGREEMENT**

WHEREAS, defendants Merck & Co., Inc. ("Merck") and Medco Health Solutions, Inc. ("Medco") (collectively, the "Defendants") and plaintiffs ("Plaintiffs"), as class representatives, in *Gruer v. Merck-Medco Managed Care, L.L.C.*, No. 97 Civ. 9167 (CLB); *Green v. Merck-Medco Managed Care, L.L.C.*, No. 98 Civ. 0847 (CLB); *Bellow v. Merck-Medco Managed*

Care, L.L.C., No. 98 Civ. 4763 (CLB); *Janazzo v. Merck-Medco Managed Care, L.L.C.*, No. 99 Civ. 4067 (CLB); and *O'Hare v. Merck-Medco Managed Care, L.L.C.*, No. 01 Civ. 3805 (CLB) (the "Actions") entered into an Amended Settlement Agreement dated July 31, 2003.

WHEREAS, the settlement proposed in the Amended Settlement Agreement was approved by the United States District Court for the Southern District of New York on May 25, 2004.

WHEREAS, class members Central States Southeast and Southwest Areas Health and Welfare Fund, Sweetheart Cup Company, Inc. and Iron Workers Tri-State Welfare Fund (the "Self-Funded Plans"), among others, appealed the order approving the settlement to the Court of Appeals for the Second Circuit (the "Second Circuit").

WHEREAS, the Second Circuit remanded the matter to the District Court to allow the Self-Funded Plans to raise their claims as part of a separate subclass and "for necessary findings and an explanation in support of any reduction in the shares of the insured or capitated plans."

WHEREAS, on January 29, 2008, the Self-Funded Plans made a motion for certification of a subclass of all self-funded plans and appointment of the Self-Funded Plans as subclass representatives, which motion was granted by Order dated March 17, 2008.

WHEREAS, counsel for the Self-Funded Plans and counsel for the parties entered into negotiations to further amend the Amended Settlement Agreement because they wished to address certain issues raised by the Self-Funded Plans, as well as by the Second Circuit.

THEREFORE, it is hereby STIPULATED and AGREED by and among all named parties and the Self-Funded Plans, that the Amended Settlement Agreement dated July 31, 2003 is hereby further amended as follows:

1. Paragraph 13 of the Amended Settlement Agreement shall be amended and shall read as follows:

The allocation of the Settlement Fund shall be made primarily on the basis of each settling plan's proportionate share of the total drug spend of all settling plans for the Class Period. Any plan that pays for prescription drug benefits on an insured or capitated basis shall have its proportionate share of the total drug spend reduced by 85%. Any Self-Funded Plan that does not participate in any brand-to-brand therapeutic interchange program administered by Medco shall have its proportionate share of the total drug spend reduced by 55%. After the Settlement, as amended, becomes final, the Settlement Fund shall be distributed according to a final distribution plan to be prepared by Complete Claims Solutions, without further Order of the Court. Counsel for the named plaintiffs and the Self-Funded Plans reserve the right to review and approve the final distribution plan and approval of such plan shall not be unreasonably withheld provided it comports with the terms of the Amended Settlement Agreement, as further amended.

2. Counsel for the undersigned agree to recommend approval of this Second Amendment by the Court and to undertake their best efforts to carry out the terms of the Settlement, as amended. Plaintiffs and the Self-Funded Plans shall submit this Second Amendment to the Court along with a proposed notice of the amendment to the Class in the form appended hereto as Exhibit A and a proposed form of order preliminarily approving the Second Amendment in the form appended hereto as Exhibit B.

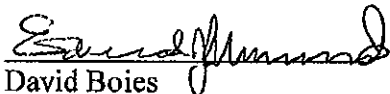
3. Upon approval of the proposed form of notice, plaintiffs will mail or arrange for mailing to all Class Members that filed an Identification Form and identified themselves as Insured Plans and all Class Members who did not properly identify themselves as either self-funded or insured, at the addresses currently maintained by Complete Claims Solutions, a supplemental notice advising them of the foregoing changes to the Amended Settlement Agreement. The costs of this notice will be paid from the Settlement Fund. There will be no publication notice.

4. This Second Amendment to Settlement Agreement shall constitute the only amendment to the Amended Settlement Agreement dated July 31, 2003, which shall otherwise remain in full force and effect.

5. This Second Amendment to Settlement Agreement may be executed in separate counterparts.

DATED: March 31, 2008

Counsel for Plaintiffs:



David Boies
Robert Silver
Edward J. Normand

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Counsel for the Self-Funded Plans

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Counsel for Defendants:

A handwritten signature in black ink, appearing to read "JTallon", with a long horizontal flourish extending to the right.

James P. Tallon

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