

**WORKERS' COMPENSATION INSURANCE CARRIERS AND
SELF INSUREDS MUST ACT
BY JULY 9, 2009
TO COLLECT THEIR SHARE OF
A \$288,000,000 CLASS ACTION SETTLEMENT**

There is a class action lawsuit called *New England Carpenters Health Benefits Fund, et al. v. First DataBank, Inc. and McKesson Corporation*, Case No. 05-11148-PBS, pending in federal court in Boston, Massachusetts. This lawsuit concerns how brand-name drugs are priced.

Prescription drugs often are priced using certain benchmarks. The most common pricing benchmark is called the Average Wholesale Price ("AWP"). AWP is often used in determining how much insurance companies and other Third-Party Payors will reimburse for these prescription drugs and the co-payment price that some consumers pay for them. In Pennsylvania, for example, all comp payments for drugs are linked to AWP. The lawsuit claims that two Defendants, McKesson Corporation ("McKesson"), a large drug wholesaler, and First DataBank ("FDB"), a publisher of drug data, wrongfully inflated the mark-up factor used by FDB to determine the AWP for certain prescription drugs ("Subject Drugs"). The lawsuit claims that, as a result, many drug purchasers overpaid for these drugs. Both FDB and McKesson deny any wrongdoing.

A settlement of the class action has been reached. The defendant's will pay \$350 million to settle the lawsuit, of which up to \$288,000,000 will be shared by Third Party Payors.

Generally, a workers' compensation insurer or self-insured is such a Third Party Payor eligible to make a claim for its share of the settlement fund. Claims may be submitted for drugs purchased **between August 1, 2001 through March 15, 2005**. There is a long list of drugs for which claims may be submitted. Some of the drugs frequently prescribed in comp cases include: Neurontin, Ambien, Darvocet, Daypro, Demeral, Duragesic, Naprosyn, Klonopin, and Cipro. Below is a link to the official McKesson Average Wholesale Price Settlement website, which includes details of the drugs subject to the settlement, instructions for filing claims, and information about exceptions and exclusions.-

<http://www.mckessonawpsettlement.com/TPPClass.htm>

The Chartwell Law Offices, LLP has long advocated that comp carriers and self-insurers need to be more actively involved in getting their fair share of recoveries in class action drug litigation. Many other suits for overcharges, fraudulent marketing, anti-trust violations and other claims against drug manufacturers and distributors are currently pending. In many cases, comp carriers and self-insurers are not the lead parties, and without aggressive representation, they run the risk of not being included in these initiatives. For example, a recent decision in a class action Neurontin case found that although the plaintiffs could not bring the suit as a class, individual Third Party Payor companies could sue for their own recoveries. **Chartwell** is coordinating groups of companies interested in pursuing recoveries for purchases of Neurontin. If you would like to find out about the Neurontin suit, or about other Chartwell initiatives to recover money for comp carriers and self-insurers, please contact Cliff Goldstein at cgoldstein@chartwelllaw.com or call **610 666 8425**.

It would be a shame to lose out on a recovery by missing the deadline. Please make sure that you file your claim by July 9, 2009. If you need help or more information, please call Cliff Goldstein at **610 666 8425**.