

UNITED STATES DISTRICT COURT – DISTRICT OF MASSACHUSETTS

## If You Are a Consumer Who Paid For All or Part of the Cost of Prescription Drugs,

### A Proposed Class Action Settlement May Affect Your Rights

There is a Proposed Settlement with First DataBank (“FDB”), one of the Defendants in a class action lawsuit pending in the U.S. District Court for the District of Massachusetts. The name of the lawsuit is *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, No. 1:05-CV-11148-PBS.

#### What is the Class Action Lawsuit About?

FDB is a Defendant trade publication that reports certain pharmaceutical drug prices in printed and electronic databases. Pharmaceutical manufacturers often report the Wholesale Acquisition Cost (“WAC”) to FDB. FDB then applies a markup factor to the WAC to derive the Average Wholesale Price (“AWP”) or the Blue Book AWP (“BBAWP”) used in its databases. The published AWP is often used to set the price that consumers pay for prescription drugs. Insurers and other Third-Party Payors (“TPPs”) also often use it to determine the reimbursement amount for these drugs.

The lawsuit claims that in late 2001 FDB conspired with McKesson, a large pharmaceutical wholesaler, to inflate the markup factor that applies to numerous prescription drugs. As a result, consumers, insurers and TPPs paid more for these drugs than they should have from 2001 forward. McKesson has not agreed to settle these claims and remains a Defendant in the lawsuit.

#### Who is a Member of the Private Payor Class?

The Class includes all individual persons or entities who, between January 1, 2000 and [date of Final Order], made purchases and/or paid, whether directly or indirectly, or by reimbursement, for all or part of the purchase price of prescription pharmaceuticals. Any or all of the purchase price must have been based on the AWP or BBAWP or similar data published or disseminated by FDB. Consumers who made flat co-payments for their prescription pharmaceuticals were not affected by FDB's actions and are not Class Members. Flat co-payments are those that do not differ with the cost of the drug.

#### What Are the Terms of the Settlement?

The Proposed Settlement does not provide cash payments by FDB to Class Members. However, substantial benefit is provided to the Class because FDB will:

- Reduce the WAC to AWP markup factor for thousands of pharmaceuticals for which they publish price information. This reduction has been estimated to save well over a billion dollars in future drug costs for consumers, insurers and TPPs in just a single 12-month period.

- Cease to publish an AWP or BBAWP within two years of the Proposed Settlement approval.
- Establish and maintain an FDB Data Room for use in related litigation.
- Cooperate in providing information on pharmaceutical pricing in connection with this and other litigation. This will likely provide additional benefits, including monetary benefits, to Private Payor Class Members in other pharmaceutical pricing litigation.

The *Notice of Proposed Class Action Settlement*, available below, has more detailed information on the Proposed Settlement Terms.

#### Who Represents Me?

The Court has appointed Class Counsel to represent everyone in the Class. Subject to Court approval, FDB will pay fees and expenses of Class Counsel that the Court awards not to exceed \$625,000 in fees, \$125,000 for the maintenance of the FDB Data Room for a period of 3 years and \$200,000 in expenses. FDB will also pay the cost of notice to Class Members. You may hire your own attorney, if you wish. However, you will be responsible for that attorney's fees and expenses.

#### What Are My Legal Rights?

- **If you wish to remain a member the Class**, you do not have to do anything. You will be bound by all the Court's orders. This means you will drop any claims you may have against FDB that are covered by the Proposed Settlement.
- **If you do not wish to be a member of the Class**, you must sign a Request For Exclusion form as outlined in the *Notice of Proposed Class Action Settlement* postmarked no later than Month Date, 2007. Visit [www.XXXXX.com](http://www.XXXXX.com) or call 1-800-XXX-XXXX to obtain the Notice.
- **You can tell the Court if you do not like this Proposed Settlement** or some part of it if you do not exclude yourself. To object or comment, you must send a letter that is mailed and postmarked no later than Month Date, 2007, as outlined in the *Notice of Proposed Class Action Settlement*.

#### Will the Court Approve the Proposed Settlement?

The Court will hold a Final Approval Hearing on \_\_\_\_\_ at \_\_\_\_\_ to consider whether the Proposed Settlement is fair, reasonable, and adequate and the motion for attorneys' fees and expenses. If comments or objections have been received, the Court will consider them at this time.

### For a Notice of Proposed Class Action Settlement

Call toll-free: 1 800-xxx-xxxx (Se Habla Español) or Visit: [www.xxxx.com](http://www.xxxx.com)

Or Write: FDB Litigation Administrator, c/o Complete Claim Solutions,  
P.O. Box 24654, West Palm Beach, FL 33416

## Legal Notice

UNITED STATES DISTRICT COURT – DISTRICT OF MASSACHUSETTS

**If You Are a Third-Party Payor Who Paid for  
All or Part of the Cost of Prescription Drugs  
Based on AWP's and BBAWP's Reported by First Databank,  
A Proposed Class Action Settlement May Affect Your Rights**

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