

## CLIENT ALERT

### Crowell & Moring Obtains Victory In First Tried Indirect Purchaser Pharmaceutical Antitrust Case

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Crowell & Moring lawyers, led by Robert T. Rhoad, obtained a significant victory on behalf of Health Care Service Corporation ("HCSC") in the first and only indirect purchaser antitrust case to date tried to verdict involving the pharmaceutical industry. On Thursday, January 24, 2008, Chief Judge Thomas F. Hogan of the U.S. District Court of the District of Columbia granted HCSC's motion to treble the damages awarded by the jury to HCSC in the *In re Lorazepam & Clorazepate Antitrust Litigation* (D.D.C.). Initially, HCSC was included within a class of indirect purchasers/third-party payors in the underlying class actions. Although the class litigation was settled, HCSC, along with three other third-party payors (Blue Cross Blue Shield of Massachusetts, Blue Cross Blue Shield of Minnesota and Federated Mutual Insurance Co.), elected to opt-out of the class settlement and litigate their antitrust claims on their own. This decision to opt-out was based on the fact that the class settlement provided the nationwide third-party payor class members only approximately \$35 million, constituting mere pennies on the dollar for actual damages suffered due to Defendants' anticompetitive conduct in the markets for two highly utilized anti-anxiety drugs -- lorazepam and clorazepate. Following years of litigation and a month-long trial, the jury found in favor of our client, HCSC, as to all claims and as to all damages alleged. The Court denied various post-verdict motions filed by Defendants and granted Plaintiffs' motions for trebling and other enhancements to the damages awarded by the jury. The Court's recent damages award to the opt-out Plaintiffs that litigated and tried their claims, including HCSC, as trebled/enhanced, now totals over \$69 million (i.e., roughly 200% of the settlement obtained for the entire nationwide class of third-party payors) and does not yet include additional amounts for attorneys' fees and costs and/or interest that are the subjects of pending supplemental motions.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.