

## [Another Third Party Payer Class Action Denial](#)

Friday, May 20, 2011

We already posted once today about third party payers and class actions, so this will be short. In the Neurontin litigation certification of a purported nationwide class of TPPs was recently denied (again) in In re Neurontin Marketing & Sales Practices Litigation, MDL 1629, [slip op.](#) (D. Mass. May 17, 2011). The rationale, which the court considered to be a denial of reconsideration, involved what the plaintiffs considered their best facts, having to do with an indication where, supposedly, there was "no reliable scientific evidence" to support off label use - although that doesn't mean that it didn't in fact work. Once again predominance defeated certification, because statistical analysis doesn't equal individualized proof of reliance. [Slip op.](#) at 9. "[T]reating physicians varied widely in their reasons for prescribing Neurontin." Id.

Thus, in order to differentiate those prescriptions that were caused by fraud from those that were attributable to nonfraudulent off-label marketing or other independent factors, a factfinder would have to perform a granular doctor-by-doctor analysis. This would be unmanageable.

[Slip op.](#) at 11.