



**CROSS LAW FIRM, S.C.**

Milwaukee, Wisconsin

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## **Forest Pharmaceuticals and Forest Laboratories to Pay \$38 Million to Settle “Pay-to-Play” False Claims Act Lawsuit.**

Forest Laboratories, LLC and its subsidiary Forest Pharmaceuticals, Inc. have agreed to pay \$38 Million to settle a whistleblower’s allegations that it violated the False Claims Act by paying kickbacks to doctors related to the volume of their prescriptions written for Forest drugs Bystolic®, Savella®, and Namenda®.

“Patients need to be able to rely on doctors to exercise medical judgment with a patient’s health, not payola, in mind,” said Attorney Nola J. Hitchcock Cross of Cross Law Firm who represented the whistleblower in this action. “Our courageous client, former Forest Pharmaceutical Sales Representative, Kurt Kroening, pushed back when he was asked to participate in the alleged kickback scheme. He put his job on the line and we all owe him a debt of gratitude for his part to ensure that doctors’ prescriptions are not influenced by kickbacks from drug companies,” she said.

In fact, at the time Kroening began having job problems, which he attributed to his push back on the alleged fraud scheme, his wife was expecting a baby any day. It would have been much easier for him to just go along with the scheme, as his co-workers did. Kroening was very fearful that he would be fired, leaving his family without income, and he almost decided not to go ahead with the case. But Kroening put his ethics and patient safety above his own concerns and filed his False Claims Act lawsuit in April, 2012.

Mr. Kroening will receive 22% of the settlement, about \$7.8 Million, as a Relator share of the settlement. “Without his integrity and fearless action, patients may have been prescribed Bystolic®, Savella®, and Namenda®, not based upon their medical conditions, but in response to monetary inducement to the physician by Forest,” Hitchcock Cross explained.

The allegations Mr. Kroening brought forward in his complaint included violations of the Anti-Kickback Statute which prohibits payment of compensation to influence healthcare. Mr. Kroening claimed that Forest monitored doctor’s prescription activity and paid them for meals and speaking engagements based on their prescription volume. In addition, Kroening alleged that payments, travel, meals, drinks, and lodging were intended as prescription inducements because Forest provided such compensation whether the events actually took place or not and whether any other healthcare providers were in attendance.

In addition to improper influence on healthcare that can harm patient safety, such kickback scheme also increase the cost of healthcare for everyone, particularly for Medicare, Medicaid and other government healthcare plans.

This nationwide settlement apportions about \$35.5 Million to the federal government and about \$2.5 Million to the states.

“Perhaps most importantly, this \$38 Million settlement will act as both a deterrent so that companies hesitate to engage in kickbacks schemes and at the same as an inducement for potential whistleblowers to come forward by bringing such schemes to light through the False Claims Act,” stated Hitchcock Cross. Cross Law Firm is headquartered in Milwaukee, Wisconsin, but maintains a nation-wide practice representing employees and whistleblowers.

Since April, 2012 when he initially filed the False Claims Act case, Kroening has added another child to his family. “Looking back, it was lonely, because none of my co-workers across the country would speak up and it was terrifying,” Kroening said. Now, though, he will have a college fund for his growing family.

Cross Law Firm gives particular credit to Assistant United States Attorney Stacy Gerber Ward in the Eastern District of Wisconsin for her tireless work on this case over a course of several years. The case is captioned *United States ex rel. Kroening v. Forest Pharmaceuticals, Inc., et al.*, Case No. 12-CV-366, file in the Eastern District of Wisconsin in Milwaukee. The claims resolved by the settlement are allegations only, and there has been no determination of liability.

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**Nationwide Practice**

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