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MARTHA COAKLEY
ATTORNEY GENERAL

Contact:

Jill Butterworth
(617) 727-2543

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Attorney General Martha Coakley's Office Reaches Settlement with Drug manufacturers to Resolve Antitrust Claims

BOSTON — Today, Massachusetts Attorney General Martha Coakley's Office, along with 22 states and the District of Columbia, reached an agreement with Abbott Laboratories, Fournier Industrie et Sante and Laboratories Fournier, S.A., resolving antitrust and deceptive trade practices claims involving the drug TriCor. The claims were raised in a suit filed by the Commonwealth and other states against Abbott and Fournier in a federal district court in Delaware. Under the settlement, states will be reimbursed for overcharges paid for TriCor. The Commonwealth will receive \$750,000 under the settlement. TriCor is used to reduce high levels of triglycerides and to treat cholesterol.

The states alleged that Abbott and Fournier thwarted generic competition to TriCor using a variety of strategies including a practice known as "product hopping." Under this practice, the states alleged, Abbott and Fournier made clinically insignificant changes to TriCor, artificially differentiated TriCor's new formulations from its earlier formulations, removed TriCor's earlier formulations from pharmacy shelves, and interfered with the normal channels of distribution of generic competitors. The states alleged this was carried out in an effort to prevent prescriptions for TriCor from being filled with a generic version of TriCor.

"Many people rely on generic drug equivalents and any improper practices aimed at blocking the availability of generics to consumers will not be tolerated," said Attorney General Coakley. "Our office will continue to work with state and federal regulators to ensure that drug manufacturers engaging in antitrust and unfair and deceptive trade practices are held accountable."

The states also alleged that Abbott and Fournier delayed the Federal Drug Administration's (FDA) approval of generic versions for TriCor. Under federal law, when a generic drug company is sued for patent infringement, the FDA's approval of the generic drug is automatically halted for up to 30 months. The states alleged that Abbott and Fournier purposely delayed the FDA's approval of generic drugs by suing generic companies over patents that Abbott and Fournier knew were not enforceable or were not infringed.

As a result of the alleged misconduct, state entities paid higher prices for TriCor because their conduct blocked the lower-priced therapeutically-equivalent generic versions of TriCor from the market.

Under the settlement, government purchasers will be reimbursed for overcharges paid for TriCor. Abbott and Fournier have also agreed not to delete the drug codes for the latest version of TriCor in the event a generic manufacturer seeks FDA approval of a generic version of TriCor, until after a specified time has lapsed. The settlement will also reimburse the Attorneys General for fees and costs.

Assistant Attorney Generals Madonna Cournoyer, and Mary Freely, of Attorney General Coakley's Antitrust Division, handled the case for the Commonwealth. They were assisted by Paralegal Keith McWhorter, also of Attorney General Coakley's Antitrust Division.

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