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Miller: States Sue Drug Companies for Illegally Blocking Generic Cholesterol Drug

Prices usually drop when generic drugs come on the market.

Iowa and other states filed a lawsuit Tuesday alleging that two drug companies illegally conspired to prevent and delay the market availability of a cheaper generic version of a cholesterol drug called "TriCor."

Iowa Attorney General Tom Miller said the lawsuit alleges that Abbott Laboratories and Fournier, a French drug company, violated antitrust laws by conspiring to delay a generic version of TriCor from coming into the market. (Go to [lawsuit](#))

"Prices usually drop when generic drugs come into the market and compete with brand-name drugs," Miller said. "Generic drugs often cost 50-80 percent less than branded drugs. We allege the companies conspired to implement an anti-generic-drug strategy."

TriCor is used to reduce high levels of triglycerides and cholesterol, and it accounted for over one billion dollars of Abbott's sales last year. Abbott is the American partner of Fournier, and they jointly developed and marketed TriCor. Abbott began marketing TriCor in 1998.

According to the multi-state lawsuit, the attempt to block a cheaper generic drug of TriCor started when generic drug companies began developing their own versions of TriCor. The suit alleges that Abbott and Fournier brought a series of groundless patent-infringement lawsuits against the generic companies, using patents the two companies had obtained by deceiving the U.S. Patent Office with incomplete and misleading data.

The suit alleges Abbott and Fournier filed over ten lawsuits against the generic companies between 2000 and 2004, at a time when the other companies were attempting to obtain Federal Drug Administration (FDA) approval for their generic versions of TriCor. Abbott and Fournier eventually lost or dismissed all of the lawsuits.

The suit alleges that Abbott and Fournier's purpose in filing the patent-infringement suits was to use the litigation process as an anti-competitive weapon. Abbott and Fournier knew that the patents upon which they based the lawsuits were unenforceable and that the legal actions could not succeed on their merits, the suit alleged. The infringement actions therefore were mere shams, designed to exclude generic competition from the TriCor market, the suit alleged.

At the same time, according to the suit, Abbott and Fournier took other action as part of their plan to block generic competition -- they made minor changes or "product switches" in the formulations of TriCor, not to improve it, but rather to prevent generic versions being substituted for the more costly TriCor.

As a result of the unfounded patent litigation and product switches, the states alleged, Abbott and Fournier have successfully thwarted all generic competition, allowing the companies to charge monopoly prices for TriCor.

The civil lawsuit against Abbott and Fournier seeks triple the amount of damages incurred by the states' public health agencies, and also seeks damages incurred by individual consumers.

The [multi-state lawsuit was filed in Federal District Court in Delaware](#) by the attorneys general of eighteen states and the District of Columbia: AZ, AR, CA, CT, FL, IA, KS, ME, MD, MN, MO, NV, NY, OR, PA, SC, WA, WV, and DC.

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[More background and detail from the States' Complaint:](#)

The defendants named in the States' lawsuit are Abbott Laboratories, with a principal place of business

at 100 Abbott Park Road, Abbott Park, IL; Fournier Industrie et Sante of Chenove, France; and Fournier, S.A., a wholly-owned French subsidiary of Fournier Industrie et Sante, also headquartered at Chenove, France.

Tricor is a brand-name prescription drug that uses the active ingredient, fenofibrate, to regulate triglyceride and cholesterol levels. [Complaint, paragraph 2.]

“Fournier received FDA approval in 1993 for a fenofibrate drug called Lipidil. Fournier did not market Lipidil in the U.S. so it sought and found an experienced, United States-based collaborator: Abbott. In January 1998, Abbott and Fournier reached an agreement under which Fournier licensed to Abbott the rights to sell Fournier’s fenofibrate drug in the United States. Since then, Abbott and Fournier have been collaborators in developing and marketing fenofibrate drugs in the U.S. under the brand name TriCor.” [Par. 31.]

“Abbott and Fournier feared that competition from generic manufacturers would significantly decrease prices for fenofibrate drugs and dilute their TriCor monopoly profits when consumers and state purchasers switched to lower-priced generic drugs. Once generic competition began, Abbott and Fournier knew that sales of TriCor would decline significantly. As a result, they conspired to implement their anti-generic strategy.” [Par. 1.]

“Shortly after Abbott introduced TriCor in the U.S., Abbott and Fournier began developing a sophisticated scheme to unlawfully thwart generic competition and maintain their monopoly in the fenofibrate market. Abbott and Fournier executives discussed how to exclude and defeat generic competition for TriCor. They agreed that the number one priority was to develop an anti-generic strategy and changing TriCor’s formulation was critical to forestall generic competition.” [Par. 34.]

“Abbott and Fournier agreed to an anti-generic strategy that included enforcing multiple patents with the knowledge that the patents were not infringed. This strategy was intended to generate enough time to introduce a reformulated TriCor product so that any generic competition would be foreclosed. Abbott and Fournier used the 30-month stay triggered by their patent litigation to ensure that they had sufficient time to launch the new formulation, to force the market to convert to it and to withdraw the prior formulation from the market. This left consumers, physicians, pharmacists and third-party payors with no choice but to use the reformulated product. Abbott and Fournier planned to switch the market to a reformulated TriCor product every few years, thereby creating a ‘moving target’ for generic manufacturers.” [Par. 35.]

“Abbott’s and Fournier’s anti-generic strategy was successful. When the patent litigations against the generic manufacturers of fenofibrate concluded, the old formulations of TriCor were no longer commercially available for any entering generic manufacturer to compete against.” [Par. 5.]

“As a result of Abbott’s and Fournier’s anticompetitive conduct, consumers and state governments have been and continue to be deprived of the lower prices that generic competition brings, while Abbott and Fournier have continued to reap monopoly profits from the sale of TriCor.” [Par. 7.]

END