



# Missouri Attorney General Jay Nixon

## Attorney General's News Release

March 18, 2008

### **Nixon sues pharmaceutical companies Abbott and Fournier for illegally blocking generic competition to TriCor**

**Jefferson City, Mo.** — Attorney General Jay Nixon was joined by 17 other states and the District of Columbia today in filing a lawsuit against pharmaceutical companies Abbott Laboratories and Fournier. The lawsuit alleges that the companies conspired to violate antitrust laws in delaying the availability of a cheaper, generic version of the cholesterol drug TriCor. TriCor accounted for over one billion dollars in sales for Abbott one year ago.

A civil complaint filed in federal court in Delaware against Abbott and Fournier (of France) seeks triple the amount of damages incurred by the state's public health agencies and individual consumers.

Nixon says the states' complaint stems from actions of the two drug companies to prevent the marketing of a generic version of TriCor, Abbott's brand name for a drug used to reduce high levels of triglycerides and cholesterol that Abbot began marketing in 1998. Nixon and the other Attorneys General allege that Abbott and Fournier conspired to monopolize the market for TriCor by introducing re-formulated versions of the drug and then switching the market through promotional efforts as well as forcing the switch by withdrawing the previous version of TriCor, going so far as retrieving unsold product.

"Abbott and its partner, Fournier, went to considerable effort to complete this product switch before a generic version of TriCor could get into the market," Nixon said. "This ensured that when less expensive generic alternatives became available, they were not substitutable for the TriCor formulation in the market. The result was that consumers lost having a choice between a brand and its equivalent generic, and they paid more as a result."

The lawsuit also alleges that the defendants prevented competition from prospective generic companies by obtaining patents to cover their reformulated TriCor through deceiving the Patent Office with incomplete and misleading data regarding patentability of the formulas they sought to protect with patents. Based on those patents, Abbot and Fournier brought a series of groundless patent infringement lawsuits against these generic companies, none of which prevailed. Nixon and the states allege that those lawsuits were a mere sham brought for the purpose of triggering an automatic stay against FDA approval of generic drugs.

It was during these automatic stays, which prevented the FDA from approving the generic versions of TriCor, that Abbott and Fournier switched and converted the market from one formulation to the next. As a result, Nixon says, when the generic drugs were able to enter the market they were no longer able to be substituted to the current version of TriCor. The result was that the defendants maintained their monopoly of TriCor and were able to charge monopoly prices to the detriment of consumers and government payors alike.

"These two companies have sought to manipulate the drug regulatory system, as well as the patent office, to wrongfully increase their profits at the expense of Missouri consumers," Nixon said. "Consumers have thus had to pay higher co-pays because a generic was unavailable in the market for substitution. As a result, both consumers' and Missouri's Medicaid costs have been higher."

"When competition is hampered, the consumer always ends up paying more," Nixon said. "At a time when drug and

health costs are rapidly escalating, these companies' practices cannot be tolerated."

The lawsuit is requesting that the court issue an injunction preventing the defendants from continuing to engage in anticompetitive tactics, and award Missouri restitution for consumers harmed by the defendants' conduct, damages, penalties and court costs.

Inquiries from consumers should be directed to [consumer@ago.mo.gov](mailto:consumer@ago.mo.gov) or **1-800-392-8222** (from within Missouri) or 573-751-3321 (outside Missouri).

All media inquiries should be directed to Press Secretary John Fougere.

[E-mail](#) Phone: 573-751-8844 Fax: 573-751-5818

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