

Minnesota reaches settlement with pharmaceutical company over ‘pay-for-delay’ behavior

Endo settles with 18 states over charges it protected its monopoly on Lidoderm through illegal, anti-competitive conduct

July 25, 2019 (SAINT PAUL) — Attorney General Keith Ellison announced today that Minnesota and 17 other states have reached an agreement with Endo International plc and Endo Pharmaceuticals Inc. over anti-competitive, “pay-for-delay” conduct related to Endo’s sale of Lidoderm, a pain-relief drug that treats complications from shingles.

“One of the reasons the cost of pharmaceutical drugs is so high is illegal behavior by drug companies,” Attorney General Ellison said. “Endo tried to get away with a ‘pay-for-delay’ scheme that stifled competition, forced consumers to pay inflated prices for a much-needed drug, and made it harder for people to afford their lives. We held them accountable for it.

“With this settlement, we’re sending a message to any drug company even thinking about ‘pay-for-delay’ or other illegal conduct that we’ll hold them accountable, too,” Attorney General Ellison added.

The states accused Endo of illegal, anti-competitive conduct due to its participation in a “pay-for-delay” agreement to protect a monopoly on Lidoderm, for which it was the branded distributor and patent-holder. (Lidoderm is the brand-name for lidocaine patches, a transdermal patch widely prescribed for relief of pain associated with post-herpetic neuralgia, a common complication of shingles.) Endo and Teikoku, the branded manufacturer of Lidoderm, sued Watson, a potential generic competitor, for patent infringement in order to prevent Watson’s FDA-approved launch of its generic version of the drug in August 2012. Despite the fact that Endo was the plaintiff, the suit settled with Endo agreeing to provide Watson a payment in the form of product for Watson to sell that had a value of \$96–240 million. It also included an agreement that Endo would not launch its own authorized generic to compete with Watson’s eventual generic. In exchange, Watson delayed entering the market with its generic lidocaine patches until September 2013. This kind of conduct is called a “reverse settlement” or “pay-for-delay.”

At the time of the “pay-for-delay” agreement, Lidoderm was Endo’s most important branded prescription-drug product. In 2011, Endo generated more than \$825 million from its branded Lidoderm patches, comprising 30% of Endo’s total annual revenues.

The agreement is focused on injunctive relief and preventing future conduct. The injunction prohibits Endo from paying or incentivizing a generic drug maker to delay entry into the drug market or to delay researching, developing, manufacturing, marketing or selling any drug product. Endo will also pay the states a total of \$2.3 million, which the states will use to enforce the injunctive terms and to stop other anti-competitive conduct in the pharmaceutical industry.

Endo Pharmaceuticals Inc. is a for-profit Delaware corporation that markets and sells Lidoderm and other drugs throughout the United States. Endo International plc is the parent company to Endo Pharmaceuticals Inc. with global headquarters in Ireland and U.S. headquarters in Pennsylvania.