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Rutledge Reaches Settlement with Cephalon

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August 05, 2016

LITTLE ROCK – Arkansas Attorney General Leslie Rutledge has reached a settlement, along with 47 other states, with Cephalon and affiliated companies. The settlement ends a multistate investigation into anticompetitive conduct by Cephalon to protect its monopoly on the drug market, bringing in major profits for its landmark wakefulness drug, Provigil. Due to its conduct, Cephalon delayed generic, cheaper versions of Provigil from entering the market for several years.

“Arkansans deserve the benefits of a free marketplace, but unlawful actions like those of Cephalon deceitfully keep prices high and harm consumers,” said Attorney General Rutledge. “This agreement holds Cephalon accountable and provides important relief to consumers who overpaid for drugs as a result of Cephalon’s corruption.”

The settlement includes \$35 million for distribution to consumers who bought Provigil with \$673,734.84 going to Arkansas consumers. The State’s total recovery will be \$502,779.05 consisting of \$235,928.25 to compensate for State proprietary claims and \$266,850.78 for Arkansas’s share of disgorgement and costs.

As patent and regulatory barriers prevented generic competition to Provigil neared expiration, Cephalon intentionally defrauded the U.S. Patent and Trademark Office to secure an additional patent, which a court subsequently deemed invalid and unenforceable. Before that court finding, Cephalon was able to delay generic competition for nearly six years by filing patent infringement lawsuits against all potential generic competitors. Cephalon subsequently settled those lawsuits in 2005 and early 2006 by paying the generic competitors to delay sale of their generic versions of Provigil until at least April 2012. Because of that delayed entry, consumers, states and others paid hundreds of millions more for Provigil than they would have had generic versions of the drug launched by early 2006, as expected.

This settlement was facilitated by litigation brought against Cephalon by the Federal Trade Commission (FTC). In May 2015, the FTC settled its suit against Cephalon for injunctive relief and \$1.2 billion, which was paid into an escrow account. The FTC settlement allowed for those escrow funds to be distributed for settlement of certain related cases and government investigations, such as those of the 48 states.

The settlement is subject to court review, including providing consumers with notice and an opportunity to participate in, object to or opt out of the settlement. The states expect court review will be provided by Judge Mitchell Goldberg of the Eastern District of Pennsylvania, who is currently overseeing other litigation concerning Provigil against Cephalon and others.

About Attorney General Leslie Rutledge

Leslie Carol Rutledge is the 56th Attorney General of Arkansas. She is the first woman and first Republican in Arkansas history to be elected to the office. Since taking office, she has begun a Mobile Office program, a Military and Veterans Initiative, a Metal Theft Prevention program and a Cooperative Disability Investigations program. She has led efforts to teach Internet safety, combat domestic violence and make the office the top law firm for Arkansans. Rutledge also re-established and co-chairs the National Association of Attorneys General Committee on Agriculture.

A native of Batesville, she is a graduate of the University of Arkansas and the University of Arkansas at Little Rock William H. Bowen School of Law. Rutledge clerked for the Arkansas Court of Appeals, was Deputy Counsel for Gov. Mike Huckabee, served as a Deputy Prosecuting Attorney in Lonoke County and subsequently was an Attorney at the Department of Human Services before serving as Counsel at the Republican National Committee. Rutledge and her husband, Boyce, have a home in Pulaski County and a farm in Crittenden County.

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