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Drug Company To Pay Consumers And State For Precluding Competition

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Anticompetitive Conduct Delayed Generic Competition, Causing Consumers And The State To Pay More For Provigil

A settlement between Delaware, 47 other states, the District of Columbia and the drug company Cephalon could result in up to \$250,000 to be paid to Delaware consumers to resolve claims the company delayed generic versions of Provigil from entering the market for several years.

The settlement ends a multistate antitrust investigation into anticompetitive conduct by Cephalon and affiliated companies to protect the monopoly profits it earned from its drug Provigil, which is used to treat certain sleep disorders, including narcolepsy. The settlement, which involved the Delaware Department of Justice Consumer Fraud Unit, is still subject to federal court review and approval.

The states alleged that, as patent and regulatory barriers that prevented generic competition to Provigil neared expiration, Cephalon intentionally defrauded the 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 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 multistate settlement was facilitated by litigation brought against Cephalon by the Federal Trade Commission, and the FTC's settlement of those claims in 2015 allowed for funds to be distributed for settlement of certain related cases and government investigations, such as those of the 48 states and the District of Columbia.

Delaware's total recovery will include: (1) an estimated \$163,959 to \$252,068 for distribution to Delaware consumers for payments for Provigil through a claims process to be created; (2) \$59,533 to compensate the State of Delaware for certain Provigil purchases made by the Delaware Division of Medicaid and Medical Assistance; and (3) \$324,007 to the Delaware Consumer Protection Fund, which pays for Delaware's work on antitrust matters and other consumer-oriented investigations and legal actions.

Attorney General Matt Denn commended Deputy Attorney General Mike Undorf and the Consumer Protection Unit for their work on the case.



<http://attorneygeneral.delaware.gov>

Department of Justice, Attorney General's Website (<http://attorneygeneral.delaware.gov>)

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