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AG Fox: States To File New, Expanded Complaint In Federal Generic Drug Antitrust Lawsuit

Attorney General Tim Fox and 45 other attorneys general taking part in a wide-ranging multistate antitrust investigation of the generic drug industry have asked the federal court for permission to file a new complaint in the states' pending lawsuit. The amended suit increases the number of generic drug manufacturer defendants from six to 18 in the case, and the number of drugs at issue in the litigation from two to 15.

In the expanded complaint, the states allege a number of specific illegal agreements among the defendants to fix prices and allocate customers for a number of generic drugs. The states further allege that these conspiracies were part of a much broader, overarching industry code of conduct that enabled the defendant manufacturers to divvy up the market for specific generic drugs in accordance with an established, agreed-upon understanding for assigning each competitor their share of the market.

“Americans have been increasingly affected by rising medical costs, and many of them turn to generic prescription drugs to help them manage their out-of-pocket expenses,” Attorney General Tim Fox said. “Consumers trust generics to provide them with the best value for their money; this case should help deter bad behavior from companies entrusted to provide patients with cost-effective generics used to treat a variety of serious conditions.”

Previously, the lawsuit was filed against generic drug manufacturers Heritage Pharmaceuticals, Inc.; Aurobindo Pharma USA, Inc.; Citron Pharma, LLC; Mayne Pharma (USA), Inc.; Mylan Pharmaceuticals, Inc.; and Teva Pharmaceuticals USA, Inc. alleging that they entered into illegal conspiracies in order to unreasonably restrain trade, artificially inflate and manipulate prices and reduce competition in the United States for two drugs: doxycycline hyclate delayed release, an antibiotic, and glyburide, an oral diabetes medication.

The states are seeking to expand the complaint to include Actavis Holdco U.S., Inc.; Actavis Pharma, Inc.; Ascend Laboratories, LLC; Apotex Corp.; Dr. Reddy's Laboratories, Inc.; Emcure Pharmaceuticals, Ltd.; Glenmark Pharmaceuticals, Inc.; Lannett Company, Inc.; Par Pharmaceutical Companies, Inc.; Sandoz, Inc.; Sun Pharmaceutical Industries, Inc.; and Zydus Pharmaceuticals (USA), Inc.

The expanded complaint adds allegations that the companies entered into conspiracies involving the following additional generic drugs:

- Acetazolamide, used to treat glaucoma and epilepsy;
- Doxycycline monohydrate, an antibiotic;
- Fosinopril-hydrochlorothiazide, used to treat high blood pressure;
- Glipizide-metformin, a diabetes medication;

- Glyburide-metformin, a diabetes medication;
- Leflunomide, used to treat rheumatoid arthritis;
- Meprobamate, an anxiety medication;
- Nimodipine, a calcium channel blocking agent used to reduce problems caused by a bleeding blood vessel in the brain;
- Nystatin, an antifungal medication;
- Paromomycin, an antibiotic used to treat certain parasite infections;
- Theophylline, used to treat asthma and other lung problems;
- Verapamil, used to treat hypertension; and
- Zoledronic acid, used to treat hypercalcemia.

The lawsuit is currently pending as part of the multidistrict litigation in the U.S. District Court for the Eastern District of Pennsylvania. Portions of the expanded complaint are redacted in order to avoid compromising ongoing investigations.

In July 2014, the state of Connecticut initiated an antitrust investigation of the reasons behind suspicious price increases of certain generic drugs. The investigation, which is still ongoing as to a number of additional generic drugs and generic drug companies, uncovered evidence of well-coordinated and long-running conspiracies to fix prices and allocate markets for certain generic drugs.

The states allege that the defendants routinely coordinated their schemes through direct interaction with their competitors at industry trade shows, customer conferences and other events, as well as through direct email, phone and text message communications. The alleged anticompetitive conduct – including efforts to fix and maintain prices, allocate markets and otherwise thwart competition – has resulted in artificially increased prices for generic drugs reimbursed by federal and state healthcare programs, such as Medicaid, and raised the coverage costs for employer-sponsored health plans and out-of-pocket costs for consumers. The states allege that the conduct caused significant, harmful and continuing effects in the country's healthcare system.

In 2015, generic drug sales in the United States were estimated at \$74.5 billion; currently, the generic pharmaceutical industry accounts for approximately 88 percent of all prescriptions written in the United States.