



May 18, 2021

Chairwoman Rachel Prusak
House Committee on Health Care
Oregon House of Representatives
900 Court Street NE, Room 453
Salem, OR 97301

Dear Chairwoman Prusak,

As organizations representing retirees and consumers, we write today in support of SB 764, which is intended to ban “pay-for-delay” agreements between brand name pharmaceutical manufacturers and generic drug manufacturers. We believe that patients in Oregon, especially older patients and lower-income consumers living on fixed incomes, should have widespread access to low-cost generic medicines. However, we are concerned that the bill, as written, may unintentionally reduce access to cheaper generic drugs for seniors, low-income consumers, and others.

The 35 largest drug companies in the world earned gross profits of **\$8.6 trillion** between 2010 and 2018. Their business practices harm the patients who can least afford it; Americans pay more for healthcare than the citizens of any other country. Brand-name manufacturers enjoy patent-protected monopolies stretching years longer than anywhere else in the world. This system is made far worse by the practice of building patent thickets, in which brand-name manufacturers layer dozens of patents on a single drug, falsely extending the life of the patent for months or even years after it was set to expire. Patients bear the brunt of these inflated costs.

Pay-for-delay settlements are anti-consumer and should not be allowed under law. In 2013, the Supreme Court ruled in *FTC v. Actavis* that the Federal Trade Commission could sue brand-name manufacturers for paying generic drug makers to delay their entry into the market. Justice Stephen Breyer, who wrote the majority opinion, stated that “payment in return for staying out of the market...simply keeps prices at patentee-set [brand-name pharmaceutical company-set] levels...the patentee and the challenger gain; the consumer loses.” We agree with Justice Breyer’s assessment of this troubling anti-consumer, anti-patient practice. Since the Supreme Court’s decision, the number of pay-for-delay settlements has fallen.

However, Justice Breyer also noted that “settlement on terms permitting the patent challenger [generic manufacturer] to enter the market before the patent expires would also bring about competition, again to the consumers benefit.” The unfortunate truth is that brand-name drug companies continue to find new ways to game the system to put profits over patients. Not all patent settlements are “pay-for-delay” deals, and patent settlements are not necessarily anti-competitive, nor do they necessarily adversely affect patients. In fact, these agreements can actually speed up the timeline for patients’ ability to buy cheaper generic drugs.

One independent study¹ found that patent settlements lead to generic drugs being brought into the market 81 months sooner than they otherwise would have. As written, SB 764 may unintentionally help brand-name pharmaceutical companies extend their monopolies even longer. We respectfully request that the members of your committee consider revisiting the language, specifically that which presumes anti-competitiveness and adverse effects on patients, so that patent settlements which offer patient access to cheaper generics *sooner* are not banned, to the detriment of consumers.

Patients generally do not care about patent litigation. But they care deeply about how much they will have to pay for the medicines they need to stay healthy. We believe that SB 764 could help to lower the cost of prescription drugs in Oregon, and we strongly support your efforts to make medicines cheaper and more accessible for the constituencies we represent.

Yours truly,



Ken McEldowney
Executive Director

¹ IMPACT OF PATENT SETTLEMENTS ON DRUG COSTS: ESTIMATION OF SAVINGS, IMS Institute for Healthcare Informatics, June 2013, <https://docplayer.net/12504370-Impact-of-patent-settlements-on-drug-costs-estimation-of-savings.html>