October, 25, 2011

Senate Judiciary Committee Ranking Member Chuck Grassley made the following statement after the Federal Trade Commission (FTC) released a staff report that found drug companies entered into 28 potential pay-for-delay deals between October 1, 2010 and September 30, 2011.

Grassley, along with Senator Herb Kohl of Wisconsin, is the author of legislation that would end these settlements between generic and brand name drug companies that keep more affordable generics off the market. The senators also sent a letter to the Deficit Reduction Committee encouraging them to use their legislation as a cost-saving measure. The Congressional Budget Office estimated that the Grassley-Kohl bill will save the federal government – which pays approximately one-third of all prescription costs – $2.68 billion over ten years. The Federal Trade Commission estimates that ending these settlements would save consumers who pay for prescription drugs through private insurance or on their own $3.5 billion per year. The Washington Post also editorialized about the issue today.

Here's Grassley's comment.

"The pay-for-delay tactics employed by brand name and generic drug companies only benefit those companies that engage in such settlements. It hurts consumers who don't have access to affordable medications, and it hurts taxpayers who pay for prescription drugs in both

Medicare and Medicaid. The FTC's study shows a remarkable continuation of a practice that puts the interests of drug companies above the interests of consumers. No one has to engage in such deal making at the expense of consumers, and it's time to put an end to it."

According to the FTC staff report, companies reached 156 final patent settlements in fiscal 2011, and 28 of those settlements contained a payment to a generic manufacturer which restricted the generic company's ability to market its product. The FTC went on to say that "Of those 28 settlements, 18 involved generics that were so-called 'first filers,' meaning that they were the first to seek FDA approval to market a generic version of the branded drug, and, at the time of the settlement, were eligible to exclusively market the generic product for period of time." The FTC press release explains that "Because of the regulatory framework, when first filers delay entering the market, other generic manufacturers can also be blocked from entering the market, which makes such patent settlement deals particularly harmful to consumers."

-30-