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SCHUMER, WAXMAN: DRAMATIC RISE IN COLLUSION BETWEEN PHARMA AND GENERIC DRUG COMPANIES IS INCREASING DRUG PRICES ACROSS THE BOARD

*Lawmakers Call On Generic and Brand Name Drug Companies to Publicly
Condemn Backroom Settlements in Which Big Pharmaceutical Companies
Pay Millions to Keep Generics Drug Alternatives Off the Market*

FTC Report Shows Sixty-Seven Percent Increase in Settlements since 2004

Today Senator Charles E. Schumer and Representative Henry A. Waxman wrote to the heads of the two major pharmaceutical trade organizations asking them to take a strong, public stance against the recent dramatic rise in settlements where pharmaceutical companies pay off generic drug companies to keep cheaper generics off the market. These deals allow brand name companies to pay off generic companies to delay the entry of their generic drugs into the market, keeping cheaper generics off the market decreases competition, and resulting in a drastic increase in the price of prescription drug prices, according to experts.

Schumer said, "These deals between big drug companies and small generic competitors are a financial boon for everyone but the consumer. The high cost of prescription drugs is already one of the most daunting problems American families face today, not just for seniors, and these agreements are only increasing the financial burden on American families. The key to lower drug costs is competition and these backroom deals undermine that competition."

"The report recently issued by FTC indicates that drug companies are returning to practices that severely restrict Americans' access to affordable medications. It doesn't have to be this way," said Waxman. "It is clear that drug companies are able to conduct their business transactions in

ways that do not deprive consumers of the benefit of lower-cost generic drugs. That they would instead be engaging in these practices is inexcusable and harmful to the American public.”

In 1999, the Federal Trade Commission successfully challenged these types of patent settlements, which deprive consumers of cost-savings from generic competition while allowing branded and generic companies to share in the monopoly profits. Until recently, most drug companies have followed the precedent set by the FTC and abandoned settlements that included these types of payoffs.

However, two recent appellate decisions, *Schering-Plough Corp. v. FTC*, and *In re Tamoxifen Citrate Antitrust Litig.*, paved the way for the increase by holding that these settlement agreements do not violate antitrust laws. Since the decision, there has been a resurgence in these types of arrangements. According to the FTC in the six months following the March 2005 court decisions, more than two-thirds of brand name-generic settlement agreements included such terms.

In one such case, the Canadian generic drug company Apotex was paid by Bristol-Myers Squibb to delay introduction of the generic version of Plavix until 2011. Plavix, which thins the blood to prevent strokes, costs American consumers \$3.8 billion every single year.

Schumer is the co-author of the Greater Access to Affordable Pharmaceuticals Act with Senator John McCain (R-AZ). The Schumer-McCain law, which was enacted in 2003, shut down loopholes that drug companies created in Hatch-Waxman law, enabling generic drugs to be brought to market sooner, and lowering the cost of prescriptions for millions of Americans.

Rep. Waxman was a co-author of the 1984 Drug Price Competition & Patent Term Restoration Act — also known as the “Hatch-Waxman Act” — which created the legal framework that permitted generic drugs to be marketed in the U.S.

In the letter, Schumer, a member of the Senate Judiciary Committee that has jurisdiction over anti-trust issues, and Rep. Waxman, Ranking Member on the House Government Reform Committee, called on the heads of the Generic Pharmaceutical Association (GPhA) and the Pharmaceutical Research and Manufacturers of America (PhRMA) to express strong public opposition to the settlements.

In their letter, Sen. Schumer and Rep. Waxman said, “the agreements serve only to benefit the drug companies involved while depriving consumers of access to generic drugs.”

For more information, please visit <http://www.democrats.reform.house.gov> .