

Statement of
The Honorable Russ Feingold
United States Senator
Wisconsin

January 17, 2007

Statement of U. S. Senator Russell D. Feingold
Senate Committee on the Judiciary
Hearing on "Paying Off Generics to Prevent Competition
with Brand Name Drugs: Should it Be Prohibited?"
January 17, 2006

Mr. Chairman, thank you very much for holding this hearing. This is a very important issue for U.S. consumers of prescription drugs, and this hearing goes to the integrity of our antitrust laws and the Hatch-Waxman Act. It is important, however, that we remember that this is not just a typical antitrust matter; the stakes here are particularly high. These consumers are Americans suffering from illness and disease, and they seek to buy prescription drugs that might ease that suffering and cure those diseases.

Americans are paying some of the highest prices in the world for their drugs while, at the same time, the pharmaceutical industry is enjoying some of the highest profits of any industry in the world. There is mounting evidence that drug companies are attempting to deprive consumers of the option of less expensive generic drugs by paying their generic competitors to not compete. As Federal Trade Commissioner Leibowitz tells us in his testimony, these settlement agreements restrict competition at the expense of consumers and federal and state government entities that pay for prescription drugs.

I am deeply concerned at the possibility of settlements where both the brand-name and the generic drug companies agree to enjoy the artificially inflated profits that monopolies generate since that profit comes at the expense of the consumer. The current high prescription drug prices take a particularly heavy toll on sick and low-income individuals who desperately need life-saving medicines. It is time for Congress to ensure that a truly competitive marketplace for prescription drugs is in place -- one that will help bring down the skyrocketing prices in this country.

I hope today's testimony will help us parse out the complicated incentives that lead both brand-name pharmaceutical companies and those generic drug companies that are supposed to be their competitors to agree to reverse payments. I am also intrigued at the prospect that a legislative fix might actually strengthen patent protections and increase judicial efficiency by eliminating incentives for unmerited patent challenges, mounted only in the hopes of gaining a share in profits. I am certain that today's hearing will help us evaluate how best to legislate in a manner that strengthens the unique framework Congress has constructed to deal with pharmaceutical patent disputes and, in the process, save consumers and taxpayers millions of dollars.

I congratulate Senator Kohl for the excellent work he has done with the "Preserve Access to Affordable Generics Act," and I am pleased to be an original cosponsor, along with Chairman Leahy and Senators Grassley and Schumer. I am heartened to see that the Federal Trade Commission believes that we are on the right path with this legislation. Our goal is to craft legislation that both protects American people from drug costs that are artificially inflated because of anti-competitive incentives and also respects the importance of strong protection of patent rights.

I thank you again, Mr. Chairman, for holding a hearing on this important issue.