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Senators Applaud Court's Ruling Against Pay-for-Delay Settlements

WASHINGTON – U.S. Senators Herb Kohl, D-Wis., and Chuck Grassley, R-Iowa, are applauding a ruling by the U.S. Court of Appeals for the Third Circuit that drug companies' "pay-for-delay" settlements violate antitrust law.

"The court made the right decision," Kohl said. "The Third Circuit Court of Appeals' ruling is a big step toward ending an unfair and abusive business practice that keeps generic drugs off the shelves and costs consumers and taxpayers billions of dollars.

"This backroom deal making is at the expense of consumers and taxpayers, so the Third Circuit decision is good news for Americans who need affordable medicine and taxpayers who pay for prescription drugs in the Medicare and Medicaid programs," Grassley said.

In a class-action lawsuit challenging an agreement between Merck and Co.'s Schering-Plough unit and a generic drug company that delayed a competing version of the potassium supplement K-Dur 20, the Third Circuit Court of Appeals held that a "reverse payment is prima facie evidence of an unreasonable restraint of trade."

Last year, Kohl and Grassley introduced the Preserve Access to Affordable Generic Drugs Act (S. 27), which would deter "pay-for-delay" deals in which brand name drug companies settle patent disputes by paying generic drug manufacturers in exchange for the promise of delaying the release of the generic version into the market. Under the legislation, these anti-consumer pay-off agreements would be presumed illegal and the Federal Trade Commission (FTC) would be provided the authority to stop the agreements.

The Congressional Budget Office also estimates that the bill would accelerate the availability of lower-priced generic drugs and generate \$4.785 billion in budget savings over a 10-year period. Additionally, CBO estimates that earlier entry of generic drugs affected by the bill would reduce total drug expenditures in the U.S. by roughly \$11 billion over the decade.