Sensenbrenner has stake in drug issues

By Alexander Bolton

Rep. Jim Sensenbrenner (R-Wis.), who will have a major role in an escalating battle between brand name and generic drug manufacturers as chairman of the House Judiciary Committee, has substantial stock holdings in three pharmaceutical companies that could gain or lose billions of dollars from his decisions.

Sensenbrenner has between $2 million and $7 million worth of stock in Merck & Company, Pfizer, and Abbott Laboratories, according to financial disclosure documents made public last week. Of those investments, the largest is in Merck and is worth between $1 million and $5 million. The financial documents list lawmakers' assets in broad ranges of value.

Legal experts and consumers' advocates consulted by The Hill say the financial arrangement constitutes a conflict of interest that strains the spirit of House ethics rules and would be prohibited in other branches of government.

"Sensenbrenner is in an influential position because [his committee] is where the laws get initiated. [Patent] law will be initiated out of Sensenbrenner's committee," said Frank Clemente, director of Public Citizen's Congress Watch, a legislative arm of Public Citizen that specializes in prescription drug affordability.

"The decisions of his committee with respect to the patenting process could substantially benefit the brand-name drug industry. He stands to directly profit in a very substantial way if patent law is changed to help the drug industry," Clemente said.

Kathleen Clark, a law professor at Washington University, agreed with consumers' advocates that there may be justifiable cause for concern.
"It does pose a kind of conflict of interest in the sense that anybody with that level of investment in a company might not be motivated by what's in the common good, but what's in [his or her] personal good," said Clark, who worked for the Senate Judiciary Committee under then-Chairman Joe Biden (D-Del.) in the early '90s.

However, Clark added that the general financial conflict of interest statute does not apply to the legislative branch and that members of Congress are not required to divest themselves of financial holdings that could pose a conflict.

Instead, lawmakers are accountable to the voters who elect them.
"Can you imagine the next 15 second or 30 second spot in the next race for Sensenbrenner's House seat?" she asked.

Sensenbrenner defended his stock holdings and vowed to recuse himself if the committee dealt with legislation that posed a conflict of interest.

"I've always recused myself when there is a bill that benefits an individual corporation that I have a significant interest in," he told The Hill. "Should there be a patent extension bill that deals with a company that I have significant holdings in, I will recuse myself.

He said that he will determine whether a conflict of interest exists on a case-by-case basis, and added that he inherited all his stock holdings and has not traded a security in 20 years.

In the past, Sensenbrenner has argued that Congress should be subject to the same rules as the rest of the country, a stance that helped earn him a reputation in the House as a stickler for government ethics.

Sensenbrenner's interest in Merck and other brand-name drug companies is significant because his committee has jurisdiction over intellectual property and patent law that directly affects the fortunes of those companies.

"House Rule III directs a representative not to vote on something if 'he has a direct personal or pecuniary interest' in it," said Charles Tiefer, a former deputy counsel of the House who frequently advised members and staff about ethics rules.

"It would strain the spirit of House Rule III for a chairman to bet $2 million on certain companies and then become the prime mover of legislation to make that bet hit the jackpot."

Over the next decade, Merck, Pfizer and Abbott Laboratories will lose their patents on 21 lucrative drugs as those patents are scheduled to expire. In 1998 alone, those drugs totaled nearly $9 billion in sales, according to data collected by the Food and Drug Administration.

Based on data from one year, those drugs would earn about $100 billion over the next 10 years. However, it is likely earnings would far exceed that number because drug sales would increase as products became more familiar to consumers, according to William Nixon, the president of the Generic Pharmaceutical Association (GPA).

In 2000, Merck, Pfizer and Abbott Laboratories collected a total of $84 billion in revenues and $13.2 billion in profits.

Companies that produce patented drugs have fought to protect their patents and profits. In the past, drug companies have regularly asked the House and Senate Judiciary committees to extend patents on their products.

Last year, when Rep. Henry Hyde (R-Ill.) chaired the Judiciary Committee, Schering Plough lobbied the panel unsuccessfully to extend its patent on Claritin, an allergy medication that earned the company over a billion dollars in 1998. The patent will expire in April of 2004.

Pharmaceutical industry experts say the battle over patents will become even hotter over the next two years as Congress tackles healthcare reform. In the House, patent law is the exclusive domain of the Judiciary Committee.

Pressured by consumer groups and generic drug companies, lawmakers are considering making changes in a patent law named after its original sponsors Sen. Orrin Hatch (R-Utah) and Rep. Henry Waxman (D-Calif.). Generic drug companies contend that brand-name companies such as Merck are exploiting loopholes in Hatch-Waxman to extend their patents. The House Judiciary Committee would share jurisdiction with the Commerce panel over that law because it also affects the Food and Drug Administration.

Drug companies lose big profits when they lose a drug patent. Competition from generic drugs usually lowers the price of a medication by about 70 percent.

PRINT THIS PAGE

The Hill www.hillnews.com June 20, 2001