

In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation

COURT: United States District Court for the District of New Jersey
CASE NUMBER: 08-2177 (DMC) (JAD)
CLASS PERIOD: 12/06/2006 - 03/28/2008
CASE LEADERS: Salvatore J. Graziano, Adam H. Wierzbowski

This is a securities action that has been certified by the Court to proceed as a class action on behalf of all persons and entities that purchased or acquired Merck & Co. Inc. ("Merck" or the "Company") common stock, or call options, and/or sold Merck put options, during the period between December 6, 2006 through and including March 28, 2008 (the "Class Period"), and who did not sell their stock and/or options on or before January 14, 2008, and who were damaged thereby (the "Class"). Certain persons and entities who otherwise come within the definition of the Class are excluded from the Class by Order of the Court.

October 1, 2013 – Court Grants Final Approval of \$215 Million Settlement in *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*; Total Recoveries in Coordinated Class Actions against Merck and Schering-Plough Reach \$688 Million

On October 1, 2013, the Court granted final approval of the \$215 million settlement reached as part of a coordinated securities class actions pending against Merck & Co. Inc. ("Merck"), Schering-Plough Corporation ("Schering"), Merck/Schering-Plough Pharmaceuticals, certain of the Companies' directors and officers, and the underwriters of a 2007 Schering stock offering. The other action, *In re Schering-Plough Corporation/ENHANCE Securities Litigation*, settled for \$473 million.

The combined \$688 million in settlements is the second largest securities class action settlement in the Third Circuit, among the top 25 securities class action settlements of all time, and among the ten largest recoveries in a securities class action not involving a restatement. The settlements were reached only after the Court granted Plaintiffs' motions for class certification and denied Defendants' motions for summary judgment, and the Third Circuit denied Defendants' Rule 23(f) appeals of the District Court's decisions granting class certification. Trial was scheduled to begin on March 4, 2013.

According to a report issued by Court-appointed Special Masters tasked with reviewing the course of the litigation, the Merck settlement is "extremely impressive given the particular challenges presented by the Merck Action in proving causation, materiality, *scienter* and damages emanating from, among other difficulties, the failure of Merck shares to decline in the wake of the initial public disclosure that Vytorin had failed the ENHANCE trial," especially since Merck did not experience a significant drop in their stock price.

Important information about the settlement is contained in the Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Settlement Notice"). The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

Background

The action arises from allegations that Merck, one of the world's largest pharmaceutical companies, concealed material information and made false and misleading statements relating to Merck's multi-billion dollar blockbuster drugs Vytorin and Zetia. In particular, it is alleged that Merck improperly withheld the results of the "ENHANCE" clinical trial, which contradicted Merck's initial public statements and presentations claiming that the Company expected the trial to "demonstrate [the] additional benefits of Vytorin," thereby driving "future growth."

The results of the trial, which Merck partially released on January 14, 2008 in response to public pressure, revealed that not only did the Company's cholesterol drugs show "no statistically significant difference" in plaque buildup, but that the fatty arterial plaques actually grew somewhat faster than in those patients taking a cheaper generic drug. Following this announcement, the House of Representatives' Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations began a probe into the Defendants' "withholding of clinical trial data that may significantly affect the medical management of hypercholesterolemia, as well as the use of misleading statement [sic] in direct-to-consumer advertisements for prescription medicines."

The Complaint in this action claims that, as a result of Merck's dissemination of materially false and misleading information, as well as the failure to disclose material facts during the Class Period, the market price of Merck's common stock was artificially inflated, thereby causing damage to Class Members.

Case Developments

On July 2, 2008, the Honorable Dennis M. Cavanaugh appointed BLB&G clients Jacksonville Police and Fire Pension Fund and the General Retirement System of the City of Detroit, along with other public pension funds, Co-Lead Plaintiffs and BLB&G as Co-Lead Counsel for the Class. On October 6, 2008, the Lead Plaintiffs filed the Consolidated Class Action Complaint.

Defendants moved to dismiss on December 12, 2008. Lead Plaintiffs filed their opposition to the motion to dismiss on February 9, 2009 and an amended opposition brief on February 12, 2009, and Defendants replied on April 9, 2009. On September 2, 2009, Judge Cavanaugh denied Defendants' motion to dismiss in its entirety. Click [here](#) to view the opinion.

Fact discovery was completed in October 2011 and expert discovery was completed on January 10, 2012. On February 9, 2012, Lead Plaintiffs filed a Second Amended Consolidated Complaint for Violation of the Federal Securities Laws (the "Complaint").

Briefing on class certification was completed in January 2012 and, on September 25, 2012, the Court issued an Order and an Opinion granting Lead Plaintiffs' motion certifying the Class, appointing Lead Plaintiffs as Class Representatives and appointing Lead Counsel as Class Counsel.

On March 1, 2012, Defendants moved for summary judgment dismissing the Complaint. The motion was fully briefed on May 18, 2012 and, on September 25, 2012, the Court issued an Order denying the motion.

Case Documents

- June 21, 2013 - Notice of Proposed Settlement and Plan of Allocation; Settlement Fairness Hearing; and Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- February 9, 2012 - Second Amended Consolidated Complaint for Violation of the Federal Securities Laws

- September 25, 2012 – Order Certifying the Class
- September 25, 2012 – Opinion Granting Motion for Class Certification
- January 17, 2013 – Notice of Pendency of Class Action
- September 2, 2009 - Opinion Denying Defendants' Motion to Dismiss
- October 6, 2008 - Consolidated Class Action Complaint