

In re Schering-Plough Corporation/ENHANCE Securities Litigation

COURT: United States District Court for the District of New Jersey
CASE NUMBER: 08-397 (DMC) (JAD)
CLASS PERIOD: 01/03/2007 - 03/28/2008
CASE LEADERS: Salvatore J. Graziano, Gerald H. Silk, 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 Schering-Plough Corporation ("Schering") common stock, 6% mandatory convertible preferred stock maturing August 13, 2010 ("Preferred Stock"), or call options, and/or sold Schering put options, during the period between January 3, 2007 through and including March 28, 2008 (the "Class Period"), and who did not sell their stock and/or options on or before December 11, 2007, 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 \$473 Million Settlement in *In re Schering-Plough Corporation/ENHANCE 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 \$473 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 Merck & Co., Inc. Vytarin/Zetia Securities Litigation*, settled for \$215 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 *Schering* settlement was "extremely impressive," and that "a comparison of the Settlement Fund created here to the results in other cases involving comparably sized investor losses, confirms the great success achieved by Schering's Co-Lead Counsel."

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 was brought against Schering-Plough Corporation ("Schering" or the "Company"), Merck/Schering-Plough Pharmaceuticals ("M/S-P"), certain of the Company's directors and executive officers, and the underwriters

of Schering's August 9, 2007 offering of Schering common stock and August 15, 2007 offering of Schering Preferred Stock.

Schering jointly markets two anti-cholesterol drugs, Vytorin and Zetia, with Merck & Co., Inc. In April 2006, Schering completed a clinical trial called the ENHANCE study, which compared Vytorin (a combination of Zetia and the generic anti-cholesterol drug simvastatin) to simvastatin alone. The study showed that there was no statistically significant difference between Vytorin and simvastatin in terms of reducing atherosclerosis, the disease that causes plaque formation in the arteries and the hardening of the arteries and leads to heart attacks and heart disease. Simvastatin (formerly known as Zocor) and other generics are widely available on the market and cost a fraction of the price of Vytorin and Zetia.

In the two years following completion of the ENHANCE study, the Company engaged in an aggressive marketing campaign touting the benefits of Vytorin and Zetia, attracting billions of dollars in investment without disclosing the negative results of the ENHANCE study. In November of 2007 — eighteen months after the completion of ENHANCE — the Company defied scientific protocol and announced it was changing the primary endpoint of the study. After a firestorm of public criticism, the Company retreated from that position — but still did not release the study results. In the ensuing months, pressure against the Company mounted as Congress and federal and state prosecutors began seeking information related to the ENHANCE study and demanding the release of the results. Finally, on March 30, 2008, at the American College of Cardiology Conference in Chicago, Schering released the complete study results. That same day, a panel of expert cardiologists announced that doctors should return to prescribing statins and use the drugs Vytorin and Zetia only once other treatments have failed. As a result, Schering's stock price plummeted and investors suffered billions of dollars of losses.

On April 17, 2008, the Honorable Dennis Cavanaugh of the United States District Court for the District of New Jersey appointed the Arkansas Teacher Retirement System, the Public Employees' Retirement System of Mississippi, the Louisiana Municipal Police Employees' Retirement System, and the Massachusetts Pension Reserves Investment Management Board as Lead Plaintiffs and BLB&G and Labaton Sucharow as Lead Counsel for the class. Lead Plaintiffs filed an Amended Complaint on September 15, 2008. Lead Plaintiffs seek recovery on behalf of themselves and the Class under the Securities Act of 1933 and the Securities Exchange Act of 1934.

Defendants moved to dismiss the Amended Complaint on December 10, 2008. Lead Plaintiffs filed their opposition to the motion to dismiss on February 6, 2009. Defendants filed their reply briefs on March 18, 2009. On September 2, 2009, Judge Cavanaugh denied Defendants' motions to dismiss in their entirety. Click [here](#) to view the opinion. Defendants moved for reconsideration on September 17, 2009, Lead Plaintiffs filed their opposition brief on October 5, 2009, and briefing was completed on October 13, 2009. Defendants' motion for reconsideration was denied on June 21, 2010.

Defendants answered the complaint on November 18, 2009.

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 October 11, 2012, the Court entered an Amended Order relating to the definition of the Class.

On March 1, 2008, Schering, M/S-P and the Individual Defendants moved for partial summary judgment and the Underwriter Defendants moved for summary judgment. The motions were full briefed and, on September 25, 2012, the Court entered an Order denying both motions.

Case Documents

- January 24, 2019 - Order Approving Cy Pres Distribution
- 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
- January 17, 2013 - Notice of Pendency of Class Action
- October 11, 2012 - Amended Order Certifying the Class
- September 25, 2012 - Opinion Granting Motion for Class Certification
- September 2, 2009 - Opinion Denying Defendants' Motion to Dismiss
- September 15, 2008 - Consolidated Class Action Complaint for Violation of the Federal Securities Law