



NEWS RELEASE

## Merck to Appeal Verdict in Massachusetts Medicaid Case

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Says evidence showed it was not responsible for the amounts the Commonwealth agreed to pay pharmacists

Asserts that jury's findings are clearly against the weight of the evidence

WHITEHOUSE STATION, N.J.--(BUSINESS WIRE)--Merck & Co., Inc. today said it will vigorously appeal a Massachusetts federal court jury verdict concerning allegations that a former subsidiary of Schering-Plough Corporation, Warrick Pharmaceuticals, caused the Commonwealth of Massachusetts to overpay local pharmacists for prescriptions of albuterol. Merck and Schering-Plough merged in November 2009. Warrick ceased operations prior to the merger, in 2008.

Following a 3-week trial, the jury found Merck liable for approximately \$4.6 million in compensatory damages. U.S. District Judge Patti Saris deferred a decision on how penalties should be calculated under Massachusetts state law. While penalties could be substantial, Merck emphasized that significant legal issues remain to be decided by the court before penalties could be imposed in any amount.

"The company intends to vigorously pursue a reversal of the verdict in the trial court and on appeal, if necessary," said Bruce N. Kuhlik, executive vice president and general counsel of Merck. "We strongly believe the evidence showed that the Commonwealth made informed choices about amounts it paid to Massachusetts pharmacists, and that Warrick was in no way responsible for those choices."

At trial, Merck presented evidence that Warrick was never required or asked to provide information to the Commonwealth regarding the price at which it was selling albuterol, that the prices Warrick reported to other

parties, including other government entities, were true and accurate, and that the Commonwealth had extensive and accurate information regarding those prices from sources other than Warrick.

"We are very disappointed with the outcome of this trial. Both the finding of liability and the amount of compensatory damages are clearly against the weight of the evidence," said John T. Montgomery of Ropes & Gray LLC, outside counsel for Merck. "We will promptly seek to set aside the verdict."

The case was originally filed by the Commonwealth in 2003 and was tried in federal court in Boston. The drugs involved in the case are three generic albuterol products that were manufactured and sold by Warrick.

## About Merck

Today's Merck is a global healthcare leader working to help the world be well. Merck is known as MSD outside the United States and Canada. Through our prescription medicines, vaccines, biologic therapies, and consumer care and animal health products, we work with customers and operate in more than 140 countries to deliver innovative health solutions. We also demonstrate our commitment to increasing access to healthcare through far-reaching policies, programs and partnerships. For more information, visit [www.merck.com](http://www.merck.com).

## Forward-Looking Statement

This news release includes "forward-looking statements" within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995. Such statements may include, but are not limited to, statements about the benefits of the merger between Merck and Schering-Plough, including future financial and operating results, the combined company's plans, objectives, expectations and intentions and other statements that are not historical facts. Such statements are based upon the current beliefs and expectations of Merck's management and are subject to significant risks and uncertainties. Actual results may differ from those set forth in the forward-looking statements.

The following factors, among others, could cause actual results to differ from those set forth in the forward-looking statements: the possibility that the expected synergies from the merger of Merck and Schering-Plough will not be realized, or will not be realized within the expected time period; the impact of pharmaceutical industry regulation and health care legislation; the risk that the businesses will not be integrated successfully; disruption from the merger making it more difficult to maintain business and operational relationships; Merck's ability to accurately predict future market conditions; dependence on the effectiveness of Merck's patents and other protections for innovative products; the risk of new and changing regulation and health policies in the U.S. and internationally and the exposure to litigation and/or regulatory actions.

Merck undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise. Additional factors that could cause results to differ materially from those described in the forward-looking statements can be found in Merck's 2009 Annual Report on Form 10-K and the company's other filings with the Securities and Exchange Commission (SEC) available at the SEC's Internet site ([www.sec.gov](http://www.sec.gov)).

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