

Attention Reporters: Visit and bookmark the precedent-setting original content Web reference developed for this case at <http://www.drugfraudsettlement.com>. The site provides an in-depth look at the fraud allegations, federal and state laws, and includes an extensive timeline with milestone dates/periods during the seven-year investigation. Also explained is the new model of cooperation among federal and state investigators, relator and *qui tam* whistleblower attorneys which promises to be the basis for future complex healthcare fraud *qui tam* investigations.

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Merck Pays More Than \$400 Million To Settle
Federal, State Medicaid Fraud Investigation Sparked By
Qui Tam Whistleblower Case Detailing Marketing Schemes
For Vioxx®, Zocor®, Several Other Drugs

PHILADELPHIA - One of the world's largest drug manufacturers, Merck & Co., Inc. ("Merck"), has agreed to pay more than \$400 million to the U.S., 49 states and the District of Columbia to settle *qui tam* whistleblower-led allegations that the pharmaceutical giant illegally defrauded Medicaid and other public healthcare programs across the U.S., according to a federal Settlement Agreement unsealed today. Merck employed four schemes to grab or maintain market share for drugs including Vioxx®, Zocor®, Cozaar®, Fosamax®, Maxalt®, and Singulair®, according to *qui tam* whistleblower lawyers Steven H. Cohen, Mark Kleiman and BethAnne Yeager, who represent the whistleblower, a former Merck district sales manager.

Capping a marathon, seven-plus-year investigation among federal and state authorities and the *qui tam* whistleblower's legal team, the Merck case presents several major legal milestones, according to Cohen, Kleiman and Yeager, including:

- The first Government recovery from investigation into marketing of Zocor and Vioxx;
- The first fully-coordinated whistleblower-federal-state Medicaid fraud investigation;
- The first Medicaid fraud enforcement in which the States, led by Nevada, tested an innovative—and successful—prosecution theory;
- The first federal and state nominal price Medicaid fraud settlement; and
- The second largest civil False Claims Act ("FCA") recovery to federal and state Medicaid programs.

Although Merck did not admit to wrongdoing, in addition to returning \$400 million to taxpayers, the Whitehouse Station, New Jersey-based drug manufacturer has agreed to be bound by a Corporate Integrity Agreement, according to Cohen, who, along with Yeager is associated with the Whistleblower Action Network in Chicago.

"Our relator, a former Merck sales manager, blew the whistle on Merck which resulted in a nationwide investigation by federal and state prosecutors that returned hundreds of millions of taxpayer dollars to the Medicaid program," Cohen said.

"When we realized the extent of the fraud, we took the evidence straight to the Government. Taking on Merck required close coordination and cooperation between us and the state and federal prosecutors. This taskforce approach and unrelenting commitment won a huge victory for the taxpayers." Kleiman said.

(More)

“This landmark case exposed abuses of Medicaid’s Best Price nominal price exception, and strengthened the Medicaid Rebate program to reduce the states’ drug costs,” Yeager said.

Aside from the huge settlement, the second largest FCA civil fraud Medicaid recovery, the case marked new ground with a collaborative investigation model that saw the relator and his lawyers work closely with state and federal Government investigators to press the case. This new investigative model, Cohen said, “will become the basis for future *qui tam* whistleblower investigations, especially in an age of shrinking government budgets.”

The FCA, initially sponsored by President Abraham Lincoln to stop military fraud during the Civil War, allows private citizens with knowledge of fraud to help the Government recover ill-gotten gains and additional civil penalties. The FCA allows the Government to collect up to three times the amount it was defrauded, in addition to civil penalties of \$5,500 to \$11,000 per false claim. Whistleblowers whose cases settle or are won in court usually receive rewards representing 15 to 25 percent of *qui tam* recoveries.

The federal investigation was conducted by the U.S. Attorney’s Office for the Eastern District of Pennsylvania, under the direction of Patrick L. Meehan, U.S. Attorney, Assistant U.S. Attorney Virginia Gibson, Chief of the Civil Division, and Assistant U.S. Attorney Viveca Parker. Parker led the broad investigation, including the review of more than 400 boxes of Merck documents, and fostered the coordinated work of her office, the states, the whistleblower and his attorneys.

At the state level, Nevada Chief Deputy Attorney General Tim Terry, head of the state’s Medicaid Fraud Control Unit, worked with the whistleblower legal team on the groundbreaking companion case brought by the State of Nevada and the whistleblower. The Nevada case is part of the of the \$400 million global settlement announced today.

Terry and Patrick Keenan, Deputy Attorney General for Illinois, along with representatives from Attorneys’ General Offices in Delaware, Massachusetts and Illinois made up the investigation team on behalf of the States’ Medicaid fraud units that brought about today’s global settlement.

Cohen, Kleiman and Yeager praised the work of the investigation team. “The federal and state prosecutors on this case represent the highest calling of public service, Cohen said. “If it had not been for Tim Terry, Viveca Parker and the rest of the Government team we would not be announcing today’s global settlement against Merck.”

United States *ex rel.* Steinke, et al. v. Merck & Co., Inc., U.S. Dist. Ct. Case No. 00-CV-6158 (E.D. Pa.)

State of Nevada *ex rel.* Steinke v. Merck & Co., Inc., U.S. Dist. Ct. Case No. 3:05-cv-00322 HDM RAM (D. Nev.)

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ATTORNEY CONTACTS

Steven Cohen 312-327-8800

Mark Kleiman 310-260-2303

Media Relations: PRforLAW, LLC 215-736-0198