

# Maryland Lawyer

*News and analysis of legal matters in Maryland*

## Merck owes fired employee \$555K

BY **BRENDAN KEARNEY**

BrendanKearney@TheDailyRecord.com

**A** Baltimore jury has awarded \$555,000 to a former Merck & Co. saleswoman who claimed she was fired two years ago in retaliation for reporting her supervisor's violations of corporate policies.

The panel deliberated about three hours Friday afternoon before finding in favor of Jennifer Scott, a 47-year-old Ellicott City woman who worked at Merck from 1992 to 2008. The jury of five women and three men determined Scott was owed \$513,000 in back pay and \$42,000 in front pay. Similar to back pay, front pay essentially is the equivalent of future lost earnings.

Scott had complained to Merck's ethics office in July 2007 concerning William Liberato's insistence that she allow a co-worker to use her credit card to cover dinners with doctors, and about Liberato's support of unauthorized sales pitches. Scott had worked at the pharmaceutical giant for 16 years and won several awards before she was sacked.

Merck's attorney had argued Scott was terminated for performance reasons alone.

"This is a case that shows that corporations need to be held accountable for their promises to their employees," said Scott's attorney, Andrew D. Freeman, referring to Merck's stated policy of not retaliating against employees reporting violations in good faith.

A Merck spokesman implied Scott wouldn't be paid any time soon.

"We disagree with the jury's verdict and will vigorously defend

against plaintiff's claims on appeal," Ronald Rogers, the spokesman, said in an e-mailed statement. "We believe the verdict was contrary to the evidence presented at trial."

Asked about the possibility of an appeal, Freeman said he viewed the case "as a credibility issue, which is what a jury decides" and that "had we lost, we would not have appealed."

"But they have a lot more resources than Ms. Scott does," Freeman noted.

New Jersey-based Merck's product line includes cholesterol-lowering drugs Zocor and Vytorin, as well as Fosamax (for osteoporosis) and Vioxx (an arthritis drug that was withdrawn from the market). Merck, which employed roughly 100,000 people worldwide as of a year ago, reported quarterly revenue of \$11.1 billion in October. It has not yet reported fourth-quarter or full-year results. The stock was trading after hours Friday at 34.25, down from its opening of 34.63 and its weekly high of 37.60.

The trial began Monday in U.S. District Court before Judge Benson E. Legg.

Scott testified she had received "very positive" performance reviews and "numerous sales awards" during her tenure, before Liberato became her boss in May 2005.

Around the same time a new salesman, Lionell Randall, came to work with Scott. Initially, Scott allowed Randall to use her credit card to cover business meals but became uncomfortable with the practice in fall 2005 and asked Liberato to cure the situation.

Freeman said Liberato then began "papering her file" with negative notes, even though her performance

was well above average.

"I think there were several claims that her former boss made that simply were not credible, and we were able to show that he was retaliating against her in various ways," Freeman said after the verdict.

Liberato drafted Scott's performance improvement plan on July 1, 2007, Baldwin said, and Scott lodged her ethics complaint less than two weeks later. That August, Scott reported Liberato for promoting unapproved sales pitches.

According to the parties' pretrial memorandum, the company's Office of Ethics determined that Liberato had mishandled the credit card controversy and that he had improperly encouraged sales reps to use unapproved promotional messages. But the office did not find Liberato had issued Scott's performance improvement plan in retaliation for her complaints about him.

Liberato changed jobs within Merck in November 2007 but was the one who fired Scott in January 2008.

Among the people who supported Scott's version of events were a former boss and a physician customer. People from Merck's ethics and human resources offices testified for the defense.

Scott, an MBA who had been making \$120,000 in her Merck position, has not been able to find a job in the past two years and had asked the jury for almost the same amount of front pay as back pay, that is, a half million dollars. Nevertheless, Freeman said, he and Scott are "very pleased and appreciative."