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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Merck, J&J Strike Deal In Arthritis Drugs Dispute

By **Bibeka Shrestha**

Law360, New York (April 15, 2011, 10:11 PM ET) -- Merck & Co. Inc. said Friday it will pay Johnson & Johnson \$500 million to end a dispute over rights to two arthritis drugs resulting from Merck's merger with Schering-Plough Corp., and that the two companies plan to share marketing rights.

Merck added it would hand J&J's Janssen unit exclusive marketing rights to the drugs Remicade and Simponi in Canada, Central and South America, the Middle East, Africa, and Asia Pacific on July 1, while retaining marketing rights throughout Europe, Russia and Turkey.

The deal ends an arbitration J&J requested in May 2009 to sever an agreement between subsidiary Centocor Ortho Biotech Inc. and Schering-Plough for rights to market and sell the arthritis drugs.

Merck's retained territories represent about 70 percent of the company's 2010 revenue of about \$2.8 billion from Remicade and Simponi. Starting July 1, Merck and J&J will equally share profits from Merck's distribution of the products in those territories.

Merck President and CEO Kenneth Frazier said in a statement he was pleased to have reached the voluntary agreement.

"The immunology field is a rapidly growing therapeutic area. Merck will have a strong footprint in this category through our significant retained interests in Remicade and Simponi, both of which will be important contributors to our overall portfolio," Frazier said. "We also are committed to ensuring a smooth transition for customers and patients in the territories being relinquished, with no impact on product supply."

Bill Weldon, J&J's chairman and CEO, lauded the agreement for expanding the company's immunology portfolio on a global basis.

"Our first priority will be to ensure the continued availability of Remicade and Simponi to health care providers and patients around the world, while continuing to increase access," Weldon said. "We are working closely with Merck to make certain this is a seamless transition in the relinquished territories."

In launching the arbitration, J&J had argued that Merck's merger constituted a change of control that permitted the termination of the agreements and said it should regain Schering-Plough's rights to distribute the products outside the United States.

Merck disagreed, arguing that the deal did not trigger the change-of-control provisions.

The change-of-control provision said that if either party to the distribution agreement came under control of a third party, the other party in the agreement would have the right to terminate the contract within 30 days of receiving notice.

The agreement defined "change of control" in part as "any merger, reorganization, consolidation or combination in which a party to this agreement is not the surviving corporation," according to Merck's regulatory filing.

Remicade is a well-established treatment for rheumatoid arthritis and Crohn's disease. Simponi is a next-generation treatment for rheumatoid arthritis and active psoriatic arthritis.

Johnson & Johnson is represented by Patterson Belknap Webb & Tyler LLP.

Merck is represented by David Boies and William Ohlemeyer of Boies Schiller & Flexner LLP and Scott Vernick of Fox Rothschild LLP.

--Additional reporting by Jocelyn Allison. Editing by Eydie Cubarrubia.

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