

NEWS RELEASE

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LATEST VIOXX VERDICT REVEALS CHINK IN MERCK'S ARMOR

MUNCIE, IN, Aug. 3 – Yesterday's verdict by a California jury (*Grossberg v. Merck & Co., Inc.*, Superior Court of California, County of Los Angeles, Docket No. BC 327729) for Merck & Co, Inc. reveals less about the viability of Vioxx litigation than the flaw of Merck's approach to litigating remaining cases, says B. Joseph Davis, a Muncie attorney who is investigating Vioxx claims.

He believes that Merck's strategy of trying single cases is not only incredibly expensive but that the cases tried to date are not truly representative of those that will prove tougher for Merck.

"Merck's wins to date are illusory," says Davis. "Of the five cases where Merck has obtained a favorable verdict,¹ all involved plaintiffs with some questionable use of the drug," he adds. "Merck tallies its wins on cases that provide no real value for what are considered the *hard* cases for the drug company – those where the patient was on the drug for at least four

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¹ *Plunkett v. Merck & Co., Inc.*, Eastern District of Louisiana, Docket No. 05-0406; *Humeston v. Merck & Co., Inc.*, Superior Court of New Jersey, Atlantic County, Docket No. ATL-L-2272-03; *Cona v. Merck & Co., Inc.*, Superior Court of New Jersey, Atlantic County, Docket No. ATL-L-3553-05; *Doherty v. Merck & Co., Inc.*, Superior Court of New Jersey, Atlantic County, Docket No. ATL-L-0638-05; *Grossberg v. Merck & Co., Inc.*, Superior Court of California, Los Angeles County, Docket No. BC 327729.

Vioxx Verdict Reveals Weakness

Page 2 of 4

months and had prescriptions to prove it.” In those cases, Davis and other attorneys handling Vioxx cases expect Merck to lose and to lose big.

Merck & Co., Inc. pulled Vioxx off the market on September 30, 2004, after results from a clinical trial showed increased risks of cardiovascular events, such as heart attacks and strokes, in patients. At the time, Merck assured patients and physicians that patients who had taken the drug for less than 18 months were not at risk. However, recent data uncovered by attorneys in the litigation shows that patients who had taken the drug for as little as four months experienced significantly more heart attacks and strokes than those not on the drug.

“It is interesting that in each of the cases Merck has lost,² the juries returned verdicts that included punitive damages,” he continues. “Punitive damages are designed to punish and deter egregious conduct. Those juries, in essence, agreed that not only did Merck fail to warn plaintiffs and their doctors about the cardiovascular risks, but that Merck concealed those risks,” he adds.

“There are over 16,000 Vioxx cases filed in the United States. And, that number is expected to rise substantially before September 29 - the two-year anniversary of the drug’s recall and the statute of limitations in states like Indiana,” Davis states. “Come October, Merck will argue that many plaintiffs simply have waited too long to sue the company if they were injured,” he adds.

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² *Ernst v. Merck & Co. Inc.*, District Court of Brazoria County, Texas, Cause No. 19961*BH02; *Garza v. Merck & Co., Inc.*, et. al., District Court of Starr County, Texas, Cause No. 7:05-cv-00017; and *McDarby v. Merck & Co., Inc.*, Superior Court of New Jersey, Atlantic County, Docket No. ATL-L-1296-05.

Vioxx Verdict Reveals Weakness

Page 3 of 4

“It is important that people who took the drug and experienced a heart attack or stroke while they were on the drug protect their legal rights by consulting an attorney,” Davis adds. The statute of limitations is the time period in which someone must file a complaint in court or else they may be prevented from maintaining a claim later.

Merck’s Trial Docket Increases

Since Merck’s withdrawal of Vioxx from the worldwide market, only eight cases have been tried to jury in the country. The pace is expected to quicken as more cases are set for trial this year and beginning in early 2007. Additionally, in courts like New Jersey and California, expect cases to be consolidated with more than one plaintiff attempting to prove their case.

Upcoming Vioxx trials to watch include:

Continuing (Started July 31, 2006)

- *Barnett v. Merck & Co., Inc.*, Eastern District of Louisiana
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September 11, 2006

- *Smith v. Merck & Co. Inc.*, Eastern District of Louisiana

October 17, 2006

- *California Coordinated Cases*, Superior Court of Los Angeles

October 23, 2006

- *Crook v. Merck & Co. Inc.*, Alabama Circuit Court, Jefferson County

October 30, 2006

- *Mason v. Merck & Co. Inc.*, Eastern District of Louisiana

November 8, 2006

- *To be determined*, Texas District Court, Harris County

Vioxx Verdict Reveals Weakness

Page 4 of 4

November 27, 2006

- *Dedrick v. Merck & Co. Inc.*, Eastern District of Louisiana

December 11, 2006

- *Albright v. Merck & Co. Inc.*, Alabama Circuit Court, Jefferson County
- *Schwaller v. Merck & Co. Inc.*, Illinois Circuit Court, Madison County

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