



VIOXX VERDICTS, OBSERVATIONS & STRATEGIES

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VIOXX

VIOXX VERDICTS THROUGH OCTOBER 1, 2006

Date	Venue	Plaintiff	Age/Harm	Duration	Compensatory	Punitive
1 Aug. '05	TX	Ernst	59, death	<7 months	\$24 million	\$229 million
2 Nov. '05	NJ	Humeston	60, MI	60 days	defense verdict[1]	defense verdict
3 Dec. '05	MDL	Irvin	53, death	<30 days	hung jury	hung jury
4 Feb. '05	MDL	Irvin	53, death	<30 days	defense verdict	defense verdict
5 Apr. '06	NJ	McDarby	59, death	>4 years	\$4.5 million	\$9 million
6 Apr. '06	NJ	Cona	77, MI	22 months	defense verdict[2]	defense verdict
7 Apr. '06	TX	Garza	77, death	30 days	\$7 million[3]	\$25 million
8 Jul. '06	NJ	Doherty	68, MI	2.5 years	defense verdict	defense verdict
9 Aug. '06	CA	Grossberg	66, MI	30 days	defense verdict	defense verdict
10 Aug. '06	MDL	Barnett	62, MI	31 months	\$50 million[4]	\$1 million
11 Sept. '06	MDL	Smith	56, MI	4 months	defense verdict	defense verdict
12 Nov. '06	MDL	Mason	61, MI	10 months	defense verdict	defense verdict
13 Dec. '06	MDL	Dedrick	51, MI	6 months	defense verdict	defense verdict
14 Dec. '06	AL	Albright	57, MI	1 year	defense verdict	defense verdict

SEVEN WHO WENT TO TRIAL

Cona:

Defense verdict

Barnett:

\$51 million verdict

Humeston:

New trial in Jan. 2007

Doherty:

Defense verdict

McDarby:

\$13.5 million verdict

Ernst:

\$253 million verdict

Irvin:

defense verdict



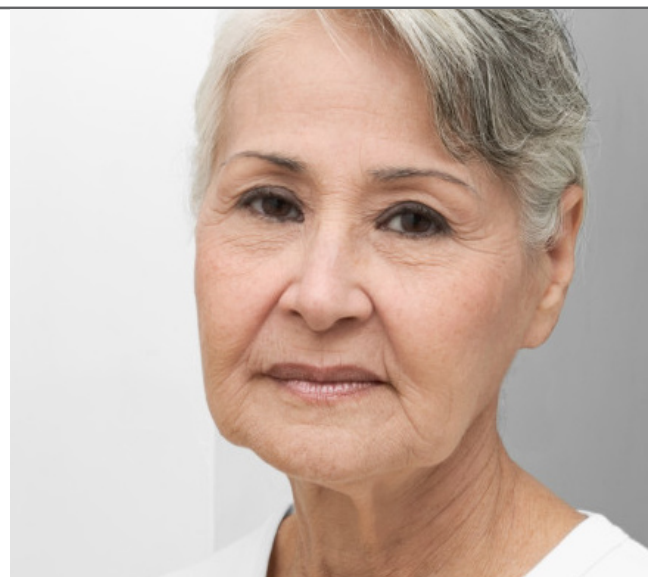
Photograph of Vioxx sample pack by: David Jordan

SCHEDULED VIOXX TRIALS

PLAINTIFF	VENUE	TRIAL DATE
Hermans Humeston (retrial) Combined trial	Atlantic County NJ Superior Ct.	January 27, 2007
Schwaller	Madison County IL Cir. Ct.	February 20, 2007
Schramm	Philadelphia PA CP Ct.	May 21, 2007
Slatton	Jefferson County AL Cir. Ct.	June 18, 2007

AVERAGES
(Little if any value)

Average age of plaintiff	61.9 years
Average duration of use	11 months
Average compensatory	\$ 5.7 million
Average punitive	\$ 17.6 million
Average total verdict	\$ 23.3 million



PENDING VIOXX CLAIMS

as of January 27, 2006

	Cases filed	Tolling Agreements	Filed + Tolling
Federal MDL	8,250	14,100	22,350
New Jersey	15,000	0	15,000
Other State Courts	3,950	0	3,950
Total	27,200	15,000	41,300

If 20,000 cases go to trial, and plaintiffs win 40% of them ...

Average plaintiffs' verdict	Merck's total verdict liability
\$250,000	\$2 billion
\$500,000	\$4 billion
\$1 million	\$8 billion
\$2 million	\$16 billion
\$5 million	\$40 billion

MERCK'S STOCK PRICE

has recovered the value lost with Vioxx withdrawal announcement



One Year
as of February 19, 2007



Five Years
as of February 19, 2007

Vioxx withdrawn Sept. 30, 2004

Source: Morningstar

Merck pays \$21 million for a report that says it did no wrong.

- 20-month investigation commissioned by Merck.
- Headed by a lawyer from a corporate defense law firm.
- Investigators were not asked about conflicts of interest.
- 1,700-pages report.
- Merck paid \$21 million for it.
- Results announced on September 6, 2006.
- Some minor criticisms but concludes that "management acted with integrity and had legitimate reasons for making the decisions that it made, in light of the knowledge available at the time."
- Merck says the report confirms the company's position that it never knowingly put patients at risk.
- Judge Higbee in NJ has ruled that the report cannot be used or referred to at trial.

YEARS BEFORE MERCK WILL CONSIDER A MASS VIOXX SETTLEMENT.

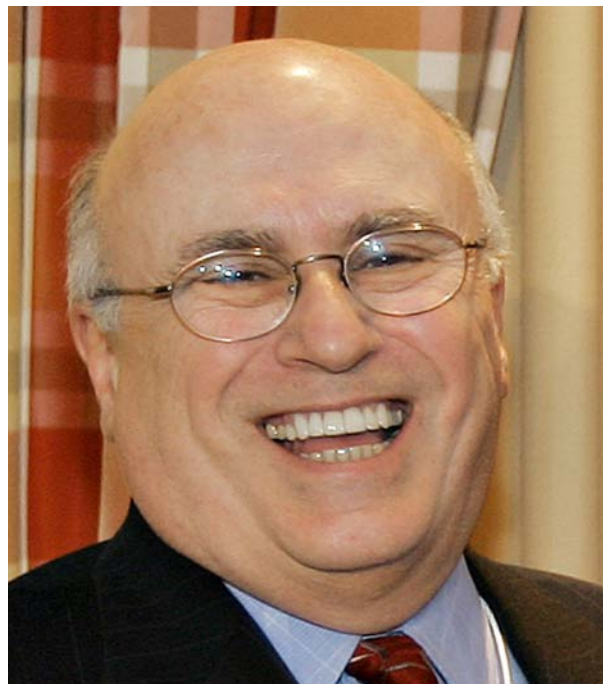
Merck CEO Richard Clark says it could be several years before Merck considers mass settlement of Vioxx cases.

Clark pointed to some 3,000 cases that have been dropped as justifying the decision to ignore calls for a major settlement that could put Vioxx in Merck's past.

"If we would have settled earlier, those 3,000 cases, which probably weren't worthy of being in the case load, we would have had to settle those," Clark said.

"This case by case (strategy) is going to take us years until we are satisfied that the case load is the proper case load. We're not there yet,"

"The difference between us and fen-phen is we haven't written a check yet."



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<http://www.agenciabrasil.gov.br/imagens>

MERCK'S PROPAGANDA WEBSITE

Learn About VIOXX.com at <http://vioxx.trickydns.com>

- Jury trial history (lots of spin)
- List of ongoing and scheduled trials (more spin)
- Bullet points on why Merck did no wrong
- Detailed history of why Merck did no wrong
- Video library
- "The difference between us and fen-phen is we haven't written a check yet."
- What Merck knew
- Marketing of Vioxx
- Disclosing data
- Risks and benefits
- In the news (only favorable items included)
- Vioxx timeline (highly selective)

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“ADDITIONAL RESOURCES” HYPERLINKED FROM MERCK’S PROPAGANDA WEBSITE

Center for Legal Policy at the Manhattan Institute

“The Manhattan Institute supports and publicizes research on our era’s most challenging public policy issues: taxes, welfare, crime, the legal system, urban life, race, education, and many other topics”

American Tort Reform Association

“The American Tort Reform Association is dedicated exclusively to tort and liability reform through public education and the enactment of legislation”

American Tort Reform Foundation

“The American Tort Reform Foundation educates the public, the media, and policymakers about the need for a balanced civil justice system”

American Enterprise Institute for Public Policy Research

“The Manhattan Institute supports and publicizes research on our era’s most challenging public policy issues: taxes, welfare, crime, the legal system, urban life, race, education, and many other topics”



Vioxx MDL snippets:

- Injury class action certification denied November 22, 2006.
- FDA production of documents continues in waves.
- Court reviewing advertising agency documents in camera as to privilege.
- Motion to dismiss based on preemption filed in two cases.
- Mandatory electronic filing as of 1/1/2007.
- No additional trial scheduled, except retrial in Barnett.

New Jersey Consolidated Vioxx Litigation rulings on November 16, 2006

Law of state where the cause of action arose governs as to failure to warn and punitive damages.

FDA rules preamble does not preempt Vioxx cases in New Jersey State Court.

Three-phase trial for four (previously planned for nine) plaintiffs in January 2007:

- Phase I: what Merck knew or should have known about cardiovascular risks. (75% of trial time and common to all cases)
- Phase II: case specific causation and compensatory damages.
- Phase III: punitive damages.

The NJ attorney fee issue

- Plaintiffs' attorneys asked for \$5.6 million on McDarby and Cona consumer fraud verdicts.
- Merck choked on this, claiming plaintiffs' lawyers:
 - didn't separate time on PI case from CF case,
 - used big dogs to do little dog jobs,
 - want paid for getting from one place to another, and
 - lived too high on the hog.
- Plaintiffs' lawyers offered to take ½ of requested fee to resolve the PI vs. CF question.



In October 2006, the Court ordered Merck to produce, in connection with the plaintiffs motion for fees and expenses in connection with the Cona & McDarby consumer fraud verdicts:

- All billing records from all defense firms for these cases through the date of the verdicts,
- Billing rates and summary of hours billed for defense lawyers and paralegals,
- Itemization of defense expenses for experts, hotels, technical services, etc.
- Merck may separate PI billing from CF billing if it wants.

After this order, Merck withdrew its big dog, travel time, and good hotel objections, leaving only an objection to not separating consumer fraud from personal injury parts of trial and preparation.

DISCLOSING DEFENSE IS COSTLY

- On October 20, 2006, Merck announced that it would increase its reserves for Vioxx-related legal defense costs from \$685 million to \$958 million, and said it had spent \$325 million on defense costs during nine months of 2006.
- Merck spent \$285 million on defense costs through December 31, 2005.
- Merck has not allocated reserves for paying verdicts and/or settlements.
- Merck spent \$610 million on defense through September 30, 2006. (\$325 million + \$285 million = \$610 million)



Disclosing defense costs could be costly, because it would allow analysts to make frightening projections.

- \$610 million defense costs for 11 trials through September 30, 2006 = \$55.45 million per trial.
- If 10% of defense costs represents cost per trial = \$5.5 million per trial.
- If 1% of defense costs represents cost per trial = \$550,000 per trial.
- 40,000 cases @ \$550,000 = \$22 billion in costs.
- 40,000 cases @ \$5.5 million = \$220 billion in costs.
- Not counting verdicts in cases won by plaintiffs.