

September 2005 Vioxx® Litigation Update

Much has happened since our last update letter to you on July 29, 2005. A favorable verdict came in by the Texas jury in the first Vioxx® case to go to trial, new dates were established for filing Plaintiff Profile Forms, and Hurricane Katrina caused the New Orleans levees to give way, inundating the city where the Vioxx® MDL had been established.

We are pleased to report that Judge Eldon Fallon has today moved the MDL location to Houston, Texas, where he will continue to preside over the case. While all of the ramifications of the delay and subsequent move have not been established, it is safe to say that the MDL remains on track. All of the key documents, evidence, and data have been preserved. So while there may be some delay caused by the hurricane, no permanent damage is expected to result. All of the attorneys and staff we have been working with in Louisiana have survived. Many of them have relocated their offices to either Houston, Baton Rouge or Atlanta, and all are now back "on line."

Each person who has filed a claim against Merck ("Plaintiff") is required to complete and file a Plaintiff Profile Form ("PPF"). The schedule for filing of these forms has been established as follows:

October 3, 2005 – A – C
October 18, 2005 – D – G
November 2, 2005 – H – L
November 17, 2005 – M – R
December 2, 2005 – S – Z

While Merck intends to appeal the August 19, 2005 *Ernst* trial verdict, based upon our review of the issues and the evidence we do not expect the appeal to be successful (although the punitive damage award will be significantly reduced).

Another case is set for trial in New Jersey, set to start next week, and two other Texas state court cases are scheduled for trial October 24, 2005 and March 20, 2006. Judge Fallon set down *Plunkett v. Merck*, a heart attack case, for trial commencing November 28, 2006, with additional Vioxx® trials to follow February 13, 2006, March 13, 2006 and April 3, 2006. It is not entirely clear if these dates will be preserved; however it is my opinion that any delays will be short ones.

The next pretrial conference with Judge Fallon is set for September 29, 2005. We will continue to keep you updated, and will be in contact with you regarding the signing and filing of your PPF.