

## November 2005 Vioxx® Litigation Update

The purpose of this letter is to bring you up to date on the status of the Vioxx® litigation. You probably know that the case that went to trial in state court in New Jersey resulted in a defense verdict in favor of Merck, the manufacturer. We followed that trial carefully. In our opinion that verdict was the result of the following factors:

1. The plaintiff only took Vioxx® for two months before his heart attack;
2. He survived his injuries and actually appeared to be in surprisingly good health at trial;
3. Plaintiff had a number of serious (non-Vioxx®) risk factors that could have caused his heart attack;
4. The case was tried in Merck's "home state";
5. Merck's trial attorney took every opportunity to make it appear as if the trial judge was being unfair to the drug maker with her rulings; and
6. The jury also was not enthralled by plaintiff's trial attorney.

The Plaintiff's attorney read his opening statement and did not appear to be nearly as passionate about the case as the Defense attorney. We are not discouraged by the verdict.

All of our cases are pending in the "MDL" before Judge Fallon. The first MDL trial, *Plunkett v. Merck*, is just now starting in Houston. We have read the briefs and will continue to follow the trial closely. One of the problems with the Plunkett case is that the Plaintiff only took Vioxx® from April 22, 2001 to May 15, 2001, when he suffered a fatal heart attack. This case therefore has the difficult issue of whether only three weeks of Vioxx® can cause a fatal heart attack. Merck asserts that no study has shown that Vioxx® will cause a heart attack if it is taken for less than a month.

All of the Plaintiff Profile Forms have been filed timely, and those that needed to be updated have been updated. There may be further updates required. If so we will contact you promptly. The last group of forms, those for people whose names are at the end of the alphabet, will be filed next week.

We will keep you posted.