

In re Merck & Co., Inc. Securities Litigation (Vioxx-Related)

COURT: United States District Court for the District of New Jersey
CASE NUMBER: 05-cv-1151; 05-cv-2367
CLASS PERIOD: 05/21/1999 - 10/29/2004
CASE LEADERS: Salvatore J. Graziano, Katherine M. Sinderson, Adam H. Wierzbowski
CASE TEAM: Catherine E. van Kampen, Stavros Katsetos

This is a class action lawsuit brought against (i) Merck & Co., Inc.; and (ii) Dr. Edward Scolnick (the former President of Merck Research Laboratories) and Dr. Alise Reicin (the former Executive Director of Clinical Research at Merck Research Laboratories) (collectively, the “Individual Defendants” and, together with Merck, the “Defendants”) by investors who claim that the prices of Merck Common Stock and Merck Call Options were artificially inflated and the prices of Merck Put Options were artificially depressed as a result of allegedly false statements and non-disclosures concerning Vioxx, a prescription pain-killer once sold by Merck, in violation of the federal securities laws.

Lead Plaintiffs, on behalf of themselves and the Settlement Class, have reached a Settlement of the Action with Defendants. On June 28, 2016, the Court granted final approval to the settlement.

The Settlement provides for a payment of \$830 million (the “Settlement Class Fund”) for the benefit of the Settlement Class, and another \$232 million (the “Fee/Expense Fund”) from which Court-awarded Lead Plaintiffs’ attorneys’ fees and Litigation Expenses and the fees of the Special Master appointed by the Court regarding the award of attorneys’ fees and expenses shall be paid. To the extent the Court awards attorneys’ fees and Litigation Expenses in an amount less than \$232 million, any amount remaining in the Fee/Expense Fund, after the payment of the Special Master’s Fees and any Taxes owed by the Fee/Expense Fund, will be credited to the Settlement Class Fund and will not revert back to any of the Defendants or their insurers.

The claims administration was completed in July 2018. On August 21, 2018, the Motion for Approval of Distribution Plan was filed. On September 13, 2018, the Court entered the Order Approving the Distribution Plan. The first distribution of the net settlement fund occurred in October 2018. The second distribution occurred in January 2020. The third distribution occurred in October 2020. The fourth distribution occurred in June 2021. The fifth distribution occurred in November 2022.

The Settlement Class consists of:

all persons and entities who, from May 21, 1999 through October 29, 2004, inclusive (the “Settlement Class Period”), purchased or otherwise acquired Merck & Co., Inc. common stock or call options on Merck Common Stock, or sold put options on Merck Common Stock, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in paragraph 1(bbb) of the Stipulation

Please read the [Settlement Notice](#) to fully understand your rights. Copies of the [Settlement Notice](#) can be found under **Case Documents**. You may also visit the Settlement website, www.MerckVioxxSecuritiesLitigation.com, for more information about the Settlement.

If you have any questions about the proposed Settlement, or your eligibility to participate in the Settlement, please **DO NOT** contact any Defendant in the Action or their counsel. Any questions you may have should be directed to the Claims Administrator or Co-Lead Counsel identified on this website.

Background

The action was brought against Merck and certain of its officers and directors asserting claims arising out of the Company's materially false and misleading statements concerning Vioxx. As alleged in the complaint, Merck securities dropped sharply as the truth concerning Vioxx's cardiovascular risks, the diminished commercial viability of the purported "blockbuster" drug, and Defendants' knowledge of problems with Vioxx became known to the market. This significantly harmed investors who had purchased Merck securities during the Class Period. For example, following the worldwide withdrawal of Vioxx on September 30, 2004, and the public confirmation of Defendants' long-held concerns about the life-threatening risks posed by Vioxx, Merck's market capitalization fell by tens of billions of dollars.

On September 9, 2008, the United States Court of Appeals for the Third Circuit reversed the District Court's dismissal of this action on statute of limitations grounds. BLB&G argued the appeal on behalf of the Plaintiffs and the Class, including Co-Lead Plaintiff and BLB&G client The Public Employees' Retirement System of Mississippi, which intervened in the action on January 25, 2007. Please see the **Case Documents** page for the Third Circuit's decision.

On January 15, 2009, the Defendants filed a petition for a writ of certiorari with the United States Supreme Court in an effort to appeal the Third Circuit's decision. While Defendants' petition was pending before the Supreme Court, Co-Lead Plaintiffs continued their prosecution of the action and, on March 10, 2009, filed with the U.S. District Court for the District of New Jersey a Consolidated Fifth Amended Class Action Complaint. On May 26, 2009, the Supreme Court announced that it had granted Defendants' petition. On October 19, 2009, Plaintiffs filed their Supreme Court brief in opposition to Merck's appeal and oral argument was held before the Supreme Court on November 30, 2009.

On April 27, 2010, the Supreme Court issued a unanimous decision in favor of the Plaintiffs, ruling that Merck investors can move forward with their class action. The Supreme Court's decision is a ground-breaking victory for investors that clarifies the standard governing the statute of limitations in securities fraud suits. The decision is available on the **Case Documents** page.

In June of 2010, Defendants moved to dismiss the Complaint on grounds other than the statute of limitations. Lead Plaintiffs filed their opposition to that motion in August of 2010, and the Court held oral argument on those motions on July 12, 2011. On August 8, 2011, the District Court issued its Order sustaining the Plaintiffs' claims in all material respects. Specifically, the Court held that the Plaintiffs had adequately alleged that Merck made false and misleading statements of material fact throughout the Class Period concerning the safety of Vioxx while failing to disclose data illustrating its potentially dangerous side effects. Moreover, the Court held that the Plaintiffs' allegations of scienter as to the Company and two of its top scientists were sufficient to overcome Defendants' motions. The decision is available on the **Case Documents** page.

On January 30, 2013, the Court granted Plaintiffs' motion for class certification, finding that Plaintiffs' cause of action satisfied each of the required elements of class certification, and that the case should proceed on behalf of a class consisting of all persons and entities who, from May 21, 1999 to September 29, 2004, inclusive (the "Certified

Class Period”), purchased or otherwise acquired Merck Common Stock or Merck Call Options, or sold Merck Put Options (the “Certified Class”). The Court also held that each of the four Lead Plaintiffs was adequate to represent the interests of the Class, and appointed Bernstein Litowitz Berger & Grossmann LLP and its Co-Lead Counsel to serve as Class Counsel. The decision is available on the **Case Documents** page. The Notice of Pendency of Class Action (“Certified Class Notice”) was mailed to potential members of the Certified Class in September 2013 and provided members of the Certified Class with an opportunity to request exclusion from the Certified Class.

Throughout 2013, Plaintiffs engaged in extensive fact and expert discovery in the case. Following the close of discovery, on January 17, 2014, Defendants filed motions for summary judgment. Plaintiffs filed their opposition to that motion on March 14, 2014; and on April 11, 2014 Defendants filed a reply to Plaintiffs’ opposition. On May 13, 2015, the District Court issued its Opinion and Order largely denying Defendants’ motions. Specifically, the District Court denied Defendants’ motions for summary judgment on the vast majority of alleged false statements, finding that there is evidence in the record that would allow a reasonable jury to find that Defendants knowingly or recklessly deceived investors by asserting that studies and data reviewed by Merck do not indicate that Vioxx may increase CV risk and expressing confidence in Vioxx’s CV safety. The Court granted summary judgment with respect to: (i) statements made by Merck between May 21, 1999 and March 26, 2000, *i.e.*, the alleged misstatements prior to public announcement of the results of a Merck Vioxx study called “VIGOR” on March 27, 2000; and (ii) a December 2001 statement by Individual Defendant Dr. Scolnick in a *Bloomberg News* article. The decision is available on the **Case Documents** page.

On August 28, 2015, both Defendants and Plaintiffs filed motions to limit the testimony of certain experts in the case. On September 18, 2015, the parties filed oppositions to those motions and filed replies to the oppositions on September 28, 2015. At the time of the agreement in principle to settle, the Court had not issued a decision on these motions. Trial of the Action was scheduled by the Court to begin on March 1, 2016. By the date the agreement in principle to settle was reached, Lead Plaintiffs and Defendants were substantially engaged in trial preparations. Thus, for example, the Parties had submitted to the Court the proposed Joint Pre-Trial Order, which included the Parties’ stipulated and contested facts, deposition transcript designations, witness lists, and exhibit lists.

Case Documents

- September 13, 2018 - Order Approving Distribution Plan
- Settlement Notice – Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses
- Appendix 1 to the Stipulation of Settlement
- June 28, 2016 - Judgment Approving Class Action Settlement
- June 3, 2016 - Report and Recommendation of the Special Master Relating to the Award Attorneys’ Fees and Expenses
- February 10, 2016 - Order Appointing Special Master Pursuant to Fed. R. Civ. P 23(b)(4) and 54(d)((2)(D)
- February 10, 2016 - Order Preliminarily Approving Proposed Settlement and Providing for Notice
- February 8, 2016 - Stipulation and Agreement of Settlement

- May 13, 2015 – Opinion on Defendants' Motions for Summary Judgment
- September 4, 2013 - Notice of Pendency of Class Action
- June 20, 2013 - Corrected Consolidated Sixth Amended Class Action Complaint
- January 30, 2013 - Opinion
- August 8, 2011 - Opinion of Defendants' Motion to Dismiss the Fifth Amended Complaint
- April 27, 2010 - U.S. Supreme Court Decision on Writ of Certiorari to the Third Circuit Court of Appeals
- October 19, 2009 - Brief for Respondents in U.S. Supreme Court on Writ of Certiorari to the Third Circuit Court of Appeals
- September 9, 2008 - Third Circuit Court of Appeals Merck Vioxx Decision