BLB&G and Mississippi Obtain Unanimous U.S. Supreme Court Victory Holding that VIOXX Securities Fraud Suit Can Move Forward

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In a unanimous decision, the U.S. Supreme Court ruled that Merck investors can move forward with their class action arising out of the Defendants' fraudulent misstatements and omissions concerning the painkiller VIOXX. The Supreme Court's decision, available here, is a ground-breaking victory for investors that clarifies the standard governing statute of limitations in securities fraud suits. BLB&G's clients, The Public Employees' Retirement System of Mississippi and Richard Reynolds, are Lead Plaintiffs, and BLB&G is Co-Lead Counsel.

On September 30, 2004, Merck withdrew VIOXX from the market, at which time Merck cited a study that found "an increased risk of confirmed cardiovascular events" associated with the drug, and described those results as "totally unexpected." Shortly thereafter, the *Wall Street Journal* reported on internal Merck e-mails and other documents further showing that Merck did not believe its own statements during the Class Period concerning VIOXX's purported cardiovascular safety. As plaintiffs' allege, investors in Merck securities lost billions of dollars as a result of Defendants' fraud. In recent years, and as detailed in Plaintiffs' complaint filed March 10, 2009, and available here, additional information has emerged showing how Defendants fraudulently misrepresented their true understanding of VIOXX's serious cardiovascular risks.

This case was originally dismissed in early 2007 by the U.S. District Court for the District of New Jersey on statute of limitations grounds because (according to the Defendants) investors were on notice of their fraud years before the investors filed their complaint against them. Plaintiffs subsequently appealed that decision to the U.S. Court of Appeals for the Third Circuit, which reversed the dismissal in September 2008. In the Third Circuit's opinion, available here, the Court found that there was no indication of fraud that would have triggered the running of the relevant two-year statute of limitations period before the first plaintiffs filed suit in late 2003. The Defendants appealed the Third Circuit's decision to the Supreme Court. On October 19, 2009, Plaintiffs filed their Supreme Court brief in opposition to Merck's appeal, which is available here. Oral argument before the Supreme Court was held on November 30, 2009.

In its decision, the Supreme Court held that the limitations period for private securities law claims does not begin to run until the plaintiff discovers, or a reasonably diligent investor would have discovered, the facts constituting the violation -- including evidence of the Defendants' fraudulent intent. This standard will help prevent those engaging in securities fraud from evading liability because they are able to successfully cover up their frauds, and will have a wide-ranging, beneficial impact on investors. In this case, the Supreme Court found that the Plaintiffs did not discover - and indeed could not and would not have discovered -- the "facts constituting the [Defendants'] violation" until several years after the alleged fraud began, because evidence sufficient to adequately plead the Defendants' fraudulent intent did not become available to investors until well after the commencement of the fraud.

As investors have been reminded all too often in recent years, modern frauds are often highly complex and deliberately designed by corporate wrongdoers to obscure and conceal the truth. Moreover, even when there may be grounds to suspect fraudulent conduct, determining the scope of an alleged fraud - and collecting sufficient facts to adequately plead fraud in a complaint against all culpable persons in a fraudulent scheme - will often be a difficult and time-consuming task. By holding that the two year "discovery rule" statute of limitations period does not begin to run until a plaintiff could reasonably be expected to adequately plead all the key elements of his claim (including the defendant's fraudulent intent), the Court's ruling is a significant victory not only for Merck investors, but for all investors.