

Third Circuit Court of Appeals Reverses Dismissal of the Merck VIOXX Securities Litigation

September 09, 2008

On September 9, 2008, the United States Court of Appeals for the Third Circuit reversed the District Court's dismissal of the Merck Securities Litigation. 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. The Court's decision is available for download below.

This case is brought on behalf of the Co-Lead Plaintiffs and a Class of purchasers of Merck securities between May 21, 1999 and October 29, 2004 injured by the Defendants' alleged misstatements and failures to disclose information they knew concerning the commercial viability of Merck's prescription painkiller VIOXX. As the truth concerning the diminished commercial viability of the purported "blockbuster" drug became known, the trading price of Merck securities dropped sharply. For example, between 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 on November 1, 2004, Merck's market capitalization fell by tens of billions of dollars.

The United States District Court for the District of New Jersey had dismissed the action on statute of limitations grounds in early 2007. Merck had argued that investors had a duty to investigate the wrongdoing at Merck due to "storm warnings" of possible misconduct by Merck as early as October 2001, and that since the first investors to sue did not do so until more than two years later, the case was untimely and should be dismissed. The District Court sided with Merck, but the Third Circuit reversed that decision as erroneous. The Court of Appeals held that, as of October 2001, market analysts, scientists, the press and the U.S. Food and Drug Administration all agreed that Merck's public explanations for the potential side effects of VIOXX were "plausible," and "none suggested that Merck believed otherwise," which left investors completely in the dark as to Merck's true beliefs. As Lead Plaintiffs have alleged, Merck's public statements that reassured investors in fact misrepresented the Defendants' true understanding – that VIOXX caused cardiovascular events.

The Third Circuit's decision paves the way for BLB&G and Co-Lead Counsel to resume prosecuting this important action on behalf of their clients and the Class.