

# Missouri Lawyers

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## WEEKLY

### Vioxx settlement gets judge's final OK

*Lawyer: Up to 300,000 Missourians qualify for payments*



**Don Downing**

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A Jackson County circuit judge gave final approval to a class action settlement with Merck & Co. worth at least \$39 million and maybe as much as \$220 million.

The settlement ends an eight-year lawsuit over the marketing of the anti-inflammatory drug Vioxx, which was pulled off the market in 2004 after a study found it posed an increased risk of heart attacks and strokes.

The suit alleged Merck violated the Missouri Merchandising Practices Act by concealing Vioxx's safety risks. The parties reached the settlement shortly before the matter was to go to trial last November.

According to the plaintiffs' attorneys, the case involved 17 experts, millions of documents, dozens of depositions and an estimated 30,000 hours of time over eight years.

"This was going to be probably

the biggest trial I've ever had," Judge Marco Roldan said in approving the deal.

Under the settlement, class members who took Vioxx but lack proof of purchase can get a one-time cash payment of \$180 if they submit an affidavit. Those who can show what they bought will get \$90 for each month they took Vioxx.

Don Downing, an attorney for the class, said the plaintiffs actually got a better outcome through the settlement than they could have at trial.

"I've never seen a settlement this extraordinary," he said. Downing, of Gray, Ritter & Graham in St. Louis, added that as many as 300,000 Missourians qualify for payments, and that about 5,200 have submitted claims so far. The claim period ends in October.

According to the plaintiffs' experts, the total value of the claims

could be \$220 million if all claimants participate. Merck so far has made a minimum payment of \$39 million. If claims are lower than that amount, any remaining money will be donated to Legal Aid of Western Missouri.

Attorney Pat Stueve, of Stueve Siegel Hanson in Kansas City, said the case was the only consumer class action against Merck over Vioxx's marketing that had reached a settlement. He pointed to nine other cases in which the drug company prevailed on the merits at some point in the litigation.

In addition, the plaintiffs were operating under an unfavorable ruling from a federal court in Louisiana. The court, which was overseeing multidistrict litigation on similar claims, had enjoined the Missouri plaintiffs from collecting damages that exceeded their out-of-pocket expenses, such as their co-pay amounts.

That ruling had been appealed to the 5th U.S. Circuit Court of Appeals and was days from oral argument when the parties first reached a tentative deal in September.

Judge Roldan also approved \$30.5 million in attorneys' fees and \$2.4 million in expenses, to be paid out of the common fund. Roldan also OK'd \$15,000 incentive payments to the two named plaintiffs, Mary Plubell and Ted Ivey, both of whom attended the March 15 final approval hearing in Kansas City.

An attorney for Merck, Dan Ball, of Bryan Cave in St. Louis, attended the hearing but declined to comment. Ronald Rogers, a spokesman for Merck, pointed to a previous company statement in which it said the settlement reduced uncertainty and was "in the best interest of the company and its shareholders." **MO**

## \$220 Million settlement

**MISSOURI MERCHANDISING PRACTICES ACT**

- **Venue:** Jackson County Circuit Court at Independence
- **Case Number/Date:** 04CV235817-01/March 15, 2013
- **Judge:** Marco Roldan
- **Caption:** Mary Plubell and Ted Ivey v. Merck & Co.

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- **Plaintiffs' Attorneys:** Patrick Stueve, Todd Hilton, David Hickey, and Jack McInnes, Stueve Siegel Hanson, Kansas City; Don Downing, Gretchen Garrison and Thomas Neill, Gray, Ritter & Graham, St. Louis
- **Defendant's Attorneys:** Dan Ball, Bryan Cave, St. Louis; John Beisner, Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.