

"The measure of a society is found in treats its weakest and most helpless citizens." – Jimmy Carter

Published as a client service by these law firms.

**Clark Perdue Arnold & Scott • Hill Toriseva & Williams
Hill Peterson Carper Bee & Deitzler • Michael Martin & Associates**

David Graham is face of the year



Forbes magazine, a noted business publication, named FDA scientist David Graham, M. D., as its 2004 Face of the Year for, as Forbes puts it, "his steadfast advocacy of

drug safety and his willingness to blow the whistle on his bosses."

Dr. Graham says the FDA ignored warnings that Vioxx was killing people by causing heart attacks and strokes. He warns that the agency, at least as presently structured, is incapable of defending the public against another drug disaster.

Graham adds that Vioxx illustrates a systemic failure to address drug safety on the part of the FDA.

On February 15, 2005, federal Human Services Secretary Mike Leavitt announced creation of a new board to more aggressively monitor the safety of drugs on the market, as part of an effort to restore public confidence in the nation's prescription drug supply.

Whether this board will be effective in remedying the problems at the FDA identified by Dr. Graham remains to be seen.

On the inside

Show me the money	2
Medicare repayment	2
Federal Vioxx MDL	3
FDA Advisory Committee	3

This newsletter is published for the exclusive use and benefit of Vioxx injury claimants represented by Hill Toriseva & Williams; Hill Peterson Carper Bee & Deitzler; Clark Perdue Arnold & Scott; and Michael Martin & Associates. Questions concerning editorial content should be addressed to:

Barry Hill
89 12th Street, Wheeling WV 26003
304.233.4966
866.706.1477
email: bhill@htwlaw.us

eVioxx.com website ready for use

The December issue of this newsletter announced the eVioxx website.

This website is now available for use by our clients and lawyers working with us in Vioxx litigation.

You should have received mail from us with your user name and password for accessing eVioxx. If you did not get this, email Stephanie Green and let her know. Her email address is stephanie@hpcbd.com

One feature of the website is an opportunity to get to

know the people at our law firms who are working for you.

Click on the tab labeled "lawyers and caseworkers," and you will see a list of people that includes both lawyers and nonlawyers.

Click on a name, and you will be taken to a page with a picture of the person, a description of his or her role in Vioxx case development, and a personal email address.

The website also has items in the news, scientific journal

articles, court documents, testimony, and other information relating to Vioxx.

The information on the website will be updated periodically, and you can sign up on the home page to receive notice when new documents are posted.

Court orders give confidential status to most of the documents Merck turns over in Vioxx litigation. These orders prevent posting of confidential documents to eVioxx.

Did you know?

Barry Hill, one of your Vioxx lawyers, recently addressed national audiences of hundreds of lawyers and others at two Vioxx conferences.

Both conferences were held in Philadelphia in January 2005. One was sponsored by Lexis/Nexis Publishing and the other by Harris Martin Publishing.

An Associated Press article, quoting Hill from the Lexis/Nexis seminar, was published in newspapers around

Important information

A person must actually receive money from a Vioxx settlement or jury verdict before Medicare can seek reimbursement or cut off benefits.

You will not end up financially worse off by settling a Vioxx claim than you would have been if you did not make a claim.

Show me the money

In 1999, Merck's then new pain drug, Vioxx, was beaten to pharmacy shelves by a competing drug, Celebrex. Merck apparently hoped that nationally known rheumatologists like Dr. Roy Altman could help it catch up.

At a dinner that year in Miami, a Merck executive asked Dr. Altman what it would take to win his support. Dr. Altman told the executive that he wanted to run a clinical trial involving Vioxx. Merck responded by putting up \$25,000 for the project.

An internal Merck document has the notation, "Show me the money," written near Altman's name.

In a separate incident in 1999, a Merck sales representative asked the company make a \$25,000 donation to the West

Coast Sports Medicine Foundation, a nonprofit organization founded by orthopedic surgeon Dr. Keith Feder.

The sales rep wrote that the \$25,000 payment was needed to "be competitive" with Celebrex, and the rep listed the "Expected Outcome/Return on Investment" as "51 percent share of COX-2 market in 2000."

Rheumatologist Dr. Max Hamburger headed a large group of physicians in the New York metropolitan area who, by the time Vioxx went on the market, were "high-volume prescribers and huge adopters of Celebrex," according to a Merck memo.

At the time, Dr. Hamburger was approaching drug companies to subsidize retreats for his group, during which the physicians would

put together guidelines on what drugs to prescribe.

"Companies that provide funding will receive preferred status with its members and those that do not will have trouble accessing" the group, the Merck memo states. "Price tag is \$25,000."

When asked by the New York Times about the propriety of the company's marketing program, Merck responded by saying it stands behind its marketing and will defend it.

The doctors deny any improper conduct, and they say that their decisions as to what pain pills to prescribe for their patients were not influenced by Merck's money.

Medicare repayment

Federal law gives Medicare the right to be reimbursed for payments it makes for healthcare, if the treatment paid for by Medicare is part of a recovery in a lawsuit.

Simply making a claim or filing a suit does not trigger a Medicare reimbursement claim

There are no loopholes in this law, and there is no legal way to avoid repaying Medicare, when a settlement or verdict is paid.

The law also requires that a Medicare claim be paid, or at least that more than enough to cover it be held back, before any money can be distributed to the claimant whose case has been settled.

Failure to follow the law can result in legal action by Medicare to recover from the claimant, the claimant's lawyer, and/or the defendant paying the settlement.

The government can also cut off Medicare and Social Security benefits

to a person who does not comply.

The reimbursement requirement only applies to bills paid by Medicare for treatment for an event Vioxx contributed to causing.

We are working on a plan to handle Medicare claims, and we will explain more about this in future newsletters.

This is not an issue in claims where Medicare did not pay medical expenses.

Federal court Vioxx case go to New Orleans

A panel of federal judges has picked New Orleans as the site where all Vioxx case in federal court will be transferred. The announcement was made on February 16, 2005.

This mass consolidation is for all pretrial purposes.

This does not change our decision to file most of our clients' cases in state court in New Jersey, as was explained in the December issue of this newsletter.

However, some of our clients' cases will, out of necessity, be in federal court and will be transferred to New Orleans.

The consolidated litigation in New Orleans is known as *In re VIOXX Product Liability Litigation*, MDL 1657, United States District Court, Eastern District of Louisiana at New Orleans. The "MDL" designation means multi-district litigation.

The federal judge in New Orleans who will be in charge of



Federal Courthouse on Poydras Street in New Orleans

the MDL is Judge Eldon Fallon. Judge Fallon has also been presiding over the Propulsid prescription drug MDL for the past several years.

One of your lawyers, Barry Hill, was appointed by Judge Fallon to the State Liaison Committee in the Propulsid MDL. Attorney Hill has been attending court proceedings in the Propulsid MDL before Judge Fallon approximately once-a-month for the past four years.

FDA panel sends mixed messages about Cox-2 drugs

Members of a U.S. Food and Drug Administration advisory panel voted on February 18, 2005, to recommend keeping the Cox-2 inhibitors Bextra and Celebrex on the market.

The Celebrex vote was an overwhelming 30-1. But the vote on Bextra was much closer, 17-13. And even more narrowly, 17-15, the advisory panel concluded that "current data supports the marketing in the U.S." of Vioxx.

Committee Chairman, Dr. Alistair Wood, said, "Vioxx is worse than the others, and I can't see any reason to keep it on the market."

"The news is not good news," said Dr. Mark Fendrick, professor of internal medicine at the University of Michigan School of Medicine. "Cox-2 users who started to scrutinize this class of drugs after September 30 should under no means flock back to them."

"Given that the FDA panel has stated the potential for *all* Cox-2 inhibitors to increase the risk of adverse cardiovascular events, their use should be limited to only those individuals who are at risk for stomach injury, which is the darn thing they were developed for in the first place, and those who are at low risk for cardiac problems," he said.

A majority of the panel members recommended against direct-to-consumer advertising for the any of these drugs. A majority also recommended that the drugs carry a strong black-box warning of the risk of heart attack, stroke, and death.

A physician working as a consultant to us in Vioxx litigation put the Vioxx vote into perspective, saying that the advisory committee debate was not over whether Vioxx is cardiotoxic. The committee was unanimous that it is. The debate was over whether a toxic drug that benefits a small number of people should be available to them.

The bottom line is that the committee found that risks of Vioxx outweigh its benefits for most people, but for those at high risk for serious

stomach bleeding from other pain relievers, the benefit might be worth the risk.

This advisory committee vote, and whatever action the FDA takes based on it, are not likely to have a serious impact on Merck's liability in existing Vioxx claims, even if Merck puts Vioxx back on the market.

The clear message is that Vioxx, if it is to be sold, must carry a strong warning of its cardiovascular risks.

Merck's liability is based on the lack of this warning over the five years Vioxx was on the market, and nothing Merck does now can make up for what it did not do in the past.