

## **Vioxx sparked massive legal effort Millions of papers were analyzed, and hundreds of area lawyers were involved.**

By Chris Mondics

Inquirer Staff Writer

Merck shareholders may rue the day Vioxx was pulled from the market because of safety concerns, but hundreds of lawyers in the Philadelphia region owe their paychecks to the litigation over the pain reliever.

> Dechert L.L.P. and other firms defending Merck & Co. Inc. relied on more than 200 contract lawyers working in New York, Philadelphia and elsewhere, reviewing medical records, company e-mails and other documents. And that is in addition to dozens of Dechert partners and associates assigned to the case.

> A dozen firms representing 27,000 plaintiffs alleging they were harmed by the drug had deployed hundreds of lawyers as well.

> "There are millions and millions of pieces of paper that have to be analyzed," said Arnold Levin of Levin, Fishbein, Sedran & Berman, one of the plaintiffs' firms based in Philadelphia. "There is just an enormous amount of work that goes into this."

> Tom Kline of the Center City firm of Kline & Specter P.C. said a half-dozen of the firm's lawyers have been working on Vioxx litigation, representing about 800 plaintiffs. Two of the lawyers have medical degrees and helped to gather and evaluate scientific evidence suggesting Vioxx increased the risk of heart attacks and strokes.

> "We established without a doubt that Vioxx caused heart attacks and strokes and that Merck recognized this early on," Kline said.

> Yet it was precisely because of the sometimes contradictory and murky nature of the evidence that the case was so hard fought - and lawyer-intensive.

> Merck pulled the drug from the market in 2004 after the disclosure of clinical trial data showing patients taking Vioxx long term had double the risk of heart attacks and strokes. Yet a Food and Drug Administration advisory committee determined after the withdrawal that the scientific data were ambiguous and that the benefits outweighed the risks; it voted to permit Merck to return the drug to the market, although Merck has not done so.

- > James J. McHugh, of the firm Lopez McHugh L.L.P., which is handling 800 Vioxx cases, said the medical histories of each plaintiff had to be explored in detail by plaintiffs' and defense lawyers.
- > In many cases, defense lawyers tried to show that a plaintiff's lifestyle or genetic predisposition to cardiovascular disease was at fault, not Vioxx, while the plaintiffs tried to shift the focus toward the drug.
- > "The typical patient was 50 to 60 to 70 years old, and they had significant medical histories which you needed to go over in minute detail because Merck lawyers will question everything about the plaintiff's history, including whether his great-grandmother once had chest pains," McHugh said. "You want to know everything."
- > Kline said that in the last three years, 54 million documents were filed in the case and lawyers took about 2,000 depositions. To cope with the enormous volume of paper, the plaintiffs' firms pooled resources.
- > Yet the outcome was hardly assured.
- > "What happened in this litigation, as in all kinds of litigation of this sort, is that the [allegation] in individual cases was put to the test, and in this litigation there was frankly a mixed result; Merck actually won more cases than the plaintiffs, although the actual verdicts when the plaintiff did win were along the lines of \$18 million," Kline said.
- > "Nor is it an absolute certainty that the settlement will go through and all the lawyers working on the case will move on to their next court battle," Kline said. "Merck has said the deal is off unless at least 85 percent of the plaintiffs agree to the settlement."
- > Apart from the settlement for the plaintiffs, and a lot of billable hours for lawyers, did any overall good come out of the case?
- > "It really exposed the inadequacy of the FDA's [oversight]," said Scott Levensten, a Philadelphia-based plaintiffs' lawyer involved in the case.

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