

# Law Bulletin

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## **How Does Alabama Products Liability Law Affect Vioxx Cases? By Michael L. Roberts**

In 1976, Alabama adopted the “Alabama Extended Manufacturer’s Liability Doctrine” which recognized that a manufacturer who makes an unreasonably dangerous or defective product has liability to someone injured by that product. Alabama’s version of this law is different than the product liability law in most states, in that it is more fault-based.

On September 30, 2004, Vioxx, an arthritis and acute pain medication, manufactured by Merck & Company, Inc., was withdrawn worldwide, after results from an FDA-sponsored study entitled Risk of Acute Myocardial Infarction and Sudden Cardiac Death With Use of COX-2 Selective and Non-Selective NSAID were revealed. The study examined whether there had been an increased rate of heart attacks or sudden cardiac death associated with the use of drugs such as Vioxx. Records of 6 million California patients were reviewed to determine whether there was an increased incidence of blood clot-instigated heart attacks and sudden cardiac deaths. The study showed that Vioxx use at doses greater than or equal to 25 mg per day increased the risk of an acute cardiac event by 315%. At lower Vioxx doses, risk also increased, though not as significantly.

Notably, Merck, in 2001, had been criticized by the FDA for making false marketing statements about Vioxx. Also in 2001, a study in the *Journal of the American Medical Association* warned that COX-2 inhibitors “raise a cautionary flag about the risk of cardiovascular events.”

Recent Congressional testimony by Dr. David Graham, a 20-year FDA scientist, estimated that Vioxx had caused between 88,000 and 179,000 excess cases of heart attack and stroke.

There are obviously significant implications under Alabama tort law, and the fault-based nature of the Alabama Extended Manufacturers Liability Doctrine may be particularly applicable.

However, Alabama also has some rules relating to statutes of limitations (which establish deadlines for filing suit) which are different than such rules in most other states, which could also be a factor in many Vioxx cases.

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Michael L. Roberts has practiced law in Gadsden for twenty-five years. He is the author of the two-volume book *Alabama Tort Law*, published by LEXIS November, 2004. This book's first edition was originally published in 1990, and it is used as a resource in law offices, law schools, and in other legal fields.

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