

# Aftershocks from Vioxx verdict

*Legal and financial experts watching the case saw the ruling either as a Texas anomaly or a dire warning to Merck.*

By Josh Goldstein and Joseph N. DiStefano  
Inquirer Staff Writers  
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It was just the first of more than 4,200 lawsuits against Merck & Co. Inc. over its Vioxx painkiller, but news of yesterday's \$253.4 million verdict in Texas against the drugmaker surged through the legal profession and Wall Street.

In New York City, where Alise Reicin, Merck's vice president of clinical research, was being deposed by lawyers representing plaintiffs in other Vioxx cases, the verdict caused a stir.

Shortly after learning the damage amount, Philadelphia lawyer Thomas R. Kline says he asked Reicin for her reaction to it and got no response from the Merck executive. She has defended the company's handling of Vioxx, including testifying in the Texas trial over the death of Robert Ernst.

"She stormed out of the room and never returned," Kline said. "Her lawyer told us that she was too upset to continue."

Kent Jarrell, a spokesman for Merck's defense attorneys, disputed that Reicin stormed out of the deposition but acknowledged that she was upset.

"Everybody at Merck is upset about this," Jarrell said. "They believe in the drug and believe that Merck's decisions are based on science and in the interest of the patient."

Merck is a big employer in the Philadelphia area, with more than 12,000 people in Montgomery County, most at its West Point corporate campus. Much of Vioxx's global marketing, sales and legal work were done in West Point. Hundreds of people worked on the development of Vioxx, which was voluntarily recalled by Merck Sept. 30.

Kline, one of the lead attorneys in the consolidated federal litigation in New Orleans, said that while each Vioxx suit would be tried individually, much of the same evidence would be presented as in the Texas case.

"I would expect to see that finding replicated repeatedly in future jury verdicts," Kline said.

Defense attorneys cautioned against reading too much into a single verdict, particularly one from Texas, which is viewed as a "plaintiff-friendly" venue.

"You can't draw conclusions about what is going to happen in litigation overall from any one individual case," said John Lavelle, head of the product-liability practice of Ballard Spahr Andrews & Ingersoll in Philadelphia. He said Merck had strong grounds for an appeal and that the punitive damages would be automatically reduced under Texas law.

Merck said it was examining four aspects of the trial that its lawyers believed were grounds for an appeal.

"We believe that we have strong points to raise on appeal and are hopeful that the appeals process will correct the verdict," said Kenneth C. Frazier, Merck's general counsel, in a statement. "There are other Vioxx cases coming to trial, and we will vigorously defend them one by one over the coming years."

Merck has set aside \$675 million to pay for its defense costs in the Vioxx suits. Defending each case could mean years of litigation. In New Jersey alone there are nearly 2,400 pending Vioxx suits.

"If we had 20 trials a year, it would take over 100 years to try those cases," said Michael A. Ferrara, a Cherry Hill lawyer representing plaintiffs in more than 200 Vioxx lawsuits. "It is time for Merck to accept responsibility for what they did... and sit down with the victims to work out a resolution."

William M. Janssen, chairman of the life-sciences practice at Saul Ewing L.L.P. in Philadelphia, said the verdict suggested the passions engendered by injured plaintiffs might overwhelm the evidence and hurt Merck's case.

Several plaintiffs' attorneys said the decision to impose \$229 million in punitive damages was significant because it meant the jury found that Merck was not only responsible for Ernst's death, but that it also had acted recklessly.

"If Merck continues to take the position that they are going to litigate each and every case to conclusion, they would similarly be reckless toward their shareholders," said James J. McHugh Jr., a lawyer at the Beasley Firm in Philadelphia.

Wall Street analysts expressed concerns about Merck's potential Vioxx liability, which could exceed the record \$21 billion Wyeth expects to pay out from litigation over the diet-drug combination commonly known as fen-phen.

"The company may face upward of 100,000 cases, which implies damages in the tens of billions of dollars," David Moskowitz of the investment firm Friedman Billings Ramsey in Arlington, Va., wrote in a report to clients yesterday.

Shares of Merck, a component of the Dow Jones industrial average, plunged \$2.35 a share, or 7.7 percent, to close at \$28.06.