Jury finds Merck liable in Vioxx death and awards $253 million

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August 19, 2005

The New York Times

ANGLETON, Tex., Aug. 19 - In the first verdict of a Vioxx-related personal-injury lawsuit, a Texas jury found the drug's maker, Merck, liable and awarded $253.5 million to the widow of Robert Ernst, who died in 2001 after taking the painkiller and arthritis medicine.

Carol Ernst, the widow of the man who died while taking Vioxx, began to cry when the verdict was read while her attorneys jumped up and shouted, "Amen!"

After deliberating for a day and a half, the jury of seven men and five women gave Mr. Ernst's widow Carol $24.5 million for mental anguish and economic losses. Jurors also awarded an additional $229 million in punitive damages after finding that Merck had acted recklessly in selling Vioxx with knowledge of the risks associated with taking the drug.

Judge Ben Hardin of the Texas District Court announced the verdict on the fourth floor of the Brazoria County Courthouse in Angleton, about 40 miles south of downtown Houston, shortly after 1:45 p.m. Central Time.

Mrs. Ernst, her family and lawyers erupted in cheers and began to hug each other.

"The justice system in America works and it works very well," W. Mark Lanier, the lead lawyer for Mrs. Ernst, said.

Jonathan Skidmore, a lawyer for Merck, the nation's third-largest drug maker, said that the company would appeal and that it continued to believe it had properly researched and marketed Vioxx.

"We believe the plaintiff did not meet the standard set by Texas law to prove Vioxx caused Mr. Ernst's death," Mr. Skidmore said.

With a flood of Vioxx lawsuits soon to reach juries, the size of the verdict may have important implications for both Merck and the entire drug industry, lawyers and analysts said. More than 4,000 Vioxx-related cases have been filed.

Merck has said it will fight every Vioxx lawsuit in court rather than settle cases. But today's verdict illustrates the dangers of that strategy, especially because Mr. Ernst's case had been viewed as relatively weak, lawyers said.

Merck shares fell $2.21, or 7.2 percent, to $28.20 after the verdict was announced.

The jury's decision also illustrates the legal dangers that drug makers face when they aggressively advertise their medicines to consumers, a practice that spread widely in the late 1990's.

More than 20 million people had taken Vioxx before the company pulled the drug from the market last September after a clinical trial indicated that Vioxx increased the risk of heart attacks or strokes in patients taking it for longer than 18 months.

But critics had been saying for years that the drug posed safety risks. And at trial, documents and e-mail messages from Merck scientists disclosed discussions of Vioxx's potential heart risks as early as 1997, more than two years before the company began selling the drug.

Mr. Lanier repeatedly attacked Merck's marketing practices during the trial, and that message apparently resonated with jurors.

But Dr. Jerry Avorn, a professor at Harvard Medical School and frequent critic of drug advertising, said he did not think that other drug makers would necessarily change their marketing approaches.