

Merck & Co. found liable in nation's first Vioxx trial

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ANGLETON, Texas - The spark drained from Carol Ernst's life when her husband's heart stopped after taking Vioxx for eight months.

On Friday, she didn't get that spark or her husband back when a jury awarded her \$253.4 million from Vioxx-maker Merck & Co.

But she called the result a "wake-up call" for the pharmaceutical industry and said she hopes the result of the first of thousands of Vioxx-related lawsuits pending against the drug company will help others.

"I'm relieved," Ernst said, a calm and tired contrast to her lawyer's gleeful shouts of "Amen! Amen!" and bear hugs when the verdict was read.

"This has been a long road for me. But I felt strongly that this was the road I needed to take so other families wouldn't suffer the same pain I felt at the time."

A tearful Ernst, surrounded by her four children, ended a long, taxing journey when a Texas jury found the New Jersey pharmaceutical company liable for the 2001 death of her husband, Robert, who took the once-popular painkiller.

"This is right. Justice is done, amen," said Lanier, who trained as a preacher before he turned to law.

Merck's legal team initially reacted with little more than grim faces but vowed later to appeal based on what they called "unreliable scientific evidence."

One of their main witnesses, Dr. Alise Reicin, was so upset upon learning of the result while giving a deposition in another Vioxx lawsuit in New York City that she had to quit early, according to the Philadelphia lawyer who was questioning her, Tom Kline.

Reicin, Merck's head of clinical trials, testified during the Ernst case, and Lanier pointed out that her 2001 performance evaluation identified her top objective as being a "defender" of Vioxx.

"Everyone at Merck is upset because they believe in the drug and that the company is driven by science," said Kent Jarrell, spokesman for Merck's legal team.

The jury of seven men and five women deliberated for 10 1/2 hours over two days before awarding Carol Ernst \$253.4 million in damages by a 10-2 vote.

The case drew national attention from pharmaceutical companies, lawyers, consumers, stock analysts and arbitrageurs as a signal of what lies ahead for Merck, which has vowed to fight the more than 4,200 state and federal Vioxx-related lawsuits pending across the country.

Analysts have speculated Merck's liability could reach \$18 billion if the first wave of verdicts goes against the drug maker, opening floodgates for more lawsuits that could force settlements.

If Merck prevails in future cases, however, lawsuits could fade, easing some of the pressure on its stock. After the verdict Friday, Merck shares closed down \$2.35, or 7.7 percent, to \$28.06, approaching the 52-week low of \$25.60. Merck lost nearly \$5.2 billion in market capitalization.

The next civil trial is in Merck's home state of New Jersey next month, and the first federal Vioxx trial will be Nov. 28 in New Orleans.

The jury broke down the award as \$450,000 in economic damages - Robert Ernst's lost pay as a Wal-Mart produce manager; \$24 million for mental anguish and loss of companionship; and \$229 million in punitive damages.

The punitive damage amount is likely to be reduced as Texas law caps punitive damages at twice the amount of economic damages - lost pay - and up to \$750,000 on top of noneconomic damages, which are comprised of mental anguish and loss of companionship.

That would give Ernst a maximum of \$1.65 million in possible punitive damages, meaning her total damage award could not exceed \$26.1 million.

Juror Derrick Chizer, 43, said he and the majority wanted to send a strong message to pharmaceutical companies about drug safety.

"It could have been prevented," Chizer said. "Respect us. That is the message. Respect us."

The panel in the semi-rural county south of Houston rejected Merck's argument that Robert Ernst died of clogged arteries rather than a Vioxx-induced heart attack that led to his fatal arrhythmia.

"They needed to be held accountable for putting a drug out there that shouldn't have been out there," said Stacy Smith, a 21-year-old child care provider.

Merck pulled Vioxx, a \$2.5 billion seller, from the market in September 2004 when a study showed it could double risk of heart attack or stroke if taken for 18 months or longer.

But unlike many other pending lawsuits involving obvious heart attacks, the Ernst case centered on an autopsy that attributed his death to an arrhythmia secondary to clogged arteries. That autopsy - and the coroner who performed it - proved critical to the trial's outcome.

Merck pointed to the autopsy as proof that Vioxx could not have caused the death of Ernst, who ran marathons and taught aerobics.

However, Dr. Maria Araneta, the pathologist who performed Ernst's autopsy, testified for Ernst that a blood clot that she couldn't find probably caused a heart attack that triggered Ernst's arrhythmia. She also said the heart attack killed Ernst too quickly for his heart to show damage.

Araneta didn't blame Vioxx, however, noting she knew little about the drug when she performed Ernst's autopsy. But three plaintiff's experts in arrhythmia, cardiology and public health did.

Merck's experts agreed with Araneta's conclusions in the autopsy, but not her undocumented theory of what triggered the arrhythmia.

Juror James Frindenberg, one of the two who voted for Merck, said he "couldn't go with the probabilities" of what caused Robert Ernst's death.

"I think there are a lot of good people there who care," he said of Merck.