

## U.S. jury awards millions in Vioxx lawsuit

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Drug giant Merck & Co. Inc. has suffered a severe setback in the first of thousands of lawsuits in the United States and Canada as a Texas jury awarded more than \$253-million (U.S.) to the family of a man who died after taking the company's Vioxx painkiller.

In a groundbreaking decision, the seven-man, five-woman jury found Merck liable in the death of 59-year-old Robert Ernst. They rejected Merck's argument that Mr. Ernst died of clogged arteries rather than a Vioxx-induced heart attack that led to his fatal arrhythmia, or irregular heart beat.

Merck yanked Vioxx, a \$2.5-billion a year blockbuster, from markets worldwide in the fall of 2004, after a long-term study showed it could double the risk of heart attack or stroke if taken for 18 months or longer.

“This loss means that this particular jury believed the plaintiff's story about the company's wrongful conduct, which we believe will carry into the future,” said Windsor, Ont. lawyer Greg Monforton, whose firm has some 200 Vioxx clients across Canada.

“The verdict against Merck is very encouraging news for all Canadians who have suffered heart attacks or strokes while taking Vioxx,” he added.

Some four dozen claims have been filed in Canada against Merck by a consortium of law firms. The cases, however, have not yet been consolidated into a single class action. Mr. Monforton said his clients may proceed individually or join a class action.

Merck put a great deal of energy into its defence in Texas on the grounds that a victory would have discouraged lawsuits in the future. “However, the net result is the opposite,” Mr. Monforton said. “Now that we have a jury verdict, it will embolden a lot of individuals to come forward with their claims.”

That prospect prompted investors to dump shares of Merck on the New York Stock Exchange yesterday. The stock price sank \$1.16, or 4 per cent, to \$29.25.

Robert's widow, Carol Ernst, began to cry when the verdict was read while her attorneys jumped up and shouted, “Amen!”

Mr. Ernst was a produce manager at Wal-Mart and a marathon runner who died in May, 2001 after taking Vioxx for eight months to alleviate pain in his hands. The couple had been married for less than a year.

Merck has vowed to fight each case individually, claiming that adverse cardiac events were caused by a patient's pre-existing condition and not by Vioxx. It said it plans to appeal the Texas ruling.

“There is no reliable scientific evidence that shows Vioxx causes cardiac arrhythmias, which an autopsy showed was the cause of Mr. Ernst's death, along with coronary atherosclerosis,” said Jonathan Skidmore, a member of Merck's defence team.

The jury award consisted of \$24.4-million in actual damages and \$229-million in punitive damages.

“This case did not call for punitive damages,” Mr. Skidmore said. “Merck acted responsibly and in the best

interest of patients, from researching Vioxx prior to approval in clinical trials involving almost 10,000 patients, to monitoring the medicine while it was on the market, and to voluntarily withdrawing the medicine when it did.”

Legal experts suggest the jury award was excessive and will probably be reduced on appeal. They said Texas law caps punitive damages to twice actual damages. The U.S. Supreme Court has ruled punitive damages should usually be limited to nine times actual damages.

Vioxx was used by more than 20 million people. It and Pfizer Inc.'s Celebrex commanded the lion's share of the pain reliever market in the past five years. Pfizer has rejected studies linking high doses of Celebrex with an increased risk of stroke or coronary disease.

Legal experts said the Texas decision is especially damaging because Merck initially had been expected to win what was considered a weak case linking Vioxx to arrhythmia. And the next two cases Merck faces appear somewhat stronger, they say. A trial begins next month in Atlantic City, N.J., over a former U.S. Marine's claims that Vioxx caused his heart attack.

In November, the first of 1,800 federal cases will be heard in New Orleans. It revolves around Richard Irvin, a Florida man who was taking Vioxx for a month before his 2001 death from a blood clot in his heart. Scientists have speculated that Vioxx causes cardiovascular problems because it blocks a substance that keeps blood from clotting.

*With a report from Associated Press*

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