



Jury Rules Against Merck on Vioxx

Merck Failed to Warn Doctors About Vioxx, New Orleans Jury Finds in 2nd Federal Case

By **MARY FOSTER**

The Associated Press

NEW ORLEANS - Merck & Co. lost the second federal trial over its withdrawn painkiller Vioxx on Thursday and must pay \$51 million to a retired FBI agent who had a heart attack after taking the drug for more than two years, a jury decided.

The jury found that Merck & Co. "knowingly misrepresented or failed to disclose" information about the drug to retired FBI agent Gerald Barnett's doctors. It said Barnett should get \$50 million in compensatory damages.

Then, after hearing more arguments, the jurors added a \$1 million punitive damage award, finding that Merck "acted in wanton, malicious, willful or reckless disregard for the plaintiff's rights."

Barnett's lawyer, Mark Robinson, had asked for another \$25 million, arguing that it would send a message to drugmakers that they should not rush pharmaceuticals to market.

Merck's lawyer, Phil Beck, argued that no further awards were needed to punish the drugmaker.

"My guess is that you have already awarded punitive damages. You sent a message loud and clear and the people at Merck heard that message," Beck said.

Merck shares fell 57 cents, or 1.4 percent, at \$40.61 on the New York Stock Exchange on Thursday afternoon.

On its verdict sheet, the jury had the chance to assign percentages of fault to Merck and various physicians, but assigned blame only to Merck.

Barnett's lawsuit is among more than 16,000 Vioxx-related suits against Merck in state and federal courts.

The first federal trial had to be held twice. The first jury deliberated 18 hours over three days, but deadlocked over whether Vioxx was to blame for the death of a Florida man who had taken the drug for less than a month. The second jury in that case came back in less than four hours with a verdict for Merck.

In state courts, Merck has won four cases in New Jersey and California. It has lost two cases in Texas and one in New Jersey.

The jurors who decided the Barnett case have at least two things in common with the plaintiff: All eight are men. And they're all getting older.

Beck pointed out in closing arguments Wednesday that both are risk factors for heart attacks, and neither can

be controlled.

Robinson has emphasized that his 62-year-old client, who underwent a quintuple bypass after a heart attack at the age of 58, was careful to keep his risks as low as possible with daily exercise, a healthy diet and drugs to control his cholesterol.

He told the jury that the problem was Vioxx, which Barnett took for 31 months before his heart attack in July 2002. He continued to take the painkiller for another two years, stopping one week before Merck pulled it from the market in September 2004, after a study showed it increased the risk of heart attacks and strokes.

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