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Federal Vioxx trial in the jury's hands

Merck has lost 1 case over the painkiller, won 1

THE ASSOCIATED PRESS

Friday, December 9, 2005

HOUSTON

Merck & Co. knew that its painkiller Vioxx increased heart-attack risks but misled doctors and the public because it was more concerned with profits, a plaintiff's attorney said yesterday in closing arguments of the first federal trial involving the drug.

"They could take the high road to patient safety, or they could take the low road to sales," attorney Andy Birchfield told jurors. "What did they do? They pushed forward."

Merck's lead attorney, Phil Beck, said that the pharmaceutical company issued adequate warnings based on studies showing that Vioxx was safe. He said that Merck scientists put patient safety first and were not "evil" or "out to make an extra buck."

Beck said that evidence showed ruptured plaque in an artery caused a blood clot - not Vioxx - leading to the 2001 death of Richard "Dicky" Irvin, 53, of St. Augustine, Fla., whose widow is suing Merck. Beck said studies show Vioxx can lead to cardiovascular problems after 18 months but isn't considered a real risk until after three years. Irvin had been on Vioxx only a month when he died.

Although Merck voluntarily took Vioxx off the market last year, jurors cannot consider that as evidence that the product was defective or the company negligent, Beck said.

Jurors began deliberating yesterday afternoon.

The nine jurors, whose decisions must be unanimous, will decide whether Merck failed to warn Irvin's doctor about the risks of taking Vioxx, whether the painkiller was defective and whether Merck was negligent in designing and marketing the drug. If jurors answer yes to any of those questions, they must decide whether any of those factors helped cause Irvin's death.

This is the first federal trial over Vioxx; Merck has already lost one state trial over the drug and won another, but it faces about 7,000 lawsuits. The Irvin case was moved to Houston from its original venue of New Orleans because of damage from Hurricane Katrina.

Birchfield urged jurors not to award anything to Irvin's family for the loss of his estate and for funeral expenses, but to award about \$350,000 to his widow, Evelyn Irvin Plunkett, and \$53,000 to his youngest daughter for their loss of support and services. Birchfield said he did not know an appropriate amount for the companionship and parenting lost by Plunkett and her two youngest children, who were minors when Irvin died.

Plaintiff's attorneys told jurors that Merck rushed Vioxx to the market in 1999, despite studies showing safety risks, because it was about to lose patents on other profitable drugs. They also said that Merck should have issued label warnings promptly after a study in 2000 showed that Vioxx users suffered five times as many heart attacks as users of the older painkiller naproxen.

Instead, Merck explained the results by saying that naproxen has a protective effect on the heart and by denying that Vioxx leads to heart attacks.

This story can be found at:

http://www.journalnow.com/servlet/Satellite?pagename=WSJ%2FMGArticle%2FWSJ_BasicArticle&c=MGArticle&cid=1128768618336&path=!business&s=1037645507

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