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CTV News with Lloyd Robertson

Sat. Aug. 20 2005 7:57 AM ET



Vioxx maker found liable in U.S. man's death

CTV.ca News Staff

A Texas jury has found pharmaceutical giant Merck and Co. liable for the death of a man who took the painkiller Vioxx.

Robert Ernst's widow, Carol, was awarded \$253.4 million US in damages.

The amount is a combination of the pay he lost as a Wal-Mart produce manager, mental anguish, loss of companionship and punitive damages.

"I hope this will be a wakeup call to all the pharmaceutical companies," Carol Ernst said at a press conference outside the Angleton, Texas courthouse.

"Not only physicians but individuals, the consumers, have the right to know what the risks are when you take a drug. And let the physician and the consumer make the decision whether or not they're willing to take that risk. It shouldn't be a risk that's decided we will take by the pharmaceutical company."

Jurors determined that the drug killed Ernst in his sleep in 2001. They rejected Merck's claim that he died of clogged arteries rather than a Vioxx-induced heart attack that led to his fatal arrhythmia.

The case has drawn much attention as a signal of what lies ahead for Merck -- which says it will fight more than 4,200 state and federal Vioxx-related lawsuits pending in the United States.

"We believe that we have strong points to raise on appeal and are hopeful that the appeals process will correct the verdict," Kenneth C. Frazier, senior vice president and general counsel of Merck, said in a statement. "Our appeal is about fundamental rights to a fair trial."

The company says its appeal will focus on "unqualified experts" called at the trial, as well as the "surprise witnesses" plaintiffs called, which the company says is against Texas law.

Other lawsuits

There are class action lawsuits pending in Canada as well.

Lawyers representing Canadians who used Vioxx and then suffered from heart attacks, strokes and other complications, filed a class action suit against Merck last year.



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Claire Macinnis said she had been healthy all her life until she started taking Vioxx for her arthritis and went into cardiac arrest in 2001.

"They had to paddle me back to life to get me breathing again," she told CTV News from Grimsby, Ont.

Merck also is a defendant in a number of lawsuits alleging securities law violations in relation to its handling of Vioxx.

It's also a defendant in some cases alleging violations of laws governing retirement savings plans.

By 2004, it was becoming clear that there were serious problems with Vioxx.

Independent studies were showing much higher rates of heart disease in Vioxx patients.

Merck removed the drug from store shelves after clinical trials showed that people who took the drug for more than 18 months had a higher risk of heart attack and stroke than did people receiving a placebo.

But in February, a Food and Drug Administration advisory committee voted 17-15 that Vioxx could be returned to the U.S. market under certain restrictions for some patients.

In July, a panel of medical advisers to the Canadian government recommended by a 12-1 vote that Vioxx be reinstated with certain restrictions. Merck plans to discuss the matter with Canada's health department.

Shares of Merck & Co. fell \$1.01, or 3.3 per cent, to \$29.40 in afternoon trading on the New York Stock Exchange after today's verdict.

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