

## **Merck fails in bid to postpone Vioxx trial Texas judge rejects firm's request for two-month delay**

**The Boston Globe**

By Globe Wire Services | July 6, 2005

Merck & Co., the third-biggest US drugmaker, failed to persuade a judge to postpone the trial of a lawsuit over the death of a Texas man who took the Vioxx painkiller.

Judge Ben Hardin in Wharton, Texas, turned down Merck's request for a two-month delay, said Mark Lanier, a lawyer for the man's family. The company cited publicity over a suit filed June 30 by Texas Attorney General Greg Abbott, which accused Merck of committing Medicare fraud by downplaying Vioxx's risks.

"The judge found we could still get a fair trial," Lanier said. "We're tired of Merck running from us. We're ready for a jury to decide what the truth is about this drug."

Jury selection in Lanier's wrongful-death case is set to begin July 11. The suit on behalf of the family of Robert Ernst would be the first over Vioxx to go to trial. Merck pulled the painkiller off the market last year after it was linked to increased risk of heart attacks and strokes.

Analysts estimate Merck may face more than 100,000 suits over the drug.

"We're ready to go to trial and confident about our case," Kent Jarrell, a spokesman for lawyers representing Whitehouse Station, N.J.-based Merck, said yesterday.

Merck officials said Jan. 25 that the company has set aside a total of \$675 million to defend Vioxx suits.

Besides Lanier's case, Merck is gearing up to face lawsuits in Texas, Alabama, and New Jersey.

All federal suits over Vioxx have been consolidated in New Orleans and lawyers say some of them may be ready for trial by November.

In Lanier's case, Ernst's family contends that the marathon runner's death was caused by the Vioxx he was taking for tendinitis, the lawyer said. Ernst died of a heart arrhythmia, a heart malfunction that his family linked to the drug.

Merck officials counter that there's no research linking arrhythmias to Vioxx and argue that Ernst's death isn't attributable to the drug, Jarrell said yesterday.

Merck's lawyers sought to convince Hardin that publicity of the attorney general's suit had made it impossible to get a fair trial in Angleton, Texas, where the four-week trial will be held. The company's motion for a delay says Abbott's suit "effectively eliminated any possibility Merck can receive a fair trial beginning July 11."

"It is vital for the interests of justice that the first Vioxx trial be conducted in a fair and deliberate proceeding untainted by the prejudicial atmosphere Merck's litigation opponents seem intent on creating," the company's lawyers said in court papers filed July 1.

The filing said a story in the "national media" that cited a privileged attorney-client communication could prejudice a jury against it. The Associated Press reported June 22 that Merck scientists had contacted company attorneys in 2000 about reformulating Vioxx over concerns it could cause negative cardiovascular side effects.

But Ken Soh, a plaintiff's lawyer in the case, said that regional newspapers gave minimal coverage to Abbott's lawsuit and other Vioxx-related issues.

Hardin said attorneys can hash out questions to include on questionnaires intended to ferret out bias at a hearing tomorrow. They also can gauge any taint during jury selection next week. ■