

Merck ordered to pay US\$32 million in Vioxx case

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RIO GRANDE CITY, Texas -- A state jury found Merck & Co. (NYSE:MRK) liable Friday for the death of a 71-year-old man who had a fatal heart attack within a month of taking its since-withdrawn painkiller Vioxx and ordered the company to pay \$32 million US. Merck said it would appeal.

The damage award will likely be reduced because of state caps on such awards.

The jury of 10 men and two women deliberated for about seven hours over two days before returning the verdict in favour of the family of Leonel Garza.

The company was ordered to pay \$7 million in non-economic compensatory damages and \$25 million in punitive damages.

But the punitive damage amount is likely to be reduced since state law caps punitive damages at twice the amount of economic damages - lost pay - and up to \$750,000 on top of non-economic damages, which are comprised of mental anguish and loss of companionship.

Because Garza was retired, the jury awarded no economic damages. That means the most Garza's family could receive under state law is \$7.75 million.

"Merck will appeal," spokesman Kent Jarrel said.

The case was the sixth of 11,500 lawsuits to reach a verdict and brings Merck's scorecard in the trials to three wins and three losses.

In the prior two losses, the New Jersey-based pharmaceutical company was ordered to pay one plaintiff \$253.4 million, which will be reduced to \$26 million under Texas caps on punitive damages; and the other \$13.5 million.

Merck (NYSE:MRK) shares fell 26 cents to close at \$34.74 on the New York Stock Exchange. They are still near the upper end of their 52-week range of \$25.50 to \$36.65.

Lawyers for Garza said that while Garza had a history of heart problems, his veins had been cleared and a stress test showed less than a two per cent risk of heart attack within a year. They said he had taken the drug for almost a month before he died in April of 2001.

Merck lawyers argued there was no proven link between heart problems and use of the drug for less than 18 months and said there was doubt whether Garza had taken the drug for more than a week. They said the heart attack was the end result of Garza's 23 years of heart disease.

Lawyers for Garza's family asked the jury to award \$22 million in compensatory damages and \$1 billion in punitive damages.

"Bottom line, you look at all the evidence, the evidence is pretty clear what this case is about," Garza lawyer David Hockema said. "Merck lied and people died."

Joe Escobedo, another plaintiff lawyer, said studies showed the drug caused "excess cardio events" years before the drug was introduced and e-mails between Merck employees and medical consultants showed doubt as to whether it should be marketed to certain populations. He said Merck was in a race to release a potential blockbuster arthritis drug and ignored its dangers.

In his closing statements, Merck lawyer Richard Josephson reviewed Garza's history of heart disease, beginning with a quadruple bypass in 1989. He also noted Garza's smoking habit.

"He had every single risk factor that you can have," he said. "The idea that Mr. Garza was in good health and only had a one per cent chance of having a heart attack is science fiction. ... You'll see that Mr. Garza's time was up."

The case went to trial on Jan. 25, but the judge's schedule allowed only one week of testimony each month.

Vioxx was pulled from the market in September 2004, when a study showed it could double risk of heart attack or stroke if taken more than 18 months.

Plaintiffs in this and other cases say Merck executives knew by 2000 to pull the drug because of its cardiovascular risks, but kept quiet because the drug was so profitable.

Earlier this month, a jury in Atlantic City, N.J., awarded \$9 million in punitive damages and \$4.5 million in compensatory damages to 77-year-old heart attack victim John McDarby and his wife, Irma.

The jury rejected the claim of another plaintiff in the case, who had taken the drug for 22 months before he had a heart attack.

That trial was the first involving people who used the drug 18 months or more.

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