

Merck may settle some Vioxx cases, NJ trial looms

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By Martha Graybow and Ransdell Pierson

NEW YORK (Reuters) - Merck & Co Inc. on Friday signaled it may consider settling some lawsuits alleging harm from its Vioxx pain drug, as it gears up for its second Vioxx court battle -- this time in its own backyard.

The next Vioxx trial is set to begin on September 12 in Atlantic City, New Jersey -- Merck's home state -- although Merck's lawyers on Wednesday asked the state court to delay the start 45 days to allow a "torrent" of bad publicity from the recently concluded first Vioxx trial in Texas to die down.

Merck, which previously said it would fight each of the thousands of Vioxx lawsuits one by one, on Friday indicated it might soften its stand and settle some cases out of court.

"For a relatively small set of cases that involve patients who used Vioxx for over 18 months, we will take a close look," said Kent Jarrell, a spokesman for Merck's legal team, echoing published comments earlier in the day by Merck's general counsel.

Merck withdrew its popular pain and arthritis drug in September after it was shown to double the risk of heart attack and stroke among patients who took it 18 months or longer.

But a Texas jury last week awarded \$253 million to the widow of a triathlete who died of heart arrhythmia after taking Vioxx for no more than eight months.

Merck has vowed to appeal the Texas verdict and use the lessons learned from that defeat to better defend itself in Atlantic City, the casino resort town located 125 miles from the drug maker's headquarters in Whitehouse Station, New Jersey.

The New Jersey court battle -- involving one of almost 5,000 Vioxx-related U.S. lawsuits Merck faces -- features some key differences from the widely publicized Texas trial.

For one thing, Merck will face a local jury in New Jersey, which is also home to many drug makers, including Johnson & Johnson and Schering-Plough Corp., which employ thousands of state residents.

And while the Texas case was a wrongful death suit brought by a widow who blamed Vioxx for her husband's death, the plaintiff in the New Jersey Superior Court trial is a heart attack survivor the jury will be able to see and hear.

Still, legal experts say there is no way to know whether any of these factors will make a difference in the trial. The case is being closely watched, in part because more than 2,400 of the Vioxx cases that Merck faces have been filed in New Jersey state court.

"Home state defendants hope to get some home court advantage in the sense that jurors may be concerned about the loss of jobs in the state" should the company lose and be forced to pay big damages, said Howard Erichson, a professor at Seton Hall University Law School.

"I suppose it benefits Merck a little bit, but I wouldn't make too much of it," he said. "There are plenty of people in the jury pool who are likely to be as sympathetic to consumers as to the business."

The New Jersey case was filed by Frederick Humeston of Boise, Idaho, a 60-year-old postal carrier and Vietnam War veteran, who says Vioxx was responsible for his 2001 heart attack.

Merck said in court papers that Humeston's lawyers have not presented any evidence to suggest his heart attack "was caused by anything other than his preexisting medical conditions."

Humeston's lawyer, Christopher Seeger of the law firm Seeger Weiss, said the drug industry's heavy presence in New

Jersey should not have an impact on the trial. The pharmaceutical industry is not a major part of Atlantic City, which is best known for its casinos and oceanfront boardwalk.

"Jersey juries are incredibly fair," Seeger said. He said a potential juror with ties to the drug industry should not be automatically excluded from consideration.

Seeger said that many of the same Vioxx-related documents shown to the Texas jury will be introduced again in the upcoming trial. Juries tend to sympathize more in cases where people lost their lives, but that doesn't mean the latest case is a weaker one, he said.

"From a damages standpoint, which is what the law is going to look at, somebody who is alive and has persistent and chronic problems as a result of their heart attack would have more medical bills," he said. "So you could get a big verdict."

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