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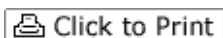
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## Jury: Merck negligent

**Merck blamed for death in Vioxx suit; jury awards \$253 million in damages. Drug giant to appeal.**

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By Aaron Smith, CNN/Money staff writer

**NEW YORK (CNN/Money) - Merck has been held liable by a Texas jury in the first lawsuit involving its former blockbuster drug Vioxx, in a case that could have a profound effect on thousands of other cases filed against the company.**

Plaintiff Carol Ernst has won her lawsuit in Texas Superior Court in Angleton, which blames Vioxx for the 2001 death of her husband, Robert Ernst, a 59-year-old marathon runner and Wal-Mart worker who was taking the arthritis painkiller at the time of his death. Ernst died of a heart attack.

The verdict held Merck liable for the death. Jurors voted 10-2 in favor of Ernst.

The jury awarded more than \$250 million in total damages -- a \$24 million penalty to Carol Ernst for mental anguish and loss of companionship and \$229 million in punitive damages. Ernst's Houston-based lawyer, Mark Lanier, said the punitive-damages figure was based on "the money Merck made and saved by putting off their product label changes."

Lanier had been seeking \$40.4 million in damages, and after the verdict, Lanier said that he expected the punitive-damages award to be reduced according to Texas law.

"Justice is a beautiful thing, isn't it?" said Lanier to reporter following the verdict.

Merck said it would appeal the decision. "We believe that the plaintiff did not meet the standard set by Texas law to prove Vioxx caused Mr. Ernst's death," said Jonathan Skidmore, a member of Merck's legal defense team, according to a statement released by Merck.

[Merck \(Research\)](#) shares were trading down 8 percent after the announcement.

David Moskowitz, analyst for Friedman, Billings, Ramsey & Co., said that if Merck continues to lose cases it will have to settle in order to save the company.

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"The squeeze is coming," said Moskowitz. "With this number of cases and these types of awards, the stability of the company is at risk."

Merck has vowed not to settle. Analyst Christ Shibutani of J.P. Morgan Chase has estimated that Merck's liabilities could range from \$8 billion to \$25 billion.

### **An emotional trial; more to come**

Lanier argued that Merck had concealed information about the health risks associated with the drug in order to protect sales. Lanier has used colorful analogies in his portrayal of Merck, which he has compared to Saddam Hussein and the three monkeys who see no evil, hear no evil, speak no evil.

Carol Ernst, who had divorced her first husband in the early 1980s and raised four children as a single mother, delivered emotional testimony about the death of her second husband, Robert, and said she was taking antidepressants to cope with the loss.

Merck's defense team had insisted that Vioxx did not cause Ernst's death, asserting that arrhythmia had not been linked Vioxx in studies.

Merck's legal battle began after Sept. 30, 2004, when the company pulled Vioxx, a arthritis painkiller worth \$2.5 billion in annual sales and about one-tenth of total company revenue, triggering a one-third slide in the company's stock value.

Merck pulled the drug after participants in a Vioxx study experienced "adverse cardiovascular events" compared to those taking a placebo. Nonetheless, Merck never actually conceded there were health risks.

Some 20 million people have used Vioxx. Since the recall, about 4,200 product liability lawsuits representing about 7,500 plaintiff groups have been filed against Merck.

The battle continues on Sept. 12, when jury selection begins in the next case in New Jersey Superior Court in Atlantic City under Judge Carol Higbee. Plaintiffs from all over the country have sued Merck in New Jersey because the company is based in Whitehouse Station.

While the Ernst case was a wrongful death suit, the next plaintiff is a heart attack survivor. The company will face plaintiff Frederick Humeston of Boise, Idaho, a postal carrier and twice-wounded Vietnam veteran who blames Vioxx for his 2001 heart attack. Merck's lawyers say that Vioxx did not cause Humeston's heart attack and his case presents "little more than guilt by temporal association."

The outcome of the Humeston case will impact how the rest of the New Jersey cases are organized, in groups or individually. Merck has vowed to fight them all, one at a time, if necessary.

That could take a while. Judge Eldon Fallon, who is presiding over all federal cases in New Orleans district court, told reporters in May that lawsuits could ultimately reach 100,000. The first federal case begins on Nov. 28, with a pre-trial conference on Aug. 25.


Andy Birchfield, an attorney in one of the federal cases who is representing widow Evelyn Irvin Plunkett, whose husband was taking Vioxx when he died of a heart attack in 2001, said the Ernst verdict is "certainly good news for victims."

"[Merck] was banking that we could not prove that Vioxx did not cause any individual's heart attack," said Birchfield. "This verdict sounds a very large and clear message that that is not the case."

***Moskowitz does not own Merck stock and his firm does not do business with them.*** ■

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