# In the News

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## Drug maker found liable in nation's first Vioxx trial

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**Local attorneys had anxiously awaited verdict**

In what local attorneys hope is a sign of things to come, Merck & Co. was ordered Friday to pay $253 million in damages to the widow of a Texas man, the first lawsuit involving someone who took the once-popular painkiller Vioxx.

A state jury in Angleton, Texas, awarded Carol Ernst $24.4 million in actual damages and $229 million in punitive damages in the death of her husband Robert Ernst.

The lawsuit is among more than 4,200 state and federal Vioxx-related cases pending across the country, and had been closely watched by drug makers, consumers, stock analysts and lawyers as a signal about the legal landscape for the pharmaceutical giant.

"We've been anxiously awaiting the jury's verdict, and it may be a bellwether for where this litigation is going," said Santa Barbara attorney Glenn Dorfman, who has about a dozen Vioxx clients.

Added Alan Aleksander, another local attorney involved in similar cases, "It certainly sends the word out to the Merck folks that these cases are going to be tough to beat."

Vioxx, a $2.5 billion seller, was pulled from the market in September 2004 after a long-term study showed the drug could double the risk of heart attack or stroke if taken for 18 months or longer.

Mr. Ernst, a produce manager at a Wal-Mart store who ran marathons and taught aerobics classes on the side, died of a heart attack in his sleep in 2001, after taking Vioxx for about eight months.

Jurors in the semi-rural Texas county rejected the drug maker's argument that clogged arteries rather than a Vioxx-induced heart attack led to Mr. Ernst's fatal irregular heart beat, or arrhythmia.

A statement posted on Merck's Web site Friday said the company would appeal the verdict.

"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 of Fulbright & Jaworski, a member of Merck's defense team.

"There is no reliable scientific evidence that shows Vioxx causes cardiac arrhythmias, which an autopsy showed was the cause of Mr. Ernst's death, along with coronary atherosclerosis."

However, Mrs. Ernst called the verdict a wake-up call for pharmaceutical companies. "This has been a long road for me," she told The Associated Press. "But I felt strongly that this was the road I needed to take so other families wouldn't suffer the same pain I felt at the time."

The jury awarded $450,000 in economic damages for Mr. Ernst's lost pay, $24 million for mental anguish and loss of companionship and $229 million in punitive damages. His wife's monetary award could be cut to no more than $26.1 million because Texas law caps punitive damages.

The second state trial is set for next month in New Jersey, where Merck is based, and the first federal trial will be in New Orleans in November.

A group of cases from California is expected to go to trial in Los Angeles County Superior Court next year.

Mr. Aleksander said the scientific evidence in every case will be virtually the same.

"The juries will also see evidence that Merck knew of the dangers and didn't take Vioxx off the shelf," he added. "They knew of the dangers and they told their people to keep that information away from the doctors, and that's why they're seeing such huge damages."

Observers have speculated there could be 100,000 lawsuits filed against Merck across the country, but so far there have been only about 5,000.

Mr. Dorfman was among the camp who wondered whether the Texas case had a good shot of going the plaintiff's way.

"I didn't think this case was as good as a lot of other ones I'd seen because the reported cause of death was not heart attack or stroke, but arrythmia, and people die of that who never get near Vioxx."

In medical terms, he added, the case involved an ailment that lacked a "signature disease."

"The heart attack or stroke of a person taking Vioxx can't be distinguished from a stroke or heart attack that a person who isn't taking Vioxx would have," Mr. Dorfman said.

"It wasn't an ideal case, but now that we see the results, it will encourage those of us who have cases."

Word of Friday's decision sent shares of Merck down nearly 8 percent. Analysts say Merck's liability in the civil cases could top $17 billion, but if the company prevails in future cases, lawsuits could fade away, easing some of the pressure on its stock.

Late Friday, Lance Helfert, president of Ventura-based West Coast Asset Management, said "blue chip" pharmaceuticals may not be as safe an investment as before. "It appears that the rise of punitive damages is wiping away that label, as illustrated by today's Merck ruling. It is definitely something investors should consider to be a trend for the future."

*This story includes reports from The Associated Press.*