

## UPDATE 2-Merck wins Vioxx trial in Alabama state court

(Adds attorney, juror and company comment, case details, byline)

By Verna Gates

BIRMINGHAM, Ala., Dec 15 (Reuters) - Merck & Co. scored its second swift victory this week in a Vioxx product liability trial when an Alabama jury found on Friday it did not hide health risks associated with its withdrawn arthritis drug or knowingly market a faulty product.

The Alabama state court jury of eight women and four men deliberated for less than two hours before finding for the drug maker on both counts.

Merck <MRK.N> had been sued by 59-year-old Gary Albright, who blamed Vioxx for his 2001 heart attack. Albright took Vioxx for arthritis for a year before his heart attack and continued to take it until 2004.

A federal court jury in New Orleans on Wednesday took just 90 minutes to find that Merck had provided adequate warnings of the Vioxx health risks in another case of a man who blamed the drug for his heart attack. It also found that Vioxx was not the prime cause of that plaintiff's heart attack.

Merck attorney Mike Brock said of the Alabama verdict, "The jury focused on the science of the case and saw that the drug did not cause (Albright's) heart attack."

"The jury decision confirms that Merck acted responsibly," he added.

During the trial the jury was told that Albright had severely clogged heart arteries and that for decades he had suffered from other health problems associated with high risk for heart attack such as diabetes, obesity, high blood pressure and untreated high cholesterol.

One juror, who asked not to be named, told reporters that Albright's many health problems and the fact that he did not make regular visits to his physician influenced their decision to find in Merck's favor.

Albright's attorney, Steve Heninger, expressed disappointment at the verdict and suggested he would consider an appeal. He noted that Merck is a formidable opponent in such cases.

"It's hard to go against a Goliath. They present the same evidence in every case," Heninger said.

Merck is facing more than 27,000 lawsuits from people who claim to have been harmed by the once \$2.5 billion a year drug that was pulled off the market in September 2004 after a study showed it doubled the risk of heart attack and stroke in patients taking it for at least 18 months.

The New Jersey-based drugmaker has insisted it will fight each lawsuit case by case, rather than submit to any kind of broad settlement agreement.

"All of the Vioxx cases are individual claims involving very different circumstances, so we need to consider the facts of each case on an individual basis," Merck General Counsel Kenneth Frazier said in a statement.

"Juries continue to determine that Merck acted responsibly in its research of Vioxx and provided the appropriate information about Vioxx to patients and the medical community," Frazier said.

Alabama Circuit Court Judge J. Scott Vowell presided over the trial in Birmingham, Alabama, the first Vioxx case to be tried in that state.

Of the Vioxx trials that have reached a jury verdict thus far, Merck has won eight and lost four. An additional Merck victory in New Jersey was overturned by the judge and will be retried.

Merck shares were up 33 cents, or 0.8 percent, at \$43.93 in afternoon trading on the New York Stock Exchange.

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