

Area woman's case joins surging flood of Vioxx complaints

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John Deck of Haskins, seen in this family photograph with his wife, Patsy, is suing the maker of Vioxx. He believes his wife's death in 2002 is linked to her use of the drug.

Patsy Deck was an active and energetic 64-year-old woman who did not outwardly appear to have any serious health problems.

A full-time office manager at a Toledo piano business, Mrs. Deck could run circles around her husband, John, who was seven years her junior.

But one fall day nearly three years ago, Mrs. Deck went to bed early after she came home from work feeling tired and achy. Hours later, Mr. Deck awoke to find his wife of nearly 22 years lying dead on the bathroom floor of their home in Haskins, Ohio.

"She was the most full-of-life type person who I have ever known. There was never a down day for her," said Mr.

Deck, a retired parole officer who will turn 60 next month.

Mrs. Deck's death on Oct. 22, 2002, was from arteriosclerotic heart disease, according to the Wood County coroner's office report.

It wasn't until nearly two years later when he read in a newspaper story that Vioxx had been pulled from the market that Mr. Deck suspected the prescription painkiller and arthritis drug may have been a factor in his wife's death. She began taking Vioxx for arthritis nearly two years before her death.

Last week, the drug's manufacturer, Merck & Co., was found liable by a Texas jury in the death of Robert C. Ernst, a 59-year-old marathon runner who died in May, 2001, after taking the painkiller for eight months.

The \$253.4 million verdict in the case, the first of nearly 5,000 lawsuits filed nationwide against Merck to reach trial, was closely watched by other attorneys representing Vioxx users. Among them are David Zoll, an attorney in Sylvania Township who represents Mr. Deck and about a dozen others who have filed personal injury lawsuits against Merck; and Charles Murray, an attorney with his family's Sandusky law firm who is also representing several plaintiffs.



Some of the jurors said afterward that the verdict was not intended to reward Mr. Ernst's wife, Carol, but instead meant to punish Merck for failing to properly warn the public about the drug's risks. However, the implications of the six-week trial remain uncertain.



John Deck says his wife, who suffered from arthritis, began taking Vioxx two years before her death. His suit against drug-maker Merck is one of nearly 5,000 making their way to court.

The bulk of the jury's award - \$229 million - was punitive, meaning the award will likely be reduced to \$20 to \$30 million because of state caps on liability complaints.

Merck has acknowledged that more than 4,950 lawsuits have been filed in state and federal courts by people who claim they suffered heart damage after taking the drug or by the families of those who died after taking it.

The New Jersey-based company said the verdict in the Ernst case would be appealed. Merck maintains that Mr. Ernst, a Wal-Mart produce manager, died of an irregular heart beat.

Mrs. Ernst's attorney argued at trial that Merck was aware of the painkiller's heart risks but hid them from patients. Documents presented by the attorney suggested that Merck shielded studies from regulatory scrutiny and was successful at delaying an FDA-suggested October, 2001, label warning, saving the company millions of dollars.

The documents also showed that Merck scientists were concerned about Vioxx's potential cardiovascular risks as early as 1997, two years before the drug went on the market.

Mr. Murray said the Texas verdict, which was among the highest awards ever given to an individual plaintiff, sends a message about corporate responsibility.

"Merck is an outstanding company, but they chose to look at the bottom line ignoring the safety of the product," he said.

"I think the attorneys for Merck have got their hands full," Mr. Zoll said. "The documents paint them as a company that cares more about profit than providing a safe product for patients. The more documents that came out, the more it showed they knew about the drug's risks."

Merck stopped selling Vioxx in September, 2004, after a clinical trial showed that patients taking the drug for more than 18 months had a substantially higher risk of heart attacks and strokes than people taking a placebo.

More than 20 million Americans took Vioxx before it was taken off the market. Two months after it was removed, a drug safety expert for the U.S. Food and Drug Administration told the Senate Finance Committee that research indicates the drug caused as many as 160,000 heart attacks and strokes.

Mrs. Deck, the mother of two adult children, was prescribed Vioxx in November, 2000, to relieve the pain of arthritis. She had increased blood pressure about five months before she died, but her husband and attorney claim there were no other warning signs about a potential heart attack. She was taking Vioxx right up until the day she died.

"They had an absolute responsibility to tell patients that there could be complications. If they had done that, there wouldn't be any lawsuits, and my wife would probably be still alive," Mr. Deck said.

Attorneys and a federal judge in New Orleans overseeing the consolidation of some 1,800 federal cases already filed expect thousands of additional lawsuits to be filed. Analysts predict that as many as 50,000 people in the U.S. might file suit against Merck, and an unknown number of foreign users might literally follow suit if they can find access to American courts.

Merck, the nation's third-largest drugmaker, said previously that it plans to defend every suit, and had set aside \$675 million for legal expenses.

"We believe we have meritorious defenses, and we intend to vigorously defend individual Vioxx cases one by one," said Merck spokesman Guy Bizzoco. But late last week, there appeared to be a shift in Merck's position.

Kenneth C. Frazier, the company's general counsel, said Thursday that Merck would consider settlements in limited situations involving people who brought suit after taking Vioxx for extended periods of time and who did not have other significant risks for heart disease.

On Friday, Kent Jarrell, a spokesman for Merck's legal team, confirmed the drugmaker will consider settlements on cases involving patients with limited heart risk factors who had been taking Vioxx 1 1/2 years or longer.

Nearly 1,800 lawsuits, including three in Ohio and one in Michigan filed by Mr. Zoll, have been or are being transferred from federal courts throughout the country to Judge Eldon E. Fallon of U.S. District Court in New Orleans. Judge Fallon was chosen to oversee the arduous process of the discovery phase for all cases filed in federal courts because of his expertise in dealing with such large-scale matters.

Merck's first trial in federal court is set for Nov. 28, and Judge Fallon will eventually remand the other cases back to their respective federal courts.

Meanwhile, trials are moving forward in state courts. Merck faces a Sept. 12 New Jersey trial in a lawsuit brought by a former postal worker who had a heart attack in 2001.

The Associated Press and the New York Times contributed to this report.

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