Merck to Appeal Verdict in Texas VIOXX® Product Liability Case

23.08.2005 - Merck & Co., Inc. is disappointed a state court jury in Brazoria County, Texas, returned a verdict in favor of the plaintiff in the VIOXX® product liability lawsuit Ernst v. Merck. Merck will 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."

"This case did not call for punitive damages," added Skidmore. "Merck acted responsibly - from researching VIOXX prior to approval in clinical trials involving almost 10,000 patients - to monitoring the medicine while it was on the market - to voluntarily withdrawing the medicine when it did."

Merck is examining various bases for appeal, including: allowing opinion testimony to be given to the jury by unqualified experts, allowing opinion testimony that was not based on a reliable scientific basis as required by Texas law, allowing evidence with no relevance to the issues of the case, which unfairly prejudiced the jury, and allowing undisclosed surprise witness and expert testimony contrary to Texas law.

"We believe that we have strong points to raise on appeal and are hopeful that the appeals process will correct the verdict," said Kenneth C. Frazier, senior vice president and general counsel of Merck. "Our appeal is about fundamental rights to a fair trial."

"There are other VIOXX cases coming to trial and we will vigorously defend them one by one over the coming years," Frazier added.