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AT VIOXX'S END

Most Who Qualify Will Take Deal, Burg Predicts

By Kara Lyons
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DENVER — Victims of heart attacks, strokes and death as a result of taking the painkiller Vioxx received good news this month as attorneys reached a \$4.85 billion settlement with pharmaceutical giant Merck, negotiating the second largest drug settlement in history.

Englewood-based law firm Burg Simpson represented approximately 175 plaintiffs from across the nation affected by the settlement, second only to the settlements resulting from the anti-obesity drug Fen-Phen. An estimated 47,000 personal injury lawsuits were filed against Merck for its production of Vioxx.

However, many of the cases are not expected to qualify for the settlement, according to attorney Michael Burg of Burg Simpson. "About a third of the cases have not been screened as well as they should have," Burg said.

The settlement applies to cases filed against Merck before Nov. 8. Plaintiff groups and representatives will then review the cases and make payout judgments based on an established grid depending on age and certain risk factors. Burg expects plaintiffs will see the money resulting from the settlement in late 2008 or early 2009.

"This settlement proves that Merck has to come out and pay the people they legitimately hurt with their product," Burg said.

"They wouldn't pay \$4.8 billion if they didn't know their product was hurting people. It's great because there are sufficient funds in the settlement to adequately compensate the victims. They will also receive the funds by next year."

Plaintiffs who qualify for the settlement have the option of opting out of the compensation and continuing their litigation. However, at this point, Kerry Jardine, Burg Simpson's managing shareholder, does not foresee many instances where opting out would benefit the clients.

"Probably with very few exceptions, the settlement is

what we would recommend," Jardine said. "You have to keep in mind that Merck has won the majority of the cases, so pursuing these cases on your own would be pretty risky. We don't have any plans to recommend opting out for our clients. However, it's a little premature to make that prediction."

The settlement ends litigation in the works since 2001. Though Burg Simpson did not take any of its cases to trial, it had three trial teams preparing for Vioxx cases. A total of 18 cases, none in Colorado, went to court nationally. Of these jury trials, only five were considered victories for the

KEY ELEMENTS

Plaintiffs must prove:

- They had a heart attack, stroke or sudden death as the result of a blood clot.
- Within 60 days of the injury or death, they purchased 30 Vioxx pills.
- They consumed a Vioxx pill within 15 days of the injury or death.

plaintiffs.

"Most of the wins for Merck were because of the issue of specific causation," Jardine said. "With this group of plaintiffs, because of their age, because of their medical conditions, it's harder to prove a direct causation from taking Vioxx."

Burg Simpson is unaware of how the settlement will affect the firm financially, since payment is based on the client qualifications. "It is customary for contingency fees to be between 35 and 40 percent," Jardine said.

The total expenses relating to all litigation for Vioxx are estimated at \$100 million dollars, according to Jardine.

"We're happy that our clients are going to be fairly compensated within a reasonable amount of time," Burg said. "It's not about the money. We are just trying to keep the companies honest."

From the settlement, Burg predicts Merck will benefit as well.

"They will stop the exposure for punitive damages. They make so many billions of dollars off the sales of their drugs; they still end up with profits even after the settlement. This way, they can just pay it off and be done with it."

