Merck settles Vioxx suits for $4.85B

Drugmaker aims to close door on 3-year legal battle by resolving claims by 47,000 groups of plaintiffs over blockbuster painkiller drug.

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NEW YORK (CNNMoney.com) -- Merck & Co. announced Friday that it will pay $4.85 billion to settle as claims by as many as 47,000 groups of plaintiffs over injuries linked to its blockbuster Vioxx painkiller.

Merck's stock rose more than 5 percent after the news, but moderated later to less than a 4 percent gain, or $56.77 per share, in a down market.

The company said it will pay the money into a fund, and people who claim they were hurt by Vioxx can petition for money. The company said the deal was not a class action settlement and individual cases will be examined before payments are made.

The claims include those filed in federal and state courts, including a large portion in New Jersey, where Merck is based, through Thursday. The plaintiff groups include former Vioxx patients or family members of patients who died.

To be eligible for settlements, plaintiffs must provide medical evidence they suffered heart attacks or strokes and proof of having taken Vioxx pills within 14 days of their illness and 30 pills in all, the company said. Awards will depend on how long a person took the medication and the severity of injury.

"I know that the settlement program is in the best interests of 100 percent of my clients that are eligible for the program," said attorney Andy Birchfield, whose Alabama-based firm represents 5,500 Vioxx plaintiffs.

Birchfield said 4,800 of his plaintiffs are eligible for the settlement because their injuries included heart attacks and strokes. Birchfield said those clients had already agreed to the settlement, and the future of the non-settlement clients would be determined individually.

Birchfield said individual damages from the settlement would surpass $1 million for the most serious cases, involving a fatality, or a catastrophic non-fatal heart attack.

Vioxx became a popular pain medication after it was approved in 1999, with annual sales rising to $2.5 billion, and was used as an anti-inflammatory painkiller for arthritis patients.

Merck pulled the drug from the market in September 2004 after a study linked it to an increased risk of heart attack and stroke.

The agreement announced Friday represents a change in stance for the drugmaker, which earlier had insisted it would fight each Vioxx case. Prior to the settlement, Merck had won 12 cases in court, and lost five, according to spokesman Kent Jarrell.

The company had taken an aggressive and risky courtroom strategy: It consistently denied allegations that Vioxx had killed anyone or that the company knowingly misrepresented the dangers of the drug.

"I would say that [the settlement] is a result of the [case-by-case] strategy and the number of very significant wins we were able to produce in a litigation context," said Ken Frazier, who was the company's chief counsel during much of the Vioxx litigation and was recently named president of global health.

The settlement - one of the biggest ever in civil litigation - comes after nearly 20 Vioxx civil trials were held over the last two years. But it pales in comparison to damage estimates from some analysts, which ranged as high as $30 billion.

"We believe the company's aggressive and successful defense strategy has given it a heavy hand in the bargaining process and produced a favorable outcome in the Vioxx settlement, at a cost that is clearly at the low end of general expectations," said Barbara Ryan, analyst for Deutsche Bank North America.

Ryan also said that the settlement is "completely manageable for the company," which has $5.4 billion in cash on hand. However, she added that the settlement will only be successful if 85 percent of the plaintiffs agree to it.

In fact, Merck general counsel Bruce Kuhlik said that if 85 percent of claimants don't sign up, Merck "can walk away from the agreement" and return to the previous strategy of fighting cases one at a time.

"The key to the settlement is that it's an all-or-nothing clause, so that law firms can't cherry-pick their best cases and dump the rest," said Jon LeCroy, analyst for Natixis Bleichroeder, noting that some firms represent thousands of cases. "They have to dump them all."
The settlement prompted Carol Levenson, analyst for the fixed-income research firm Gimme Credit, to upgrade the company's corporate bonds to "stable" from "deteriorating."

"The announcement at last of a settlement of most of its Vioxx cases has eliminated a huge legal overhang," said Levenson, in a prepared report. "It doesn't tie up all the strings, but at a relatively modest cost puts much of this nightmare behind the company."

Merck's decision three years ago to shut down the popular blockbuster resulted in a flood of lawsuits and a 40 percent freefall in the company's stock price. The Food and Drug Administration, which approved the drug for the U.S. market, also fell under a critical spotlight, and people began to question the agency's ability to screen for safety.
But Merck has made a comeback. Its shares have risen more than 100 percent since its lows in mid-November 2004. So far this year, the stock has climbed about 25 percent.
Merck, the third-largest U.S. pharmaceutical company behind Pfizer Inc. > Johnson & Johnson is still saddled with the some of the same problems plaguing the rest of Big Pharma: pressure from generic drugmakers.

The cholesterol drug Zocor, once worth $5 billion-a-year in sales, lost patent protection in 2006, resulting in plunging sales. The patent on Fosamax, a $3 billion-a-year treatment for osteoporosis, expires in 2008.

To make up for lost sales, Merck CEO Richard Clark is cutting costs by an estimated $5 billion; the company is eliminating 7,000 jobs and closing several manufacturing plants.
Also, Merck recently launched several potential blockbuster products, including the 2006

market entry of the cervical cancer vaccine Gardasil and the diabetes drug Januvia. This year, the FDA approved Merck's HIV treatment Isentress, and the company is awaiting an FDA decision on its experimental cholesterol drug Cordaptive.

The Merck settlement is one of the largest in Big Pharma, but it's not thelargest. The distinction probably goes to Wyeth formerly known as American Home Products, which pulled its diet drug cocktail fen-phen off the market in 1997 after it was linked to heart valve disease. The company agreed to a $3.75 billion settlement.

While Merck's lump figure of $4.85 billion is larger, the maker of fen-phen has paid out about $20 billion in settlements over 10 years, said LeCroy of Natixis Bleichroeder.

Merck's battle isn't over because it still faces lawsuits from 13,000 plaintiff groups.

"They still have a long way to go," said LeCroy. "This by no means closes the door, but it sweeps the bulk of it out the door."