Doctor calls lawyers predators

By ACSH Staff — November 22, 2004

Drug giant Merck pulled its painkiller Vioxx because it increased the risk of heart attacks and strokes.

Now the company may face thousands of lawsuits.

Are lawyers unjustly driving Merck toward bankruptcy?

Like sharks, tort lawyers are circling Merck & Co. of Whitehouse, N.J., one of the oldest, largest and most respected pharmaceutical companies in the world, their greed whetted by the withdrawal of anti-arthritis Vioxx after a study showed increased cardiovascular risk from 18 months of use.

The ads fill the airwaves, the papers and the Internet with solicitations for folks to phone for a free consultation. Those who win the big-bucks lottery for a piece of Merck will get to share their hefty damages with their attorneys while Merck faces the threat of going bottom-up.

Will the expected thousands of lawsuits bankrupt Merck? It's possible. The firm, which employs about 30,000 in the U.S. and more than 20,000 overseas, is reeling. Vioxx, with 20 million American users, did about $2.5 billion worth of business for Merck, whose total 2003 sales were about $22 billion. Merck stock has fallen by almost half since the September withdrawal, meaning its market capitalization is down by almost $50 billion.

The mere fear of lawsuits, based on much shakier scientific ground, is largely responsible for the current scarcity of life-saving flu vaccine, and has led to the flight of almost all vaccine-makers from the children's market.

If Merck goes under, valuable drugs, including drugs for high blood pressure (Cozaar and Hyzaar), osteoporosis (Fosamaz), high cholesterol (Zocor and newly released Vytorin) and asthma and allergies(Singulair), are jeopardized.

A report recently revealed that a Merck vaccine against cervical cancer was completely effective; whether it will ever see the light of day is cast into doubt by "Litigation Inc." Without Merck, the process that developed such innovative drugs as the cervical cancer vaccine would end.

Both Merck and the Food and Drug Administration acted responsibly throughout this episode. Only within the past few months did evidence about increased heart risk become indisputable, and Merck promptly withdrew the drug.

Tough luck, say the lawyers, whose only concern is their bottom line. In fact, the trial lawyers just held a big conference to organize the most efficient way to divvy up the spoils.

Unfortunately, many patients will suffer unremitting arthritis pain without Vioxx. Doctors - even lawyers - know that Vioxx, like any other drug, had its risks and benefits. Even aspirin, if it came
before the Food and Drug Administration today, might not be approved for mass marketing due to its tendency to promote bleeding.

Those who are now attacking Merck are using the only instrument guaranteed to be right: the 2-0/20 retrospectroscope. It’s easy for the Monday morning quarterback to see the problems, but quite another matter to evaluate clinical data from early trials. The system worked just as it should. No one can foresee the unforeseeable.

All of us interested in public health should hope that those plotting to take Merck apart will not be successful and that the promise of the innovations in its pipeline will not be obliterated in the legal feeding frenzy over Vioxx.

Ross, a rheumatologist, is medical director of the American Council on Science and Health.