Exhibit 3F

DeCOTIIS, FITZPATRICK & COLE, LLP
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500 Frank W. Burr Blvd.
Teaneck, NJ 07666
Tel: (201) 928-1100

Co-Liaison Counsel for the Class

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	MDL NO. 1658 (SRC) Case No. 05-CV-01151-SRC-CLW Case No. 05-CV-02367-SRC-CLW
THIS DOCUMENT RELATES TO: THE SECURITIES CLASS ACTION	**DECLARATION OF ALFRED C. DECOTIIS**

I, ALFRED C. DECOTIIS, of full age, hereby declare as follows:

1. I am an attorney licensed to practice in New Jersey and am a member of the law firm of DeCotiis, FitzPatrick & Cole, LLP ("DeCotiis"). I submit this declaration in support of the application for final approval and an award of attorneys' fees by Class Counsel in connection with services rendered in this litigation, as well as the reimbursement of expenses incurred in connection with this action. I have been actively involved in the prosecution and resolution of this litigation, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my participation in this case.

2. By way of Order dated January 25, 2007, Bernstein Litowitz Berger & Grossman, LLP, ("BLBG"), Brower Piven, Milberg, LLP, and Stull, Stull & Brody were appointed as Co-Lead Counsel on behalf of the Class and DeCotiis, Carella, Byrne, Cecchi, Olstein, Brody & Agnello and Brickfield Donahue were appointed as Co-Liaison Counsel (together "Class Counsel").

3. A complete description of the case and Class Counsels' efforts is being submitted herewith by Co-Lead Counsel in support of Plaintiffs' Motions for Final Approval of the *Vioxx*

Settlement and for the Award of Attorneys' Fees and Reimbursement of Litigation Expenses. Rather than duplicate those descriptions, we incorporate by reference Co-Lead Counsel's descriptions and address in this declaration the efforts and contributions of the DeCotiis firm.

4. In its capacity as Co-Liaison Counsel, DeCotiis participated in the motion of the Public Employees' Retirement System of Mississippi's ("MPERS") motion to intervene and the appointment of MPERS as Co-Lead plaintiff and BLBG as Co-Lead Counsel for the Class. Thereafter, DeCotiis served to support and assist Co-Lead Counsel in communications with the Court and Clerk and among counsel. DeCotiis also participated in case and trial analysis and strategy, and the settlement process. DeCotiis also supported the fact and expert discovery process.

5. DeCotiis was part of the Class Counsel team for pre-trial discovery that (i) reviewed electronic discovery; (ii) coded or tagged documents and categorized documents for responsiveness; (iii) prepared descriptions of "hot" documents; and (iv) handled numerous projects on a variety of research topics including by way of example, but not limited to, a complete analysis of the APPROVE trial that Merck conducted, the Alzheimer's Disease study assessment, and "Green Monkey" blood studies.

6. In addition to the above-referenced projects, tasks, and assignments, DeCotiis participated on several fact and expert witness deposition preparation teams, including as co-team leaders for several fact and expert witness deposition preparation teams. Among the many tasks completed: preparation of deposition binders, review and analysis of scientific journal articles and publications, responses in real-time to questions during depositions, and research for various Daubert issues.

7. DeCotiis expended 12,882.60 hours in this litigation from inception through November 2015 in the case. The total lodestar for the period is $5,322,764.00. Schedules summarizing time, by timekeeper, and expenses are set forth on Exhibits 1 and 2 respectively.

Any time and/or expenses related to the application for fees and reimbursement of expenses has been excluded.

8. Further, in connection with the preparation of this declaration, I performed a detailed analysis of the work performed by each professional and the time spent on particular tasks and confirmed that the hourly rates were those that are the usual and customary rates charged for each individual in comparable cases at my firm's 2016 billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The hourly rates vary appropriately among and between attorneys and paralegals, depending on position and experience.

9. Further, in connection with the preparation of this declaration, I reviewed the reimbursable expenses incurred by this firm in connection with the prosecution of the action. These expenses are reflected in the books and records of my firm, which are kept in the ordinary course and prepared from expense vouchers, check records, and other documents. In total, DeCotiis incurred $6,952.50 in costs prosecuting this action before this Court.

10. Finally, with respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Alfred C. DeCotiis

Dated: April 21, 2016

EXHIBIT 1

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

DeCotiis, FitzPatrick & Cole, LLP

TIME REPORT

Inception through February 15, 2016

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Alfred C. DeCotiis	275.10	700.00	$192,570.00
Jeffrey D. Smith	120.50	700.00	84,350.00
Michael R. Cole	21.60	600.00	12,960.00
Erik M. Corlett	6.90	400.00	2,760.00
Of Counsel			
Senior Counsel			
Associates			
Daniel J. Mann	7,681.50	375.00	2,880,675.00
Staff Attorneys			
Joseph Altavilla, Jr.	4,776.50	450.00	2,149,425.00
Paralegals			
Angela Triana	.20	120	24.00
Litigation Support			
TOTALS	**12,882.60**		**$5,322,764.00**

EXHIBIT 2

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

DeCotiis, FitzPatrick & Cole, LLP

EXPENSE REPORT

CATEGORY	AMOUNT
Court Fees	
PSLRA Notice Costs	
On-Line Legal Research	$2,917.05
On-Line Factual Research	
Special Publications	
Document Management/Litigation Support	
Telephone/Faxes	
Postage & Express Mail	
Hand Delivery Charges	
Local Transportation	
Internal Copying	4,035.45
Outside Copying	
Out of Town Travel	
Working Meals	
Depositions/Meetings Hosting	
Experts	
Specialized & Local Counsel	
Mediation Fees	
Court Reporters and Transcripts	
Contributions to Plaintiffs' Litigation Fund	
TOTAL EXPENSES:	**$6,952.50**

#979954

EXHIBIT 3

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658(SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367(SRC)
[This Document Relates to: The Consolidated Securities Action]

DeCotiis, FitzPatrick & Cole, LLP

DECOTIIS, FITZPATRICK & COLE, LLP

DeCotiis operates on a single, simple (but not easy) premise: our job is to help our clients get things done. We know that for our clients, legal matters are a means, not an end.

About DeCotiis

AT DECOTIIS, FITZPATRICK & COLE, LLP, WE BELIEVE IN PURSUING A COURSE OF ENERGETIC, AGGRESSIVE ADVOCACY TO RESOLVE OUR CLIENTS' PROBLEMS AND ACHIEVE THEIR DESIRED RESULTS.

DeCotiis, FitzPatrick & Cole, LLP, is an sixty plus-lawyer, full-service firm headquartered in Teaneck, New Jersey. We are a group of exceptionally skilled, experienced attorneys, who practice in a wide variety of specialties. A partial list of our practice areas includes real estate, labor law, public procurement, litigation, environmental law, public finance, tax, municipal law, government and regulatory affairs, healthcare law, corporate law, banking and bankruptcy.

Although we represent regional and national clients, we are a firm with very deep roots in New Jersey. The majority of our attorneys are lifetime New Jersey residents, and our lawyers have extensive experience in New Jersey government and political affairs, many at senior levels. Our depth of experience and understanding of the unique legal, legislative and administrative environment in New Jersey gives us the unique ability to help our clients navigate the intricacies that doing business in our state can require.

We are a firm that specializes in delivering innovative solutions. Our attorneys have an unparalleled ability to collaborate across practice groups, and to devise and implement effective, often novel, approaches to legal issues. These solutions range from helping finance green technologies to completing large, complex transactions to successfully defending major litigation matters.

We are also a firm that emphasizes practical legal thinking and consistently focuses on helping our clients achieve their objectives and get things done. Our attorneys frequently work closely with colleagues across practice groups to arrive at solutions that address a client's specific needs and situation. We believe that our counsel services our client's priorities, and we strive to provide legal counsel that is unmatched in expertise, responsiveness and cost-effectiveness for every client, in every matter, every time.

Many of our attorneys have decades of experience working in the State Attorney General's Office, Prosecutors' Offices, Department of Justice, U.S. Attorney's Office -- Civil, criminal, fraud and security units, while others worked in-house for Fortune 100 legal departments. The background of our attorneys, combined with our legal and business experience, provides our Firm with the ability to provide superior representation to our clients.

DECOTIIS, FITZPATRICK & COLE, LLP

LITIGATION

LITIGATION TENDS TO FALL INTO TWO GENERAL CATEGORIES. The first, and by far the most common, is a matter in which the goal is a rapid, favorable settlement. The second is a case that affects an issue critical to the client – a case that must be taken to trial and won. The Litigation Group at DeCotiis has expertise in handling both.

The Litigation Group consists of more than twenty-five lawyers who collectively have decades of trial experience at every level of both Federal and state courts. They have hundreds of published opinions to their credit, reflecting the breadth of their experience in trial and appellate courts alike, up to and including the Supreme Court of the United States.

Although we are primarily a defense firm, with an emphasis on commercial litigation, we routinely handle matters in other practice areas. These include labor and employment and civil rights law, white collar criminal defense, environmental law, public procurement and contracting law, land use, healthcare law, and personal injury. By working closely with other practices within the firm, we provide clients with a coordinated, cost-effective combination of trial expertise and in-depth subject knowledge.

The Litigation Group has particular talent, and an unmatched record, in representing public entities in significant or politically sensitive matters. Many of our members have held high-level government or regulatory posts.

Our approach to litigation combines aggressive advocacy with flexibility. If a case goes to court, we are aggressive, strategic trial lawyers, respected by both opposing counsel and the judiciary. Every case is unique, and we will pursue and try it that way. Our goal is always to win.

While we are justifiably proud of our record of success in court, some of our most significant successes involved negotiated solutions to problems that appeared to require litigation, and the utilization of alternate dispute resolution techniques to cut short matters that were already in litigation. The firm's

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United States of America

DECOTIIS, FITZPATRICK & COLE, LLP

LITIGATION

efforts to resolve disputes at an early stage reflect its commitment to avoid the expense, delay and uncertainty of litigation wherever possible - a commitment that we make and uphold to all of our clients, be they major corporations or private citizens. Where recourse to the courts is a necessity, however, the Litigation Group has the resources, experience, and expertise needed to pursue relief until it is achieved.

Please contact us to inquire how we may assist you.

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DECOTIIS, FITZPATRICK & COLE, LLP

WHITE COLLAR AND CORPORATE INVESTIGATIONS

ALTHOUGH ALL LEGAL ISSUES ARE SIGNIFICANT FOR A BUSINESS, CHARGES OF WHITE-COLLAR CRIME ARE PARTICULARLY SERIOUS. REPUTATIONS, CAREERS AND SOMETIMES LIBERTY ARE AT STAKE. Effective defense of these matters requires quick action, hands-on expertise and an intimate knowledge of both the justice system and the key players. The White Collar and Corporate Investigations Group at DeCotiis is one of the largest and most respected among major law firms in the State of New Jersey. We provide vigorous defense of individuals and corporations faced with criminal or quasi-criminal investigations and charges.

These cases frequently involve inflammatory allegations of fraud or self-dealing, and arise in a wide variety of subject areas including Insurance, Healthcare, Environmental, Banking, RICO, and political activity. Our group includes former Federal and state prosecutors with extensive experience in defending clients against allegations of wrongdoing in various contexts, such as grand jury investigations by Federal and State prosecutors, and investigations by regulatory agencies such as the Securities and Exchange Commission, the Commodity Futures Trading Commission and the Internal Revenue Service. Many cases handled by the Group involve complex parallel civil proceedings.

Attorneys in the group are also experienced in conducting internal corporate and union investigations of potential criminal and civil wrongdoing. In these situations, being proactive is essential. We help our clients get out in front of issues, and contain or manage them earlier rather than later, when the stakes can be much higher. In addition to handling matters during the investigative stages or at trial, the group is also experienced in representing clients in post-trial proceedings and appeals.

Although the attorneys in our group are extraordinarily accomplished in the courtroom, much of our work on behalf of clients consists of dissuading prosecutors and regulators from proceeding with threatened criminal charges or lawsuits. It is vastly better to convince a prosecutor to drop or scale back prospective charges than to attempt to fight them in court.

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DECOTIIS, FITZPATRICK & COLE, LLP

WHITE COLLAR AND CORPORATE INVESTIGATIONS

This is where our extensive experience, and past posts inside prosecuting agencies are an invaluable asset. A prosecutor has considerable discretion, and we speak their language. They are far more likely to be receptive to an advocate who knows, and has done, their job. We also have both technical and personal credibility that enables us to present our client's position as forcefully and convincingly as possible. Prosecutors respect us, listen to us, and are more amenable to negotiation. We also have substantial experience with media relations, and routinely deal with the special public relations problems faced by clients who find themselves immersed in undesired, high-visibility matters. Whatever the situation, our attorneys stand ready to provide expert, coordinated assistance in these challenging situations.

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ALFRED C. DECOTIIS
ATTORNEY AT LAW

Alfred C. DeCotiis is a partner in the firm's Teaneck office. He joined the firm in 1996 and heads the White Collar Litigation and Corporate Investigations practice group.

Mr. DeCotiis is a prominent criminal defense attorney who has practiced law for over 35 years. He specializes in the defense of complex white collar, political corruption and corporate investigations in both federal and state courts. Mr. DeCotiis served as an Assistant United States Attorney

He has also been a political leader in the State of New Jersey, both at the state and federal level. He was a member of the Democratic National Committee for 12 years, and served in a variety of leadership positions in the presidential campaigns of President Bill Clinton, Vice President Al Gore and Hillary Clinton.

In 1995, President Clinton selected Mr. DeCotiis to serve as the U.S. Representative to the 50th Session to the United Nations General Assembly. He was confirmed by the United States Senate and represented the United States before the General Assembly, addressing issues relating to disarmament and international security, economic and financial matters, as well as global social, humanitarian and cultural issues.

Mr. DeCotiis received his B.A. from Villanova University in Liberal Arts, graduating in three years and was a nominee for a Rhodes Scholarship. He graduated from Villanova University Law School, where he was President of the Student Bar Association. Immediately following law school, he clerked for the Honorable Reynier Wortendyke Jr. of the United States District Court for the District of New Jersey. In 2009, he earned a Master's Degree in state and local government from Kean University graduating with distinction. He was designated a New Jersey Super Lawyer in 2010 and 2011 and is an AV-rated Attorney by Martindale-Hubble.

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ALFRED C. DECOTIIS
ATTORNEY AT LAW

Bar Admissions:

New Jersey (1968)

U.S. District Court for the District of New Jersey

Third Circuit Court of Appeals

Professional Memberships, Activities and Associations:

New Jersey State Bar Association

Elected as a Fellow of the American Bar Association

Member of the New Jersey Legislature's Insanity Defense Study

Appointed as Assistant United States Attorney for the District of New Jersey and served under Frederick B. Lacey and Herbert J. Stern

Served as counsel to the New Jersey Assembly Committee on Independent Authorities and Commissions

Appointed by New Jersey Senate President Carmen Orechio and Governor Thomas Kean to be Vice Chairman to the New Jersey Transportation Trust Fund Authority

Served as General Counsel to North Jersey District Water Supply Commission.

Elected by the Chief Judge of the United States District Court to be on the Federal Lawyers Advisory Committee

Member of the Democratic National Committee for 12 years and a Managing Trustee of the Democratic National Committee.

Mr. DeCotiis received personal commendations for his prosecutorial achievements from the FBI Director J. Edgar Hoover and from the United States Attorney General.

JEFFREY D. SMITH
ATTORNEY AT LAW

Jeffrey Smith is a partner in the Teaneck office of DeCotiis, a member of the Executive Committee and Co-Chair of the firm's Litigation Department. He joined the firm as a partner in 1998. He is also a member of the White Collar Litigation and Corporate Investigations practice groups.

Mr. Smith concentrates his practice in White Collar and Corporate Investigations and Complex Litigation. He has wide trial and appellate experience with emphasis on the defense of federal and New Jersey criminal and regulatory cases and related civil litigation. Mr. Smith has defended corporate and individual clients in a broad cross-section of industries in investigations conducted by the U.S. Department of Justice, the Securities and Exchange Commission, the Commodity Futures Trading Commission and State Attorneys General. Mr. Smith also represents clients in complex civil litigation involving allegations of fraud, breach of contract, breaches of fiduciary duty, racketeering, violations of the federal False Claims Act and redevelopment litigation.

Prior to joining the firm in 1998, Mr. Smith was an Assistant United States Attorney for the United States Attorney's Office for the District of New Jersey from 1988 until 1998. He served in a number of assignments, including the Civil Division and the Special Prosecutions Division, where he specialized in the prosecution of public corruption cases. Mr. Smith was twice the recipient of the Justice Department's Director's Award for Superior Performance as an Assistant United States Attorney in 1996 and 1997. Mr. Smith was designated a New Jersey Super Lawyer in 2005, 2006-2016.

Mr. Smith is a member of the American Bar Association and a Trustee for the Association of the Federal Bar of the State of New Jersey. He has lectured and served as an instructor in a variety of forums. Mr. Smith taught in the U.S. Justice Department's trial advocacy program and represented the Justice Department at a conference in Kiev, Ukraine regarding governmental and political corruption. Mr. Smith has participated as a faculty member in a number of panels addressing white collar crime, the federal False Claims Act, internal investigations, redevelopment litigation and other issues.

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JEFFREY D. SMITH
ATTORNEY AT LAW

Representative matters:

Representation of pharmaceutical company executives in investigations concerning alleged off-label sales and marketing practices.

Representation of numerous senior mortgage industry executives (CEO, Chief Operating Officer, Senior VP and Chief marketing officer) in mortgage and wire fraud prosecutions and investigations.

Representation of labor unions in connection with federal grand jury investigations and related internal investigations.

Representation of medical device company executives in investigation concerning alleged fraud and anti-kickback violations.

Representation of ratings analyst in insider trading investigation and related SEC investigation and litigation.

Representation of international brownsfield redevelopment company and national real estate development companies in civil litigations concerning redevelopment, contract, and constitutional takings issues.

Representation of telecommunications company in an internal investigation concerning allegations of accounting fraud.

Mr. Smith received his B.A. *magna cum laude* from the University of Notre Dame in 1979. As an undergraduate he was a member of Omicron Delta Epsilon, the National Economics Honor Society. He was awarded his J.D. from the Law School of the University of Pennsylvania in 1983. He has been a New Jersey resident for 20 years.

Bar Admissions:

New York (1984)

United States District Court for the Southern District of New York (1984)

United States District Court for the Eastern District of New York (1984)

United States District Court for the District of New Jersey (1984)

New Jersey (1996)

3rd Circuit Court of Appeals (2006)

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(C) 973-202-2152
EMAIL: jsmith@decotiislaw.com

Experience

DeCotiis, FitzPatrick & Cole, LLP – Partner **1998 – Present**
Teaneck, New Jersey

Member – Executive Committee
Co-Chair – Litigation Group

Practice concentrated in White Collar, Corporate Investigations and Complex Litigation. Extensive trial and appellate experience, with emphasis on criminal and regulatory cases and related litigation. Substantial experience defending corporate and individual clients in investigations conducted by the U.S. Department of Justice, the Securities and Exchange Commission, Commodity Futures Trade Commission, FINRA and State Attorneys General. Complex civil litigation involving allegations of fraud, racketeering, breach of fiduciary duty, breach of contract, violations of the federal and state False Claims Acts and redevelopment litigation.

Representative matters

Representation of pharmaceutical company executives in investigations concerning alleged off-label sales and marketing practices.

Representation of medical device company executives in investigation concering alleged fraud and anti-kickback violations.

Representation of executives and employees in Foreign Corrupt Practices Act investigations and related internal investigations.

Representation of numerous senior mortgage industry executives (CEO, Chief Operating Officer, Senior VP and Chief Marketing Officer) in mortgage and wire fraud prosecutions and investigations.

Representation of labor unions in connection with federal grand jury investigations and related internal investigations.

Representation of ratings analyst in insider trading investigation and related SEC investigation and litigation.

Representation of international brownsfield redevelopment company and national real estate development companies in civil litigations concerning redevelopment, contract, and constitutional takings issues.

Representation of telecommunications company in an internal investigation concerning allegations of accounting fraud.

United States Attorney's Office for the District of New Jersey – Assistant United States Attorney **1987 – 1998**
Newark, New Jersey

Special Prosecutions Division 1990 – 1998
Civil Division 1987 – 1990

Prosecuted fraud, racketeering and public corruption cases. Responsible for civil racketeering cases using civil RICO statute to purge organized crime from, and involving trusteeship of, major international unions. Awarded U.S. Justice Department's Director's Award for Superior Performance as an Assistant U.S. Attorney 1996 and 1997.

Cahill Gordon & Reindel – Associate **1983 – 1987**
New York, New York

Activities/Awards

Trustee – Association of the Federal Bar of the State of New Jersey 2000 – 2015

Master/Member of Executive Committee – C. Willard Heckel Inn of Court – Rutgers School of Law – Newark

New Jersey Super Lawyer 2005, 2006, 2008 – 2016

Member – New Jersey Supreme Court Advisory Committee on Expedited Civil Actions 2012 – 2014

Member – New Jersey Supreme Court Ad Hoc Committee for Attorney Malpractice Insurance 2014 – Present

Instructor – U.S. Justice Department Trial Advocacy Program 1997

Moderator, Speaker – Bar Association and I.C.L.E. programs relating to White Collar defense, corruption, federal False Claims Act, internal investigations and redevelopment litigation; commentator Bloomberg News (television and print); National Public Radio – Marketplace; Wall Street Journal; New York Times.

Education

University of Pennsylvania Law School
Philadelphia, Pennsylvania
J.D. 1983

University of Notre Dame
Notre Dame, Indiana
B.A. Economics, *magna cum laude*, 1979
Member Omicron Delta Epsilon, National Economics Honor Society

Bar Admissions

New York (1984)
United States District Court for the Southern District of New York (1984)
United States District Court for the Eastern District of New York (1984)
United States District Court for the District of New Jersey (1984)
New Jersey (1996)
3rd Circuit Court of Appeals (2006)

DANIEL MANN
ATTORNEY AT LAW

Daniel Mann joined DeCotiis in 2010 as an associate in the firm's Teaneck office. Following law school, Mr. Mann clerked in the Superior Court of New Jersey, Union County. Mr. Mann is a co-founder and one of the initial research fellows of Seton Hall University School of Law's Center for Policy and Research, where he remains a senior fellow.

As one of the fellows of the Center, his work focused on the study of government data to illuminate the interrogations and intelligence practices of the United States. The reports have been introduced into the Congressional record by the Senate Armed Services Committee, the Senate Judiciary Committee, the House Armed Services Committee, and as part of a Resolution by the European Parliament.

At DeCotiis, Mr. Mann is a member of the Litigation Group. His practice has focused primarily on securities class action and condemnation law, including working with co-counsel on discovery and pre-trial motion practice for over three years in a recently settled shareholder action stemming from Merck's public statements about Vioxx, a drug withdrawn from the market in 2004.

In 2015 Mr. Mann served as an NGO observer of proceedings in the trial of Abd al-Rahim al-Nashiri, the accused bomber of the USS Cole, at Guantanamo Bay Naval Base. Mr. Mann, a National Merit Scholarship semi-finalist, holds a B.A. in Government and International Politics from George Mason University where he was admitted as an Honors Scholar, and a J.D. from Seton Hall University School of Law where he was a Chancellor's Scholar. Prior to attending law school, Mr. Mann worked as a research analyst in Bethesda, Maryland.

Bar Admissions:
New Jersey (2008)
New York (2008)
United States District Court for the District of New Jersey (2008)

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EXPERIENCE

DeCotiis, FitzPatrick & Cole, LLP, Teaneck, NJ
Staff Attorney — *January 2012 – December 2013*
Coordinated pre-trial discovery in a multidistrict securities class action lawsuit; served as Team Leader for several projects and deponent preparation; drafted memoranda and outlines for fact and expert witness deposition preparation; responded to substantive questions of law and fact.

Lower Manhattan Development Corporation, New York, NY
Assistant General Counsel — *October 2007 – March 2011*
Assisted the General Counsel with government contract administration and management of regulatory matters; drafted, negotiated, and interpreted various commercial contracts and federal grant agreements under the World Trade Center Memorial and Redevelopment Plan; analyzed applicable federal, state, and local laws and regulations; collaborated with government officials and consultants throughout all phases of program development to ensure regulatory compliance; advised staff in drafting grant guidelines and enforcing grant requirements and procedures; supervised outside counsel in litigation; prepared responses to discovery requests and liens.

Epstein, Fitzsimmons, Brown, Gioia, Jacobs & Sprouls, PC, Chatham Township, NJ
Associate — *July 2005 – February 2007*
Represented lenders, developers, and landowners in all areas of transactional real estate law; presented development applications for approval by local governing bodies; drafted and negotiated contracts of sale and commercial leases; reviewed and finalized financing agreements, construction loan documents, and conveyance instruments used in the acquisition of real property; prepared site access agreements, SNDAs, landlord waivers, letters of credit, and subleases; reviewed title and environmental reports; conducted real estate closings.

Stern, Lavinthal, Frankenberg & Norgaard, LLC, Livingston, NJ
Associate — *May 2002 – July 2005*
Conducted extensive legal research and writing in federal and state court proceedings; managed a caseload of litigated matters in real estate, land use, construction, environmental, and redevelopment law; drafted applications for development, pleadings, motions, and appellate briefs; argued dispositive motions and appellate applications.

ADMISSIONS

Admitted to practice law in New Jersey and New York

EDUCATION

New York Law School, New York, NY
Juris Doctor, Cum Laude, June 2001

Awards: The Dean's Award for Outstanding Student Leadership and Service
Two-Time Winner, ABA Law Student Division Achievement Award
Nominee, ABA Law Student Division Student Bar Association President of the Year
Who's Who: American Law Students

Offices: Student Bar Association President 2000-2001
Student Bar Association Senator 1998-1999; 1999-2000

University of Central Florida, Orlando, FL
Bachelor of Arts, Political Science, May 1998
Bachelor of Arts, Legal Studies, May 1998
Coursework Completed, Environmental Engineering, August 1993- January 1996

Honors: Golden Key International Honour Society
Pi Sigma Alpha: National Political Science Honor Society

INTERESTS

Marathon Running, Hiking, Community Service, and Astronomy

Exhibit 3G

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: MERCK & CO, INC. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	MDL No.: 1568 (SRC) Civil Action No.: 05-1151 (SRC)(CLW) Civil Action No.: 05-2367 (SRC)(CLW)
THIS DOCUMENT RELATES TO: THE SECURITIES CLASS ACTION	**AFFIDAVIT OF PAUL B. BRICKFIELD IN SUPPORT OF APPLICATION FOR AWARD OF LEGAL FEES AND EXPENSES**

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

Paul B. Brickfield, being duly sworn, deposes and says:

1. I am an attorney-at-law in the State of New Jersey. I am submitting this Affidavit in support of an application for an award of legal fees and expenses to my firm in this action. I have personal knowledge of the matters set forth in this affidavit.

2. I have been an attorney since 1982. I began my legal career as a commercial litigator at Shearman & Sterling in New York City. I then became a federal prosecutor in the United States Attorney's Office for the District of New Jersey in 1984 where I eventually served as the deputy chief of the special prosecution unit in Newark, New Jersey.

3. In 1990, I left the United States Attorney's office and became the First Assistant Prosecutor at the Bergen County Prosecutor's Office. In 1993, I entered private practice and started the firm known since 2001 as Brickfield & Donahue. Since 1993, I have been an active practitioner in the United States

District Court in Newark in both criminal and civil cases.

4. In March 2005, I was asked to serve as local counsel to the Milberg firm in the above securities class action. The case had recently been transferred to the United States District Court in Newark, New Jersey by the Multi-District Panel and was assigned to the Honorable Stanley R. Chesler, U.S.D.J.

5. I was selected to serve as local counsel, I believe, based on my prior experience and reputation in the United States District Court.

6. My first task as local counsel was assisting the Milberg firm to retain its position as lead counsel since upon the case's transfer to New Jersey, federal securities law permitted a reexamination of that designation by the assigned United States District Court Judge. There were several firms that attempted to obtain the role of lead counsel, but the United States District Court, after hearing argument, confirmed the selection of the Milberg firm as lead counsel. My firm continued as its local counsel.

7. Over the next two years, from approximately March 2005 through early 2007, I performed significant local counsel duties, including attending meetings in New York City at the office of Milberg, assisting in preparation and/or review of papers to be filed for compliance with the United States District Court local rules and the proper electronic filing of same.

8. I also sponsored a number of attorney applications for *pro hac vice* admission into the case, as well as attended various status conferences, motions and appearances in the United States District Court as local counsel to lead

counsel.

9. In addition to these traditional local counsel duties, my firm was asked by Milberg and other plaintiff firms involved in the litigation to review and digest the transcripts of three jury trials (one of which took place in New Jersey) that had occurred involving personal injury plaintiffs who alleged they were injured by use of the Vioxx medication. The outcomes of these trials were of great relevance to the securities litigation as Merck had some early success in these trials. In addition, these trials contained testimony from some of the major figures in the Merck corporation that would be key witnesses in the securities fraud case. Thus, a review of their testimony was important.

10. I conducted some of the review of the trial transcripts myself, but was also assisted in the review, as well as local counsel tasks, by the four following attorneys in my firm:

(a) Nancy Scappaticci - Admitted to the New York Bar in 1983 and the New Jersey Bar in 1989. She worked for a number of years at Shearman & Sterling and then in-house at Prudential Life Insurance Company prior to being of counsel to my firm. She has been of counsel to Brickfield & Donahue since 1994 to the present.

(b) Sandra Coira - Admitted to the New Jersey Bar in 2007. She has been an associate at my firm from 2007 to the present.

(c) Ronald Brandmayr - Admitted to the New Jersey Bar in 2002 and worked for my firm for about two years.

(d) Kelly Koscuiszka - Admitted to the New Jersey Bar in 2005 and was an associate at my firm for approximately two years. She is now a senior counsel at a large New York law firm.

(e) In addition, Susan Cassell, a former federal prosecutor, who was admitted to practice in 1985 in New Jersey and is a longtime federal practitioner in her own practice, attended one court appearance on my behalf.

11. In late 2006/early 2007, due to changes and departures at the Milberg firm, a challenge was raised to the lead counsel structure. Ultimately, the United States District Court approved a joint application for four firms to serve as lead counsel, along with two additional local counsel firms. As a result of that change, although I continued as local counsel, my role was lessened. For that reason, a review of the time records for my firm shows that the bulk of my firm's services occurred in the first two years of the litigation in New Jersey.

12. As stated above, I did remain one of the three local counsel after the changes involving lead counsel. As co-local counsel, I continued to work on the case, including reviewing documents filed with the Court, conferring with members of lead counsel, attending meetings with lead counsel, if requested, attending a mediation conference and attending United States District Court status conferences and hearings when requested by lead counsel.

13. In December 2015, the litigation reached a settlement and I reviewed and signed the settlement documents as one of the three local counsel.

14. The schedule attached hereto as Exhibit 1 is a summary indicating

the amount of time spent by attorneys of my firm who were involved in this Action, and the lodestar calculation for those individuals based on my firm's 2016 billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm.

15. Time expended on the Action after February 15, 2016, has not been included in this request. In addition, any time related to the application for fees and reimbursement of expenses has been excluded.

16. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters.

17. The total number of hours reflected in Exhibit 1 from inception through and including February 15, 2016, is 499.70. The total lodestar reflected in Exhibit 1 for that period is $252,780.00, consisting of $252,780.00 for attorneys' time and $0.00 for professional support staff time.

18. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

19. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of $444.71 in expenses incurred in connection with the prosecution of this

Action.

20. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

Paul B. Brickfield

Sworn to before me this
21 day of April 2016

Attorney-at-Law
Sandra Young
Attorney at Law
State of New Jersey

EXHIBIT 1

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

BRICKFIELD & DONAHUE

TIME REPORT

Inception through February 15, 2016

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Paul B. Brickfield	335.30	$600.00	$201,180.00
Of Counsel			
Nancy J. Scappaticci	65.00	$400.00	$26,000.00
Susan Cassell	5.00	$400.00	$2,000.00
Senior Counsel			
Associates			
Sandra Coira	4.30	$250.00	$1,075.00
Kelly Koscuiszka	86.10	$250.00	$21,525.00
Ronald Brandmayr	4.00	$250.00	$1,000.00
Staff Attorneys			
Paralegals			
Litigation Support			
TOTALS	**499.70**		**$252,780.00**

EXHIBIT 2

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

BRICKFIELD & DONAHUE

EXPENSE REPORT

CATEGORY	AMOUNT
Document Management/Litigation Support	$15.33
Postage & Express Mail	$125.73
Hand Delivery Charges	$36.75
Local Transportation	$266.90
TOTAL EXPENSES:	**$444.71**

#979954

Exhibit 3H

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	MDL NO. 1658 (SRC) Civil Action No. 05-1151 (SRC) (CLW) Civil Action No. 05-2367 (SRC) (CLW)
THIS DOCUMENT RELATES TO: THE SECURITIES CLASS ACTION	

AFFIDAVIT OF SHEILA M. GOWAN

STATE OF NEW YORK)
) SS.:
COUNTY OF DUTCHESS)

Sheila M. Gowan, in my official capacity as Post Confirmation Plan Administrator for Dreier LLP, being duly sworn, deposes and says:

1. I make the following statements in my official capacity, upon my review of the contemporaneous books and records of Dreier LLP ("DLLP"), now dissolved, and information that I obtained from conversations with lawyers who were involved with the Action (defined below).

2. I am the court-approved Plan Administrator for the post-confirmation chapter 11 estate of DLLP. I respectfully submit this affidavit in support of Plaintiffs' Counsels Application for Payment of Attorneys' Fees and Reimbursement of Litigation Expenses in the above-captioned securities class action (the "Action").

A. **DLLP Bankruptcy Filing and Plan Administrator's Role**

3. DLLP was a law firm with its principal office in New York, New York with more than 250 lawyers and numerous support personnel.

4. On December 8, 2008, in *SEC v. Dreier,* Case No. 08-civ-10617 (MGC) (S.D.N.Y.), Mark F. Pomerantz (the "Receiver") was appointed receiver of the assets of DLLP,

Marc S. Dreier and certain other entities.

5. On December 16, 2008, the Receiver, on behalf of DLLP, commenced a chapter 11 bankruptcy case (the "DLLP Case") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") before United States Bankruptcy Judge Stuart M. Bernstein, Case No. 08-15051 (SMB).

6. On December 30, 2008, the Office of the United States Trustee appointed me as the chapter 11 Trustee for the estate of DLLP, which appointment was approved by the Bankruptcy Court on January 9, 2009.

7. On April 29, 2014, the Bankruptcy Court entered an order (the "Confirmation Order"), among other things, confirming the *Second Amended Plan of Liquidation of Dreier LLP Jointly Proposed By The Chapter 11 Trustee And The Official Committee Of Unsecured Creditors Pursuant To Chapter 11 Of The United States Bankruptcy Code* (the "Plan").

8. The Confirmation Order provided that my appointment as Plan Administrator would be effective on the Effective Date (as defined in the Plan).

9. The Effective Date occurred on May 13, 2014.

10. The Plan provided for the retention of claims and causes of action of DLLP, which claims and causes of action retained by the estate were specified in Exhibits B, C, D and E of the *Second Amended Disclosure Statement For Plan Of Liquidation Of Dreier LLP Jointly Proposed By The Chapter 11 Trustee And The Official Committee Of Unsecured Creditors Pursuant To Chapter 11 Of The United States Bankruptcy Code* (the "Disclosure Statement").

11. The Plan also provides that I, as Plan Administrator, will prosecute the Claims and Causes of Action (as defined in the Plan and Disclosure Statement) following the Effective Date.

12. Exhibit C to the Disclosure Statement lists uncollected receivables and includes as

a contingency fee matter "Merck & Co., Inc. Securities Litigation (Vioxx)".

13. During the period August 16, 2006 through November 24, 2008, DLLP incurred legal fees and expenses representing Richard Reynolds and the putative class in the Action, which period is prior to DLLP's implosion and the commencement of DLLP's chapter 11 case.

14. The amount of distributions that I, as the Plan Administrator, may ultimately be able to make to holders of allowed claims against the DLLP Estate is dependent upon, among other things, the extent of the recoveries I obtain from remaining litigation and outstanding receivables, including any recovery of attorneys' fees and expenses in the Action.

15. In accordance with my duties under the Plan, my counsel and I have been monitoring all cases in which the DLLP Estate asserts an interest, including the Action, and have been working diligently to recover all outstanding receivables for the creditors of the DLLP Estate.

16. Toward that end, by letter dated October 7, 2010 (the "October 2010 Letter"), my prior counsel, Diamond McCarthy LLP, notified Bernstein Litowitz Berner & Grossman LLP ("BLB&G") that the DLLP Estate has a claim for legal fees and expenses in the Action and expects to be compensated if and when there is a recovery.

17. By letter dated December 17, 2010, Co-Lead Counsel for Plaintiffs responded to the October 2010 Letter, asserting that any claim that DLLP purportedly has for fees and/or expenses in the Action is premature and reserving all rights to object to, dispute, and/or otherwise address the validity and/or amount of the DLLP fees and expenses.

18. By letter dated February 24, 2016, BLB&G provided non-ECF counsel of record, including my prior counsel, with a copy of *Procedural Order Number 1 From Special Master Layn R. Phillips* (the "Order Number 1").

19. In accordance with Order Number 1, by letter dated March 3, 2016 (the "March 3

Letter"), my counsel submitted DLLP's time and expense records in the Action to the Special Master.

20. On March 16, 2016, my counsel and I attended the meeting convened by the Special Master with plaintiffs' counsel at the offices of BLB&G to discuss issues relating to the award of attorneys' fees and expenses.

B. **DLLP's Initial Involvement in the Action**

21. In or around 2003/2004, Richard Reynolds and Steven LeVan retained Milberg Weiss Bershad & Schulman LLP ("Milberg Weiss") to represent them in connection with an action commenced in the United States District Court for the Eastern District of Louisiana, entitled *Pringle v. Merck & Co., Inc.*, 2:03-CV-3125 (E.D. La.) (the "Pringle Action"). *See* Declaration of Steven LeVan, dated January 11, 2007 [DE 185-2]; Declaration of Richard Reynolds, dated January 12, 2007 (the "Reynolds Declaration"), p. 1 [DE 185-3][1]. The court in the Pringle Action appointed Richard Reynolds and Steven LeVan as two of the four lead plaintiffs and approved lead plaintiffs' selection of Milberg Weiss as one of two law firms to be lead counsel. *Id.*

22. By order dated February 23, 2005, pursuant to 28 U.S.C. § 1407, the Pringle Action was transferred to the United States District Court for the District of New Jersey (the "Court") for coordinated and consolidated pretrial proceedings with all related pending securities actions. *See* Transfer Order [DE 1].

23. While at Milberg Weiss, my understanding is that David A.P. Brower was primarily responsible for the day-to-day management of the Action and Bruce D. Bernstein was responsible for the day-to-day execution of Milberg Weiss's work assignments in the Action.

[1] "DE" shall refer to the docket in Civil Action No. 05-1151. "Docket Entry" shall refer to the docket in Civil Action No. 05-2367.

See Lead Plaintiffs' Memorandum in Opposition to the Public Employees Retirement System of Mississippi's Motion to Intervene and in Support of Cross-Motion for an Order Approving Lead Plaintiffs' Selection of Brower Piven, A Professional Corporation, as Co-Lead Counsel (the "Lead Plaintiffs' Opposition and Cross-Motion"), p. 4 [Docket Entry 170].

24. In May 2006, Milberg Weiss and two of its named partners were indicted by a grand jury in the United States District Court for the Central District of California. *Id.* at p. 3–4. Following the indictment, a number of Milberg Weiss partners left the firm. *Id.* at p. 4. Among those who left were David A.P. Brower, who became a principal of Brower Piven, A Professional Corporation ("Brower Piven"), and Bruce D. Bernstein, who became a partner at DLLP. *Id.*

25. Shortly thereafter, lead plaintiff Steven LeVan decided to retain Brower Piven and lead plaintiff Richard Reynolds decided to retain DLLP to represent them in the Action. *Id.*[2] Accordingly, on September 7, 2006, DLLP filed a notice of appearance on behalf of Mr. Reynolds in the Action. *See* Notice of Appearance [DE 174]; Notice of Appearance [Docket Entry 164].

26. After Brower Piven and DLLP's retention I understand that there were negotiations concerning the leadership structure for counsel in the Action. "Mindful of the Third Circuit requirement that an addition of the lead counsel in a PSLRA case requires Court approval, it was determined the best manner to accomplish these goals was to ask the Court to approve the addition of Brower Piven, the firm where the more senior of the two former Milberg Weiss partners had gone, as Co-Lead counsel." Lead Plaintiffs' Opposition and Cross-Motion, p. 4–5 [Docket Entry 170]. In addition, "Mr. Bernstein and Dreier were invited by Co-Lead

[2] Based upon Mr. Reynolds level of comfort with and confidence in Mr. Bernstein, Mr. Reynolds retained DLLP to represent him in the Action. *See* Reynolds Declaration, p. 2–3 [DE 185-3].

Counsel to work actively on the Action." *Id.* at p. 5.

27. It is my understanding that after leaving DLLP Mr. Bernstein joined BLB&G and brought with him Richard Reynolds as a client and continued to work on the Action.

C. **DLLP Fees and Expenses**

28. In my capacity as Plan Administrator, I have preserved all documents and files that are necessary for the prosecution of an award of attorneys' fees and expenses in the Action including, but not limited to, contemporaneous computer billing records relating to the Action (the "DLLP Records"). The billing rates set forth in the DLLP Records correspond to the billing rates then in existence at the relevant time.

29. My counsel and I reviewed the DLLP Records to confirm that each time entry contained no obvious errors (for example, we confirmed that no attorney billed more than 24 hours in one day).

30. In my capacity as Plan Administrator (and previously as Trustee) I have no personal knowledge regarding the actual work performed by DLLP in the Action as it pre-dates my involvement with DLLP as a bankruptcy estate. Accordingly, as a result, my counsel and I performed the following work to develop a better understanding of the DLLP Records:

a. Reviewed key documents that were filed in the Action during the time DLLP worked on the Action.

b. Reviewed DLLP documents in storage that related to the Action or the former DLLP attorneys who worked on the Action.

c. Communicated with former DLLP attorneys who worked on the Action.

d. Communicated with Co-Lead Counsel for Plaintiffs who worked with DLLP on the Action.

31. As discussed above, prior to DLLP's dissolution, DLLP was counsel for Richard

Reynolds, one of the lead plaintiffs in the Action, from approximately August 16, 2006 to November 24, 2008, and in that capacity, incurred attorneys' fees in the amount of $1,458,620.00 and expenses in the amount of $609,563.63.

32. However, after our review of the DLLP Records, I have concluded that it is reasonable to make certain reductions to those amounts as follows:

a. DLLP incurred Westlaw research charges from approximately August 31, 2006 through December 31, 2008 in the aggregate amount of $603,735.43. While it is clear that DLLP attorneys conducted substantial research activities in prosecution of the Action and many time entries explicitly refer to "Westlaw" research, I learned in my capacity as Trustee that, as a general matter, the manner in which DLLP billed for Westlaw charges is not necessarily reliable. Because I have no reasonable way of recreating these charges in any accurate manner, I have decided to write off these charges.

b. On a conference call among myself, my counsel and representatives from Co-Lead Counsel, it was brought to my attention that Co-Lead Counsel does not believe that the time DLLP attorneys Lee A. Weiss and Daniel B. Scotti billed relating to work involving efforts to secure a leadership position for DLLP in the Action is compensable. During the period in question, from August 16, 2006 through November 6, 2006, Lee A. Weiss billed 66.50 hours and incurred $36,575.00 in fees and Daniel B. Scotti billed 78.50 hours and incurred $40,427.50 in fees. My counsel and I have reviewed certain case law relating to billing for attorneys' fees in class action cases, and, although Mr. Weiss and Mr. Scotti's time records show a mixture of work on leadership issues and non-leadership issues, I have decided, to accede to Co-Lead Counsel's request to write

off all time billed by Lee A. Weiss and Daniel B. Scotti through and including November 6, 2006. Therefore, the total hours billed will be reduced by 145 hours and the fees will be reduced by $77,002.50.

c. On November 30, 2006, former DLLP partner Bruce D. Bernstein billed 8 hours of time to the Action. However, no narrative was provided for this 8 hour block of time and I could not locate any documents that would support or explain the billing for this time. As a result, I have decided to write off these 8 hours, totaling $3,600.00.

d. DLLP incurred expenses in connection with working meals provided to attorneys during the Action. However, I have been unable to verify certain meal charges and, as a result, I have decided to write off these meal charges in the aggregate amount of $173.61.[3]

33. As a result of these modifications, the DLLP Estate seeks payment of DLLP's fees in the amount of $1,378,017.50 and reimbursement of expenses in the amount of $5,654.59.

34. DLLP spent 3,354.25[4] hours prosecuting the Action. Former DLLP partner Bruce D. Bernstein, who billed 1,928 hours, and former DLLP associate, Gregory Frank, who billed 588 hours, performed the bulk of the work at DLLP. Former DLLP partners were also involved in consultations and review of brief filings, and former DLLP associates also performed numerous research assignments as necessary.

35. Attached hereto as "Exhibit A" is a summary of lodestar by timekeeper and attached hereto as "Exhibit B" is a summary of expenses by category.

36. The following is a summary of the services performed by DLLP broken down by

[3] The following meal charges were written off: (1) 12/12/06 meal in the amount of $23.15; (2) 3/19/07 meal in the amount of $18.14; (4) 5/6/07 meal in the amount of $13.76; (5) 9/17/07 meal in the amount of $17.88; (6) 10/7/07 meals in the amount of $19.77, $24.27, $20.88, $18.66; and (7) 10/16/07 meal in the amount of $17.10.

[4] This number includes the time that has been voluntarily written off.

project category:

D. **Lead Plaintiff Issues**

37. Subsequent to Mr. Reynolds's retention of DLLP there were discussions with counsel concerning the leadership structure of the Action. Former DLLP attorneys conducted legal research on the following topics: (i) conflict issues raised in Milberg Weiss's communications; (ii) motion for substitution of lead counsel; and (iii) obligations of lead counsel and counsel for lead plaintiffs. As discussed above, much of the time relating to this aspect of the Action has been voluntarily written off.

38. On October 26, 2006, The Public Employees' Retirement System of Mississippi ("MPERS") filed a motion to intervene (the "MPERS Motion") and to require the lead plaintiffs to appear at a hearing concerning their adequacy under the Private Securities Litigation Reform Act ("PSLRA") and Fed. R. Civ. P. 23 [Docket Entry 166]. Over the course of the next few months, DLLP attorneys (i) reviewed the MPERS Motion; (ii) discussed the MPERS Motion internally and with co-lead counsel; (iii) researched the duty of lead plaintiffs and others issues raised by the MPERS Motion; (iv) assisted in drafting a response to the MPERS Motion; (v) discussed strategy with co-lead counsel; (vi) investigated numerous funds participating in the Action (including MPERS, Ohio pension funds, New York State Teachers Retirement System, etc.); (vii) attended meetings with co-lead counsel and hearings in connection with the MPERS Motion; (viii) assisted in drafting the proposed stipulation and order resolving the MPERS Motion; and (ix) drafted the declaration of Mr. Reynolds in support of the proposed stipulation.

39. By order dated January 25, 2007, the Court approved the proposed stipulation and order which had the effect of, among other things, substituting MPERS as Co-Lead Plaintiff in the place of Lead Plaintiff Marc Nathanson and added BLB&G and Brower Piven, A Professional Corporation as Co-Lead Counsel. *See* Stipulation and Order Resolving the Motion

of the Public Employees' Retirement System of Mississippi to Intervene and Modifying the Lead Plaintiff and Lead Counsel Structure [Docket Entry 192].

E. **Defendants Motion to Dismiss Fourth Amended Complaint**

40. At the time DLLP became involved in the Action, the defendants' motion to dismiss the fourth amended complaint had been fully briefed. In preparation for the hearing on the motion to dismiss, DLLP attorneys (i) conferred on numerous occasions with co-lead counsel regarding the motion to dismiss oral argument and strategy; (ii) conducted substantial research on inquiry notice standards, storm warnings and the continuing violation doctrine; (iii) reviewed scientific materials, FDA materials, clinical studies, and documents filed by Merck with the Securities and Exchange Commission; (iv) drafted a memorandum regarding the clinical studies; (v) drafted an outline of key issues on the statute of limitations to circulate to co-lead counsel; (vi) drafted an outline for scienter standard; (vii) prepared a Merck stock price movement memorandum to complement a chart prepared by BLB&G; and (viii) attended the hearing on the motion to dismiss.

41. On March 26, 2007, the Court held oral argument on defendants' motion to dismiss. On April 12, 2007, the Court granted the defendants' motion to dismiss the fourth amended complaint on statute of limitations grounds (the "Motion to Dismiss Decision") and dismissed the case in its entirety as time-barred. *See* Opinion [DE 199].

F. **Appeal to Third Circuit**

42. Immediately after the Court's Motion to Dismiss Decision, DLLP conferred with Co-Lead Counsel and started to prepare an outline for the appeal. On May 9, 2007, Lead Plaintiffs appealed the Motion to Dismiss Decision to the United States Court of Appeals for the Third Circuit (the "Third Circuit") (*see* Notice of Appeal [DE 202]), where it was assigned Docket No. 07-2431.

43. In connection with the Lead Plaintiffs' appellate brief, DLLP attorneys (i) conducted significant additional research on statute of limitations issues, the continuing violations doctrine in securities cases, equitable tolling doctrine, storm warnings, truth-on-the-market cases, inquiry notice standards, and liability under Section 20A of the Securities Exchange Act; (ii) drafted portions of the appellate brief; (iii) reviewed the appellate brief and provided comments thereon; and (iv) conferred with Co-Lead Counsel on strategy.

44. On August 3, 2007, Lead Plaintiffs filed their appellate brief. On October 2, 2007, defendants filed their appellate brief in opposition. Thereafter, DLLP attorneys (i) reviewed defendants' opposition brief; (ii) conferred with Co-Lead Counsel on strategy; (iii) continued conducting significant research on the statute of limitations in response to the arguments raised in defendants' brief; and (iv) drafted portions of Lead Plaintiffs' reply brief. On October 26, 2007, Lead Plaintiffs filed their reply brief.

45. After Lead Plaintiffs filed their reply brief, DLLP attorneys (i) reviewed recent decisions impacting upon the Action; (ii) conferred with Co-Lead Counsel regarding a possible settlement; and (iii) prepared for the appellate argument with Co-Lead Counsel, which included a moot court at the offices of BLB&G. On June 24, 2008, DLLP attorneys attended the oral argument before the Third Circuit.

46. On September 9, 2008, the Third Circuit reversed the Court's dismissal of the Action in a 2-1 decision. Following the Third Circuit's decision, DLLP attorneys conferred with Co-Lead Counsel to discuss strategy and drafted an outline for an amended complaint. In December 2008, as a result of Marc S. Dreier's arrest and commencement of the DLLP Case, DLLP was no longer able to serve as counsel to Richard Reynolds in the Action.

G. **Relevant Case Law Relating to DLLP's Interest in Action**

47. In 2013, the New York Court of Appeals accepted two certified questions from the United States Court of Appeals for the Second Circuit concerning the scope of the "unfinished business doctrine." *In re Thelen LLP*, 22 N.Y.3d 1017 (2013). With respect to contingency cases, a dissolved law firm is "entitled to the value of [its] interest at the date of dissolution . . . with interest." *In re Thelen LLP*, 24 N.Y.3d 16, at *5 (2014) (quoting *Kirsch v. Leventhal*, 181 A.D.2d 222, 226, 586 N.Y.S.2d 330 (3d Dep't 1992)). *See also Santalucia v. Seabright Transp., Inc.*, 232 F.3d 293, 298 (2d Cir. 2000) ("[I]n a case where a lawyer departs from a dissolved partnership and takes with him a contingent fee case which he then litigates to settlement, the dissolved firm is entitled only to the value of the case at the date of dissolution, with interest. Stated conversely, the lawyer must remit to his former firm the settlement value, less that amount attributable to the lawyer's efforts after the firm's dissolution.").

48. As a result, the Plan Administrator believes the DLLP Estate is entitled to $1,378,017.50 in fees and $5,654.59 in expenses.[5]

H. **Fee Sharing**

49. Pursuant to a Bankruptcy Court ordered stipulation with Wachovia Bank, N.A, DLLP's secured creditor, and Wells Fargo Bank, N.A. ("Wells Fargo") in its capacity as successor-by-merger to Wachovia Bank, N.A., I am obligated to remit to Wells Fargo forty percent (40%) of any recovery of attorneys' fees and expenses that I recover during my administration of the DLLP Estate, including those obtained from this Action.

[5] The DLLP Estate reserves the right to seek a multiplier and enhancement of fees at the appropriate time.

Sheila M. Gowan

Sworn to before me this
24th day of March, 2016

Notary Public, State of New York

IBIS GUZMAN
Notary Public, State of New York
No. 01GU6158045
Qualified in Dutchess County
Commission Expires December 18, 2018

EXHIBIT A

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

DREIER LLP

TIME REPORT

Inception through November 24, 2008

NAME	HOURS	2006 Hourly Rate	2007 Hourly Rate	2008 Hourly Rate	TOTAL LODESTAR	TOTAL LODESTAR AFTER VOLUNTARY WRITE OFF
Partners						
Bruce D. Bernstein	1,928	$450	$495	$450	$881,133.75	$877,533.75
Daniel B. Scotti	297.50	$515	$570	297.50	$156,141.25	$115,713.75
Lee A. Weiss	318.50	$550	$605	318.50	$176,385.00	$139,810.00
Brian C. Kerr	5.50	$465	N/A	5.50	$2,557.50	$2,557.50
Associates						
Andrew Wilman	73.75	$380	N/A	73.75	$28,025.00	$28,025.00
Rebecca Tingey	55.00	N/A	N/A	55.00	$16,775.00	$16,775.00
Gregory Frank	588.00	$305	$335	588.00	$180,457.50	$180,457.50
Joshua D. Carlon	1.50	$140	N/A	1.50	$210.00	$210.00
Jason Kaufman	1.00	N/A	N/A	1.00	$0.00	$0.00
Shoshana Jachobov	42.75	$140	N/A	42.75	$5,600.00	$5,600.00
Danielle DiSporto	13.75	N/A	$375	13.75	$5,156.25	$5,156.25
Summer Associate						
Julie Rubenstein	12.00	N/A	N/A	$240	$2,880.00	$2,880.00

NAME	HOURS	2006 Hourly Rate	2007 Hourly Rate	2008 Hourly Rate	TOTAL LODESTAR	TOTAL LODESTAR AFTER VOLUNTARY WRITE OFF
Paralegals						
Talia C. Delgado	1.25	$125	$125	N/A	$156.25	$156.25
Beverly L. Bolton	5.25	N/A	$230	N/A	$1,207.50	$1,207.50
Jessica Cassel	3.50	N/A	N/A	$150	$525.00	$525.00
Ji I. Yi	2.50	N/A	N/A	$150	$375.00	$375.00
Rebekah Mueller	4.50	N/A	$230	N/A	$1,035.00	$1,035.00
TOTALS	**3,354.25**				**$1,458,620.00**	**$1,378,017.50**

EXHIBIT B

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

DREIER LLP

EXPENSE REPORT

CATEGORY	TOTAL AMOUNT	TOTAL AMOUNT AFTER VOLUNTARY WRITE OFF
Court Fees	$1,311.84	$1,311.84
On-Line Legal Research	$603,735.43	$0.00
Special Publications	$275.00	$275.00
Document Management/ Litigation Support	$122.29	$122.29
Telephone/Faxes	$159.98	$159.98
Postage & Express Mail	$23.62	$23.62
Hand Delivery Charges	$317.58	$317.58
Local Transportation	$1,067.37	$1,067.37
Internal Copying	$984.50	$984.50
Out of Town Travel	$536.68	$536.68
Working Meals	$1,029.34	$855.73
TOTAL EXPENSES:	**$609,563.63**	**$5,654.59**

UNITED STATES DISTRICT COURT DISTRICT
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	**MDL No. 1658 (SRC)** **Civil Action No. 05-151 (SRC) (CLW)** **Civil Action No. 05-2367 (SRC) (CLW)**
THIS DOCUMENT RELATES TO: THE SECURITIES CLASS ACTION	

DECLARATION OF C. MARK WHITEHEAD, III
IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT
OF LITIGATION EXPENSES FILED ON BEHALF OF THE WHITEHEAD LAW FIRM, L.L.C.

STATE OF LOUISIANA §
§
PARISH OF ORLEANS §

BEFORE ME, the undersigned authority, on this 25th day of April, 2016, personally appeared C. Mark Whitehead, III (hereinafter called "Declarant"), who swore an oath that the following facts are true:

1. I am sole owner and partner of The Whitehead Law Firm. My firm's resume is attached as Exhibit 1. I submit this Declaration in support of my firm's application for an award of attorney's fees in connection with services rendered in the Action, as well as for reimbursement of expenses incurred in connection with the Action. I have personal knowledge of the matters set forth in this Declaration and, if called upon, I could and would testify competently thereto.

2. My transition from medicine to full-time attorney occurred in 2001, when I joined the firm of Levin, Papantonio in Pensacola, FL. One of my primary duties at that firm

was to evaluate potential new projects in the pharmaceutical, medical device and toxic tort arena. One of the first potential projects I reviewed was Vioxx. The project was immediately appealing to me after a review of scientific literature and my interest in it put me into contact with the few firms pursuing the litigation at that time which included, *inter alia*, Goforth, Lewis Sanford, Beasley Allen, Seeger Weiss, Anapol Schwarz and Owen, Patterson and Owen. My earliest contribution to the group effort was compiling the original set of scientific literature used in the litigation. The group of us worked together and eventually formed the original "Cox-2 litigation group" at ATLA, now AAJ. The first case to be tried in New Jersey was my client, Michael Humeston. My role in the trial came primarily in the form of preparing the treating physicians for deposition and trial testimony and participating in the depositions. I also participated in the development of some of the experts[1].

3. In 2002 working alongside Shelly Sanford and Carlene Lewis of Goforth Lewis Sanford we became interested in some suspicious stock trades made by insiders at Merck. These trades seemed to have a correlation with the public release of studies that were not especially helpful to the viability of Vioxx. Pursuant to that, in May of 2003 I hired my former tax and business law professor, Daniel Posin[2]. Professor Posin and I reviewed the trades at issue, the timing of same and all other relevant factors and reached the

[1] Because the trial began soon after Hurricane Katrina, and I was needed in Louisiana in my role as an ER physician, my attendance at the actual trial was limited.

[2] Unfortunately, my friend Dan Posin passed away in the spring of 2006. Professor Posin's biography from the Tulane University Website at the time of his passing: Daniel Q. Posin is the Judge René H. Himel Professor of Law. His areas of scholarship and teaching are corporate law, alternative dispute resolution of business problems, and tax law. He is the author of Corporate Tax Planning: Takeovers, Leveraged Buyouts and Restructurings, and the co-author of The Hornbook on Federal Income Taxation, 6th edition. Professor Posin serves as Special Counsel to the Corporate and Securities Section of the leading New Orleans law firm of Jones Walker. He also regularly mediates business and commercial disputes. Professor Posin is an arbitrator with the National Association of Securities Dealers, where he served as a panel chair. He is also an arbitrator with the American Arbitration Association.

conclusion that there was more to the case than insider trading. Professor Posin also vetted the complaint that I drafted for compliance with the restrictions of the PSLRA. Following his review and approval, I filed the case as a 10b-5 action on November 6, 2003. The original complaint is attached hereto as Exhibit 2.

4. Following the filing, we enlisted the aid of Jules Brody of Stull, Stull and Brody "SSB". Jules Brody had been recommended to me by an attorney in Baton Rouge who had successfully litigated a securities case with him. Jules' immediate contribution was to suggest an amended complaint adding a "John Doe" insurer under Louisiana's direct action statute. We felt that while the law was unsettled in this area, a "Louisiana question," best interpreted by Louisiana judges, would aid us in our goal of keeping the case in Louisiana.

5. I drafted the initial complaint that was filed on November 6, 2003. I assisted in drafting and revising the multiple amended complaints that were filed in the 10b-5 action including the First Amended Complaint, in which Jules Brody entered his appearance, which was filed on November 20, 2003, the Second Amended Complaint which was filed on August 6, 2004, and the Third Amended Complaint which was filed on November 8, 2004.

6. On February 23, 2004, The Whitehead Law Firm was appointed as co-liaison counsel alongside Kahn Gauthier. Milberg Weiss and Stull, Stull & Brody were appointed co-lead counsel. This compromise was reached between SSB and Milberg Weiss. In addition to serving as co-liaison counsel and drafting and revising the

pleadings in this action, I also conducted extensive research on the Louisiana direct action statute.

7. I traveled to several hearings including the JPML hearing on January 27, 2005 in Fort Myers, Florida where Mr. Brower argued our position: that the case should remain in the Eastern District of Louisiana. This argument did not prevail and the case was transferred to Trenton, New Jersey where I attended the first status conference on April 18, 2005.

8. I also attended the first two hearings that were held in Newark which included the ultimately successful attempt at intervention by Bernstein, Litowitz representing the State of Mississippi's pension fund. My attendance at further hearings was discouraged by Mr. Brody and others who suggested that with three or four New York firms involved my attendance might be superfluous. So, my involvement following the Supreme Court decision in our favor was primarily limited to status updates via email and telephone conversations with Mark Levine and Jules Brody of Stull, Stull and Brody.

9. *Johnson v. Ga. Highway Express*, *Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974) sets forth factors to consider when allocating attorney fees. These factors include: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the

professional relationship with the client; and (12) awards in similar cases. The relevant factors are discussed below and are joined where appropriate.

10. **The time and labor required**: I committed the majority of my time in 2003 through 2005 to this project including: a) hiring and consulting with expert Professor Daniel Posin; b) preparing timelines, pleadings, and filing claims; c) filing the original complaint; e) extensive research regarding scientific, medical and legal issues; e) serving as co-liaison counsel; f) consulting with co-lead counsel Jules Brody. In 2005 I spent a significant amount of time researching the Louisiana Direct Action statute.

11. **The novelty and difficulty of the questions and the skill requisite to perform the legal service properly**: This litigation was novel on many fronts. Specifically the case involved an on-market drug with safety issues that were hotly contested by Merck & Co., Inc. Stock price fluctuations required research and an expert's analysis. Other lawyers, including securities lawyers, were reluctant to take on a claim against a company still marketing and heavily advertising a blockbuster drug. New articles reporting potential problems were appearing in prominent papers. The arguments made by the defendants show the complex nature of the case when it came to interpreting medical literature, FDA, newspaper coverage, advertisements and other public documents. These were present throughout the case and highlight the contested issues and complex legal skill and research needed to successfully maintain this action.

12. **The skill requisite to perform the legal service properly and the preclusion of other employment by the attorney due to the acceptance of the case**: My legal background has been provided herein. I had had the skill needed to file this action when

we did and to continue to pursue it and help keep it in its original venue as long as we did. I stayed committed to the case after it was transferred to New Jersey and helped whenever I was asked. When it came to other employment, in general, I worked, and still do work in a small firm that I started in January, 2004. Thus, the opportunity cost of maintaining a role in this litigation was tremendous. Devoting time to this case precluded me from pursuing other legal work and often, on many occasions, prevented me from accepting work as an emergency room physician[3]. I believe the time and expenses put forth by my small firm is proportional to that to the larger firms in this litigation. I was the sole attorney working at my small firm. I spent the majority of my time working exclusively on this 10b-5 action from 2003 to 2005. Unlike the larger firms in this litigation I did not have additional attorneys or a large support staff to handle matters outside of Merck. I was severely limited in the amount of time I could devote to the Vioxx products liability MDL science committee and to the New Jersey consolidated litigation. As to the skill requisite to perform the legal service properly, I feel that I pulled together many different skills from a diverse education that I was fortunate to have obtained through years of study. My science background enabled me to understand the dangers of Vioxx while the knowledge of securities law learned under Professor Posin allowed me to recognize the issues involved in this action at an early stage.

13. **The customary fee, whether the fee is fixed or contingent, time limitations imposed by the client or the circumstances:** I believe the contingent fee rate is consistent with what is awarded in other complex litigation. I attempted to find securities counsel as early as 2002 to no avail. As to the resolution of this contingency fees case for

[3] One thirty minute meeting or conference call can preclude one from accepting an entire twelve hour shift in the hospital.

The Whitehead Law Firm, the time delays have significantly impacted my small firm. I began working on this case in 2002 while perceiving it to be an insider trading matter. This settlement has now come almost 13 years after I filed the initial securities case. It is customary in complex MDL contingent fee litigation like this for attorneys successfully acting in the interests of their clients and in the public interest be compensated for the time expended. It is also well established that counsel receive a substantial premium for expending many years of labor without compensation and for undertaking the risk of the contingency fee work to the exclusion of other matters. These factors each support my firm's work and an award of fees in this matter.

14. **The amount involved and the results obtained the experience, reputation, and ability of the attorneys, the undesirability of the case, the nature of the professional relationship with the client, and awards in similar cases**. The amount involved is clearly substantial and the results obtained weigh heavily in favor of a substantial award for my efforts, especially because my original work in this matter was instrumental in its eventual success. In 2003, when I first filed this lawsuit, I could not find any securities firms willing to assist me (and Goforth, Lewis Sanford). When Vioxx was first withdrawn from the global market due to unacceptable adverse events, thousands of lawyers entered the litigation and there were no problems finding interested securities firms. When we undertook to represent the shareholders harmed by the defendants' actions, this was viewed as a highly undesirable case by the securities bar, therefore my willingness to pursue the case without such assistance weighs in favor of an award for my work in this matter. Courts routinely make substantial attorney fee awards to attorneys whose work is instrumental in successful securities litigation such as this.

Accordingly, the *Johnson v. Ga. Highway Express, Inc*. factors weigh in favor of an award for my work in this case.

15. While this was the first securities claim I filed, and I am not a securities-specific lawyer, I believe important factors that led to the ultimate resolution of this action arose from the foundation of investigating the scientific literature, and public documents, coordinating with Goforth, Lewis Sanford, to investigate suspicious stock trades, hiring, consulting, and evaluating the case with expert Daniel Q. Posin, searching for competent securities counsel, drafting the initial petition and ultimately filing the case.

16. It is clear to me that none of the firms involved would be where they are had I not filed the case when I did and allowed them to join the action. I had a viable plaintiff, Mr. Pringle, when I initiated this action. No competing firms had an institutional plaintiff until the drug was withdrawn from the market. When Vioxx was withdrawn from the market, and Merck's stock price plunged, many firms that had been on the sidelines for a year after this action was commenced filed similar lawsuits. New York's pension fund is the most notable and because of its size would have almost certainly become the lead plaintiff had this case not been filed by me in 2003. It should be noted that despite New York's size and sophistication, the original individual plaintiffs and their respective law firms were allowed to continue in the lead position.

17. The schedule attached hereto as Exhibit 3 is a summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who were involved in this Action, and the lodestar calculation for those individuals based on my firm's 2016 billing rates. For personnel who are no longer employed by my firm, the

lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm.

18. Time expended on the Action after February 15, 2016, has not been included in this request. In addition, any time related to the application for fees and reimbursement of expenses has been excluded. No time has been submitted for actions performed after February 15, 2016. Expenses in the amount of $1,524.78 have been submitted for travel and accommodations for the meeting on March 16, 2016.

19. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 3 are the same as the regular rates charged for their services in other Multi-District Litigation actions.

20. The total number of hours reflected in Exhibit 3 from inception through and including February 15, 2016, is 1,823.61. The total lodestar reflected in Exhibit 3 for that period is $1,614,688.00, consisting of $1,610,271.00 for attorneys' time and $4,417.00 for professional support staff time.

21. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

22. As detailed in Exhibit 4, my firm is seeking reimbursement for a total of $18,798.51 in expenses incurred in connection with the prosecution of this Action.

23. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on April 25th, 2016.

C. Mark Whitehead, III

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned notary public, on this 25th day of April, 2016.

Notary Public in and for the
STATE OF LOUISIANA

Cayce C. Peterson
Notary Public
LA Bar Roll No. 32217
Notary ID No. 89051

Notary's Name Printed or Typed

EXHIBIT 1

The Whitehead Law Firm, L.L.C.

Petroleum Tower, Suite 303
3639 Ambassador Caffery Parkway
Lafayette, Louisiana 70503
Telephone (337) 740-6006
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Lafayette, LA
Miami, FL

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^Licensed in District of Columbia

INTRODUCTION

Mark Whitehead has been practicing in the field of mass torts and class actions since 2001. He has been involved in numerous environmental cases involving class claims for property damage and medical monitoring. Mark also represented the Boilermakers' Union Local 1814 in New Orleans, LA. He served on the plaintiff's committee for consolidated Vioxx mass tort litigation in New Jersey and has served on the science committee of the Plaintiff's Steering Committee in the PPA multi-district litigation, as well as serving similar roles in the Bextra/Celebrex, Vioxx, PPA, Fen-Phen, and Avandia MDLs. Mark is currently serving as a member of the science, bellwether trial, and expert witness committees in the Xarelto MDL.

Mark has authored and co-authored publications in fields as diverse as aviation, neurosurgery, vascular surgery and cardiology and was the recipient of the American Venous Forum Research Award. He has also served as acting coroner for Vermilion Parish and was on the Eunice, Louisiana Regional Airport Commission.

EDUCATION

B.S. – University of Georgia, 1991
M.D. – Tulane University, 1995
J.D. – Tulane University, 2000

BAR ADMISSIONS

Federal Court Admissions:	Fifth Circuit Court of Appeals Eastern, Middle & Western District of Louisiana, 2001. Southern District of Florida, 2011.
State Court Admissions:	Louisiana, 2001. Florida, 2002. District of Columbia, 2015.

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PROFESSIONAL ASSOCIATIONS

American Association for Justice
Louisiana Association for Justice
Florida Justice Association
American Association for Justice
Louisiana Bar Association
Florida Bar Association
District of Columbia Bar Association
Louisiana State Medical Society
Vermilion Parish Medical Society (past treasurer and vice president)

MASS TORT/CLASS ACTION EXPERIENCE

1. Associate class counsel; Norwood v. Bayer CCA Industries, Inc., et al, Civil Action No. 3:01-cv-2094 (WDWA), United States District Court for the Western District of Washington at Seattle.

2. Associate class counsel; Sheila Brown v. American Home Products Corporation, Civil Action No. 99-20593, United States District Court for the Eastern District of Pennsylvania.

3. Associate class counsel; Margaret Williams et. al., v. Conoco, Inc., et al., Civil Action No. 2001-CA-000866, The First Judicial Circuit, in and for Escambia County, Florida.

4. Associate class counsel; In re Starlink Corn Products Liability Litigation, MDL Docket No. 1403, Master File No. 00 C 6865, In the United States District Court for the Northern District of Illinois Eastern Division.

5. Associate class counsel; Precision Billing Services, Inc., et al., v. Microsoft Corporation; O'Sullivan, Hicks and Patton, LLP, v. Microsoft Corporation; Carl Conrad v. Microsoft Corporation, Consolidated, Cause No. 99-896-GPM, Cause No. 00-26-GPM, Cause No. 0027-WDS, United States District Court for the Southern District of Illinois.

6. Associate class counsel; Plumbers v. Pipefitters Local 572 Pension Fund, et al., v. Cisco Systems, Inc., et al., Case No. 5:01-cv-20418 JW, United States District Court for the Northern District of California.

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7. Class counsel; Adams et al., v. Ciba Specialty Chemicals Corporation, et al., Civil Action No. 1:03-cv-566, United States District Court for the Southern District of Alabama.

8. Class counsel; Reed et al., v. Olin Corporation et al., Civil Action No. 1:03-cv-567, United States District Court for the Southern District of Alabama.

9. Class counsel; Ware v. Ciba Geigy et al., Civil Action No. L-243-04, Superior Court of New Jersey Law Division Atlantic County.

10. Co-liaison counsel; Pringle et al. v. Merck & Co., Inc., Civil Action No. 03-cv-3125, United States District Court for the Eastern District of Louisiana.

11. Associate class counsel; In Re: Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Product Liability Litigation, MDL No. 1203, United States District Court for the Eastern District of Pennsylvania.

12. Science committee; In Re Vioxx Products Liability Litigation, MDL No. 1657, United States District Court for the Eastern District of Louisiana.

13. Science committee; In Re: Bextra and Celebrex Marketing Sales Practices and Product Liability Litigation, MDL No. 1699, United States District Court for the Northern District of California.

14. Science committee; In Re: Avandia Marketing, Sales Practices and Products Liability Litigation; MDL No. 1871, United States District Court for the Eastern District of Pennsylvania.

15. Science committee: In Re: Phenlypropanolomine (PPA) Product Liability Litigation, MDL No. 1407, United States District Court for the Western District of Washington at Seattle.

16. Science, bellwether, and expert witness committees; In Re: Xarelto Products Liability Litigation, MDL No. 2592, United States District Court for the Eastern District of Louisiana.

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PUBLICATIONS

Whitehead, C.M. III: **"Be Careful When Activating the Gascolator Drain in the Cockpit,"**Mooney Aircraft Pilots Association Monthly Magazine, Volume 24, No. 8, 40, August 2001.

Whitehead, C.M. III: **"Why Carrying a Portable Comm[unications] and Nav[igation] Radio is a Good Idea – Regardless of the Airplane You Fly,"** Mooney Aircraft Pilots Association Monthly Magazine, Volume 24, No. 1, 38-39, January 2001.

Dinh, D., Clark, S., Whitehead, C.M. III, Amedee, R., Bhattacharjee, M.: **"Intracanalicular Meningioma,"** Southern Medical Journal, Volume 93, No. 6, 618-621, June 2000.

Moulder, P.V., Fox, L.A., Patton, R.E., Whitehead, C.M. III, Rank, W.R., Harrison, L.H., and Webb, W.R.: **"Pulmonary Artery Flow Pattern as an Indicator of Pulmonary Embolism,"** Faseb J.11:A471, 1997 Abstract.

Moulder, P.V., Silber, H.A., Gottliebson, W.A., Rank, W.R., Mahan, T.R., Whitehead, C.M. III, Lohmann, D.H., Harrison, L.H., and Webb, W.R.: **"Continuous Hemodynamic Monitoring for Myocardial Ischemia and Controlling Factors,"** Presented at International Surgical Week, 1997, (Submitted to World J. of Surgery).

Moulder, P.V., Whitehead, C.M. III, Patton, R.E., Silber, H.A., Gottliebson, W.A., Harrison, L.H., Webb, W.R.: **"Cardiac Monitor of Resistive Phenomena,"** Faseb J. 10: A347, 1996. Abstract.

Rodriguez, A.R., Whitehead, C.M. III, McLaughlin, R. L., Umphrey, S.E., Welch, H.J., O'Donnell, T.F.: **"Duplex-derived Valve Closure Times Fail to Correlate with Flow Velocities and Flow Volumes in Patients with Chronic Venous Insufficiency,"** The Journal of Vascular Surgery, Volume 23 Number 4 606-610.April 1996.

Moulder, P.V., Whitehead, C.M. III, Patton, R.S., Silber, H.A., Gottliebson, W.A., Rank, W.R., Harrison, L.H., and Webb, W.R.: **"Left Ventricular Pressure-Derivative Loop as a Monitor of Vascular Resistive Phenomena,"** (Submitted to Journal of Cardiac Anesthesia).

Moulder, P. V., Rank, W., Silber, H., Kutchera, R., Gottliebson, W., Thurber, J., Whitehead, C.M. III, Webb, W.R., Harrison, L.H., Daicoff, G., Long, E.: **"Left Ventricular Pressure-Derivative Loop: Hemodynamic Monitor,"** (Submitted to Annals of Thoracic Surgery).

EXHIBIT 2

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

FRANK PRINGLE, Individually and On Behalf of All Others Similarly Situated,	*	CASE NO. 03-3125
Plaintiff	*	DIVISION SECT. N MAG. 2
VS.	*	
	*	JURY DEMAND
MERCK & CO., INC., KENNETH C. FRAZIER, RICHARD C. HENRIQUES, RAYMOND V. GILMARTIN, JUDY C. LEWENT and MARY M. MCDONALD,	*	
Defendants	*	

****

CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAWS

Plaintiff has alleged the following based upon the investigation of plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Merck & Co., Inc. ("Merck" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal class action on behalf of purchasers of the common stock of Merck between May 22, 1999 and October 22, 2003, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC") [17 C.F.R. § 240.10b-5].

3. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b), and as many of the acts and practices complained of herein occurred in substantial part in this District.

5. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

6. Plaintiff, Frank Pringle, as set forth in the accompanying certification, incorporated by reference herein, purchased the common stock of Merck at artificially inflated prices during the Class Period and has been damaged thereby .

7. Defendant, Merck, is a New Jersey corporation with its principal place of business located at One Merck Drive, Whitehouse Station, NJ 08889-0100. The Company is a global, research-driven, pharmaceutical company that discovers, develops, manufactures, and markets a broad range of human and animal health products, directly and through its joint ventures, and provides pharmaceutical benefit services through Merck-Medco Managed Care, L.L.C. ("Merck-Medco").

8. (a) Defendant, Raymond V. Gilmartin ("Gilmartin"), was, at all relevant times, Merck's Chairman, President and Chief Executive Officer.

(b) Defendant, Kenneth C. Frazier ("Frazier"), has served as Merck's Senior Vice President and General Counsel since December, 1999.

(c) Defendant, Richard C. Henriques ("Henriques"), was, at all relevant times, Merck's Vice President and Controller.

(d) Defendant, Judy C. Lewent ("Lewent"), was, at all relevant times, Merck's Senior Vice President and Chief Financial Officer.

(e) Defendant, Mary M. McDonald ("McDonald"), served as Merck's Senior Vice President and General Counsel until her resignation in December, 1999.

(f) Defendants, Gilmartin, Frazier, Henriques, Lewent and McDonald are collectively referred to herein as the "Individual Defendants."

9. Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about the Company's business, operations, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's

operating plans, budgets, forecasts, and reports of actual operations), conversations and connections with other corporate officers and employees, attendance at Management and Board of Directors' meetings and committees thereof and via reports and other information provided to them in connection therewith.

10. It is appropriate to treat the Individual Defendants as a group for pleading purposes to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of Defendants identified above. Each of the above officers of Merck, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. Said Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements in violation of the federal securities laws.

11. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate prompt,

accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects. Additionally, each of the Individual Defendants had a duty to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

12. The Individual Defendants participated in the drafting, preparation and/or approval of the various public, shareholder, and investor reports as well as other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Merck, each of the Individual Defendants had access to the adverse undisclosed information about Merck's business prospects and financial condition and performance as particularized herein and knew, or recklessly disregarded, that these adverse facts rendered the positive representations made by or about Merck and its business issued or adopted by the Company materially false and misleading.

13. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the

Company during the Class Period. Each Individual Defendant was provided with copies of the documents, alleged herein to be misleading, prior to or shortly after their issuance and had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is, therefore, primarily liable for the representations contained therein.

Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Merck common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Merck's business, operations, management and the intrinsic value of Merck common stock; (ii) enabled Defendants to use the Company's artificially inflated stock as payment for the Company's $540 million acquisition of Rosetta Inpharmatics, Inc., ("Rosetta"); and (iii) caused Plaintiff and other members of the Class to purchase Merck securities at artificially inflated prices.

14. Merck designed, developed, and manufactured the prescription drug VIOXX, known generically as rofecoxib. This drug was first brought to market in May of 1999 following approval by the Food and Drug Administration ("FDA"). On or before May of 1999, Defendants had information relating to the existence of high numbers of strokes and heart attacks. Merck continued to deny and continues to date to deny the adverse risks of VIOXX ingestion in the human population. Material communications occurred between Merck and the FDA that were not communicated

by Defendants, who held knowledge that discussions of heart attacks in a VIOXX study, VIGOR, were likely to be of significant concern to analysts and reporters and would put cardiovascular issues into the business and consumer media to Merck's financial detriment. Merck downplayed these risks in an article presented in the New England Journal of Medicine in mid-November of 2000. Merck touted the perceived gastrointestinal benefits of VIOXX and the potential for market growth due to this perceived benefit without presentation of the full adverse cardiovascular data. Merck continued to downplay the adverse cardiovascular results even when an FDA review report was provided to Merck in approximately January of 2001. Prior to August of 2001, Merck took steps to dissuade researchers at the Cleveland Clinic from publishing an article in the Journal of the American Medical Association reporting an increased risk of cardiovascular events following VIOXX ingestion. In August of 2001, this scientific article was published, as well as a Wall Street Journal Article outlining Merck's attempts to thwart publication of the data. Merck subsequently received a rare Warning Letter from the FDA relating to its serious downplaying of the cardiovascular risks associated with VIOXX. The seriousness of those risks were further acknowledged and reported in the Wall Street Journal, B2, October 30, 2003, (Thomas, Burton and Callahan, Patricia), *Vioxx Study Sees Heart-Attack Risk: Merck Funded Research After Concerns Were Raised About Its Painkilling Drug*, and B1-2 (Landers, Peter and Lublin, Joann), *Merck's Slide May Dislodge Company's CEO*.

15. Large insider sales took place on or about May, October and November of 2000 and/or at material times thereafter prior to significant dips in market prices. More specifically and without limitation, sales in tens of millions of dollars of shares of Merck were made by the insiders. Additionally, sales of shares owned by one or more of the following insiders with actual knowledge of VIOXX related cardiovascular risks as well as with information not otherwise available outside of Merck were made prior to the public dissemination of the information regarding the cardiovascular risks associated with VIOXX:

(A) David Anstice, Senior Vice President, Human Health;

(B) Paul Bell, Director of Human Health;

(C) Per Wold Olsen, Director;

(D) Edward Scolnick, then President of Scientific Affairs and responsible overall for VIOXX;

(E) Richard Clark, then President of Merck Medco, the entity within Merck dependent upon VIOXX sales;

(F) Per Lofberg, President, Merck-Medco Managed Care;

(G) Bennett Shapiro, Director;

(H) Celia Colbert, Vice-President, Secretary and Assistant General Counsel; and

(I) Lloyd Elam, M.D., Director.

16. Merck's stock price began its slide in approximately January of 2001, and continued and worsened after August of 2001 when the VIGOR cardiovascular data was presented more fully in the Journal of the American Medical Association.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the securities of Merck between May 22, 1999 and October 22, 2003, inclusive (the "Class Period"), and who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any corporations in which Defendants have or had a controlling interest.

18. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Merck common shares were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Merck or its transfer agent and may be notified of the pendency of this action using the form of notice similar to that customarily used in securities class actions.

19. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

20. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

21. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

1. Whether the federal securities laws were violated by Defendants' acts as alleged herein;

2. Whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Merck; and

3. To what extent the members of the Class have sustained damages and the proper measure of damages.

22. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs perpetrated by Defendants. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

23. Merck is a global, research-driven, pharmaceutical company that discovers, develops, manufactures and markets a broad range of human and animal health products,

directly and through its joint ventures, and provides pharmaceutical benefit services through Merck-Medco.

24. Throughout the Class Period, Defendants issued numerous statements and filed quarterly and annual reports with the SEC which described the Company's increasing revenues and financial performance. These statements were materially false and misleading because they failed to disclose and/or misrepresented the following adverse facts, among others: (i) that the company improperly minimized and downplayed the effect that safety concerns about VIOXX, the company's second largest selling drug, had on sales of that drug; (ii) failed to disclose concerns scientists and physicians working for Merck had about the cardiovascular safety of VIOXX; (iii) failed to disclose the large amount of liability the company was facing in personal injury and wrongful death lawsuits due to the hazardous nature of Vioxx and that, as a result, Defendants' statements concerning the size of the Company's revenues, financial results, and future earnings projections were lacking in a reasonable basis at all relevant times.

25. The Class Period begins on May 22, 1999. Merck issued a press release announcing its financial results for the second quarter of 1999, the period ending June 30, 1999. For the quarter, Defendants reported revenues of $8.02 billion, as compared with revenues of $6.47 billion in the same quarter of the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Sales growth for the quarter and the first half of 1999 was led by the established major products, including the 1999 launch of VIOXX, as well as growth from the Merck-Medco Managed Care business....Solid volume gains in both our domestic and international

> operations as well as 3 point benefit attributable to the restructuring of Astra Merck, Inc. (AMI) contributed to the second quarter results.

26. Merck's financial results for the second quarter of 1999, the period ending June 30, 1999, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about August 12, 1999 which was signed by Defendants, McDonald and Henriques, and which stated, in pertinent part:

> Following a six month priority review, on May 20 the FDA cleared VIOXX, Merck's once daily COX-2 specific inhibitor, for the relief of the signs and symptoms of osteoarthritis, management of acute pain in adults, and treatment of menstrual pain. Since then, more than 400,000 U.S. patients have taken the product. Merck has introduced VIOXX in nine other countries including the United Kingdom, Switzerland, and Mexico. The Company is conducting additional clinical studies with VIOXX to determine whether it is useful in treating rheumatoid arthritis and in preventing and treating Alzheimer's disease. Studies will begin later this year to ascertain whether VIOXX might help prevent colon cancer.

27. On October 21, 1999, Merck issued a press release announcing its financial results for the third quarter of 1999, the period ending September 30, 1999. For the quarter, Defendants reported revenues of $8.2 billion, as compared with revenues of $6.8 billion in the same quarter of the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Sales growth for the quarter and nine months of 1999 was led by the established major products, the newer products, including VIOXX, and growth from the Merck-Medco Managed Care business.... Solid volume gains in both our domestic and international operations contributed to the third quarter results.

28. Merck's financial results for the third quarter of 1999, the period ending September 30, 1999, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about November 12, 1999, which was signed by Defendants, McDonald and

Henriques and which stated, in pertinent part, as follows:

> In just 20 weeks on the market in the United States, VIOXX has become the country's fastest growing prescription arthritis medicine. U.S. physicians have written more than 2 million prescriptions for Merck's newest medicine, which is used to relieve the signs and symptoms of osteoarthritis, manage acute pain in adults and treat menstrual pain. In September, Merck entered an agreement with CollaGenex, a leader in dental products, to co-promote VIOXX to dentists, periodontist and oral surgeons in the U.S. Dentists in the U.S. write more than 1.8 million prescriptions monthly for the relief of pain.
>
> Merck has introduced VIOXX in 22 other countries, including the United Kingdom, Switzerland and Mexico. The company is conducting extensive clinical studies with VIOXX to evaluate its efficacy in the treatment of rheumatoid arthritis and in the prevention and treatment of Alzheimer's disease. Studies will begin later this year to ascertain whether VIOXX might help prevent colon cancer.

29. On January 26, 2000, Merck issued a press release announcing its financial results for the fourth quarter and full year 1999, the period ending December 31, 1999. For the year, Defendants reported revenues of $32.7 billion, as compared with revenues of $26.9 billion in the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Sales growth for the quarter and the year was led by the established products, the newer products, including VIOXX, as well as growth from the Merck-Medco Managed Care business.

30. Merck's financial results for the full year of 1999, the period ending December 31, 1999, were repeated in the Company's Report on Form 10-K filed with the SEC on or about March 22, 2000, which was signed by Defendants, Gilmartin, Lewent and Henriques, among others, and stated in pertinent part, as follows:

> In May 1999, the US Food and Drug Administration ("FDA") cleared VIOXX, a once-daily, anti-inflammatory COX-2 specific inhibitor, for marketing in the United States for relief of the signs and symptoms of osteoarthritis, management of acute pain in adults, and

> treatment of menstrual pain. VIOXX had now been launched in 47 other countries in addition to the United States. In March, 1999, the FDA approved a new use indication for Mevacor...
>
> In May 1999, following a six-month priority review, the FDA cleared VIOXX, Merck's once-daily agent that specifically inhibits COX-2, for relief of the signs and symptoms of osteoarthritis, management of acute pain in adults and treatment of menstrual pain. With its product relief profile for strength, safety and once daily simplicity, VIOXX remains the country's fastest growing prescription arthritis medicine. In the product's first seven months, U.S. physicians wrote more than five million prescriptions. VIOXX is also enjoying success in the 47 other countries in which it has been launched. VIOXX was the first agent that specifically inhibits COX-2 to receive mutual recognition approval for marketing in all of the European Union countries and quickly became the most successful pharmaceutical launch in the United Kingdom after its introduction. In September 1999, Merck entered into an agreement with a leader in dental products to co-promote VIOXX to U.S. dentists, periodontists, and oral surgeons. The company is conducting extensive clinical studies with VIOXX to evaluate its efficacy in the treatment of rheumatoid arthritis and in the prevention and treatment of Alzheimer's disease. Merck also has begun studies in patients with colon polyps - a broad population at risk of developing colon cancer. Reducing the number of these polyps may reduce the incidence of colon cancer.

31. On April 24, 2000, Merck issued a press release announcing its financial results for the first quarter of 2000, the period ending March 31, 2000. For the quarter, Defendants reported revenues of $8.9 billion, as compared with revenues of $7.5 billion in the same quarter of the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Income growth for the quarter was driven by strong sales volume gains as well as manufacturing productivity improvements... The savings from productivity improvements helped fund selling and promotion programs to support our new products as well as research and development.

32. Merck's financial results for the first quarter of 2000, the period ending March 31, 2000, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about May 12, 2000, which was signed by Defendants, Frazier and Henriques, stating, in pertinent part, as follows:

> Sales growth for the quarter was led by VIOXX, the fastest growing prescription arthritis medicine in the United States, other newer and established products and growth from the Merck-Medco Managed Care business. Overall, worldwide operations reported strong sales volume gains. Sales of Merck human health products increased 17% for the first quarter. Sales of Merck human health products outside of the United States accounted for 37% of Merck human health sales. Foreign exchange had essentially no effect on the human health sales growth for the first quarter. Income growth for the quarter was driven by strong sales volume gains as well as manufacturing productivity improvements. The savings from productivity improvements helped fund selling and promotion programs to support new products as well as research and development. Five key products - VIOXX, 'Zocor', 'Fosamax', 'Singulair' and 'Cozaar'/'Hyzaar'* - led Merck's growth, and now account for more than 50% of Merck's worldwide human health sales. Supply shipments to AstraZeneca LP also contributed to sales volume growth. VIOXX remains the fastest growing prescription arthritis medicine in the United States. More than 9 million prescriptions have been written for VIOXX since its U.S. introduction 10 months ago. In addition, it is the only medicine specifically inhibiting COX-2 that is indicated both for treatment of osteoarthritis and for relief of acute pain, such as pain following knee, hip replacement and dental surgery. VIOXX is enjoying strong success in the European countries where it has been launched, including the United Kingdom, Germany and Spain. In all, VIOXX has been launched in more than 50 countries. Merck is conducting extensive clinical studies with VIOXX to evaluate its efficacy in the treatment of rheumatoid arthritis and in the prevention and treatment of Alzheimer's disease. Merck has also begun studies to investigate whether VIOXX can reduce the number of colon polyps in patients who suffer from them - a broad population at risk of developing colon cancer.

33. On July 24, 2000, Merck issued a press release announcing its financial results for the second quarter of 2000, the period ending June 30, 2000. For the quarter, Defendants reported revenues of $9.5 billion, as compared with revenues of $8

billion in the same quarter of the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Sales growth for the quarter and the first half of 2000 was led by VIOXX, the other newer and established products and growth from the Merck-Medco Managed Care business....Strong volume gains in both the domestic and international operations contributed to the second quarter results.

34. Merck's financial results for the second quarter of 2000, the period ending June 30, 2000, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about August 10, 2000, which was signed by Defendants, Frazier and Henriques, and which stated, in pertinent part, as follows:

> VIOXX, Merck's newest medicine for osteoarthritis and acute pain, has been launched in nearly 70 countries, including the United States, the United Kingdom, Germany, Spain, Mexico, Sweden, and Denmark. It remains the world's fastest growing prescription arthritis medicine, with more than 12 million prescriptions written since it was first introduced last year. In addition, VIOXX is the only medicine specifically inhibiting COX-2 that is indicated in the United States both for treatment of osteoarthritis and for relief of acute pain.
>
> In May, Merck presented results from the 8,000 patient VIOXX Gastrointestinal Outcomes Research (VIGOR) study in which VIOXX reduced the incidence of serious gastrointestinal side effects, such as ulcers and bleeding, by more than 50 percent compared to the nonsteroidal, anti-inflammatory drug, Naproxen. In June, Merck submitted a Supplemental New Drug Application for VIOXX to the U.S. Food and Drug Administration (FDA) to request labeling changes based on that study.
>
> To expand the market for VIOXX, Merck continues clinical trials to determine whether VIOXX is effective in the treatment of rheumatoid arthritis and in the prevention and treatment of Alzheimer's disease. Merck has also begun studies to investigate whether VIOXX can reduce the number of colon polyps in patients who suffer from them - a broad population at risk of developing colon cancer.

35. On or about October 20, 2000, Merck issued a press release announcing its financial results for the third quarter of 2000, the period ending September 30, 2000. For the quarter, Defendants reported revenues of $10.56 billion, as compared with $8.20 billion in the same quarter of the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Income growth for the quarter and first nine months reflect strong sales volume gains in the U.S. and international markets, as well as manufacturing productivity improvements....These gains helped fund research and development and promotion programs in support of our key products.

36. Merck's financial results for the third quarter of 2000, the period ending September 30, 2000, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about November 13, 2000, which was signed by Defendants, Frazier and Henriques, and which stated, in pertinent part, as follows:

> The Company's newest medicine, 'Vioxx', together with 'Zocor', 'Cozaar'/'Hyzaar', 'Fosamax', and 'Singulair' are driving Merck's strong performance. These products accounted for 55% of Merck's worldwide human health sales for the first nine months.
>
> More than 15 million prescriptions in the United States alone have been written for VIOXX, Merck's new medicine for osteoarthritis, since its successful launch last year, and it continues as the world's fastest growing prescription arthritis medicine. VIOXX has now achieved nearly $1.5 billion in sales so far this year - more than $600 million in this quarter alone. A key reason for its success is that VIOXX is the only COX-2 inhibitor approved by the FDA both for osteoarthritis and acute pain.

> A pilot study in osteoarthritis comparing VIOXX and celecoxib, a competitive product, presented at the European League Against Rheumatism in June, showed that VIOXX reduced osteoarthritis pain at night and at rest to a greater degree than either celecoxib 200 mg or acetaminophen 4,000 mg.
>
> In June, Merck submitted a Supplemental New Drug for VIOXX to the FDA to request labeling changes based on the results of the 8,000 patient VIOXX Gastrointestinal Outcomes Research (VIGOR) study. In this study, VIOXX reduced the incidence of serious gastrointestinal side effects, such as ulcers and bleeding, by more than 50% compared to the nonsteroidal anti-inflammatory drug naproxen.
>
> Clinical programs are underway to explore other potential benefits for VIOXX, including the treatment of chronic pain, rheumatoid arthritis and in the prevention and treatment of Alzheimer's disease. Merck has also begun studies to investigate whether VIOXX can reduce the number of colon polyps in patients who suffer from them - a broad population at risk of developing colon cancer.

37. On January 23, 2001, Merck issued a press release announcing its financial results for the fourth quarter of 2000 and full year of 2000, the period ending December 31, 2000. For the full year of 2000, Defendants reported revenues of $40.4 billion, as compared with revenues of $32.7 billion for the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Income growth for the quarter and the year reflects strong worldwide sales volume gains, as well as manufacturing productivity improvements.... These gains helped fund our ongoing research and development programs and promotional campaigns in support of our key products.

38. On April 20, 2001, Merck issued a press release announcing its financial results for the first quarter of 2001, the period ending March 31, 2001. For the quarter, Defendants reported revenues of $11.3 billion, as compared with revenues of $8.9 billion in the same quarter of the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Income growth for the quarter reflects strong worldwide sales volume gains led by our five key growth drivers - ZOCOR, VIOXX, COZAAR/HYZAAR, FOSAMAX and SINGULAIR - which combined had increased sales of 30% over first quarter 2000 sales.

39. Merck's financial results for the first quarter of 2001, the period ending March 31, 2001, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about May 10, 2001, which was signed by Defendants, Frazier and Henriques, and which stated in pertinent part, as follows:

> VIOXX, a once-a-day medicine, is the only COX-2 selective agent indicated in the United States for both osteoarthritis and acute pain. Since its successful 1999 launch, VIOXX has become the world's fastest-growing branded prescription arthritis medicine, and it is already Merck's second largest selling medicine. VIOXX achieved $485 billion in sales for the first quarter 2001.
>
> Earlier this month, Merck received an approvable letter from the FDA regarding the Company's application for changes to prescribing information for VIOXX based on results from the VIOXX Gastrointestinal Outcomes Research (VIGOR) study. An approvable letter is defined by the FDA as a written statement that the FDA will approve the application if specific additional information of material is submitted or specific conditions are met. An approvable letter does not constitute approval of the application. Approval letters may result in additional time for completion of the FDA review.

40. On July 20, 2001, Merck issued a press release announcing its financial results for the second quarter of 2001, the period ending June 30, 2001. For the quarter,

Defendants reported revenues of $11.9 billion, as compared with revenues of $9.5 billion in the same quarter of the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Income growth for the first six months reflects strong worldwide sales volume gains led by our five key growth drivers [ZOCOR, VIOXX, COZAAR/HYZAAR, FOSAMAX and SINGULAIR], which combined increased 28% over the first six months 2000 sales.

41. Merck's financial results for the second quarter of 2001, the period ending June 30, 2001, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about August 10, 2001, which was signed by Defendants, Frazier and Henriques, and which stated, in pertinent part, as follows:

> Merck's human health sales were drive by its five key growth drivers - Zocor, Vioxx, Cozaar and Hyzaar, Fosamax, and Singulair...
>
> VIOXX, a once-a-day medicine, is the only COX-2 selective agent indicated in the United States for both osteoarthritis and acute pain. Since its 1999 launch, VIOXX has become the world's fastest-growing branded prescription arthritis medicine, and it is already Merck's second largest-selling medicine. In 2001, VIOXX achieved new prescription leadership within the coxib market in the United States, demonstrating that physicians continue to recognize the medicine's benefits to patients. VIOXX achieved $725 million in sales for the second quarter.
>
> New scientific data supporting the efficacy and overall safety profile of VIOXX were presented at medical meetings during the quarter. These data included the results of the ADVANTAGE trial, presented at the Digestive Diseases Week conference in May. In this study, fewer patients on VIOXX stopped taking their medicine because of gastrointestinal side effects compared to patients taking naproxen, a commonly prescribed non-steroidal, anti-inflammatory drug.
>
> In April 2001, Merck filed a Supplemental New Drug Application for VIOXX with the FDA for the treatment of rheumatoid arthritis.

42. On October 18, 2001, Merck issued a press release announcing its financial results for the third quarter of 2001, the period ending September 30, 2001. For the quarter, Defendants reported revenues of $11.9 billion, as compared with revenues of $10.6 billion in the same quarter of the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Our five key growth drivers [ZOCOR, VIOXX, COZAAR/HYZAAR, FOSAMAX and SINGULAIR], which had increased sales of nearly 30% over the first nine months of 2000 and now account for two-thirds of Merck's worldwide human health sales, continued to lead Merck's income growth.

43. Merck's financial results for the third quarter of 2001, the period ending September 30, 2001, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about November 13, 2001, which was signed by Defendants, Henriques and Frazier, and which stated, in pertinent part:

> VIOXX, a once-a-day medicine, is the only COX-2 selective agent approved in the United States for both osteoarthritis and acute pain. Available in more than 70 countries,VIOXX is Merck's second largest-selling medicine. In the third quarter, VIOXX continued new prescription leadership within the coxib market in the United States and in many European and Latin American countries. VIOXX became the first and only coxib approved for acute pain in a European Union country when it launched with that indication in the United Kingdom in September 2001. In the third quarter, VIOXX achieved $795 million in sales, an increase of 29% over the same quarter last year.
>
> In a continuing worldwide dispute between Merck and Pharmacia Corporation (Pharmacia) over competing claims to the patent rights to the class of compounds that include rofecoxib, the active ingredient in VIOXX, the federal district court in Washington D.C., recently dismissed a Pharmacia claim for damages for Merck's sale of VIOXX. Pharmacia may seek an appeal of this decision. Merck has also received favorable decisions regarding the patent status of

> VIOXX from courts in the U.K., Holland, and Spain, while receiving no adverse claims in any country. The Company also noted that a number of federal and state lawsuits, involving individual claims as well as purported class actions, have been filed against the Company with respect to VIOXX. Some of the lawsuits also name as defendants Pfizer Inc. and Pharmacia, which market a competing product, Celebrex. The lawsuits include allegations regarding gastrointestinal bleeding and cardiovascular events. The Company believes that these lawsuits are completely without merit and will vigorously defend them.

44. On January 22, 2002, Merck issued a press release announcing its financial results for the full year of 2001, the period ending December 31, 2001. For the year, Defendants reported revenues of $47.7 billion, as compared with revenues of $40.4 billion in the prior year. Defendant, Gilmartin, commented on the Company's performance, stating, in pertinent part, as follows:

> Our five key growth drivers, which also are our five largest products, now account for 68% of Merck's worldwide human health sales and continue to lead Merck's income growth. These medicines are true breakthroughs - they offer novel approaches to disease treatment, help large, underserved patient populations and are effective, well-tolerated and convenient. The market-growth potential for these medicines remains strong.

45. Merck's financial results for the full year of 2001, the period ending December 31, 2001, were repeated in the Company's Report on Form 10-K filed with the SEC on or about March 21, 2002, which was signed by Defendants, Gilmartin, Lewent and Henriques, among others, and, which stated, in pertinent part, the following:

> The Company also noted that a number of federal and state lawsuits, involving individual claims as well as purported class actions, have been filed against the Company with respect to VIOXX. Some of the lawsuits also name as defendants Pfizer Inc. and Pharmacia, which market a competing product. The lawsuits include allegations regarding gastrointestinal bleeding and cardiovascular events. The

> Company believes that these lawsuits are completely without merit and will vigorously defend them.

46. On April 18, 2002, Merck issued a press release announcing its financial results for the first quarter of 2002, the period ending March 31, 2002. For the quarter, Defendants reported revenues of $12.2 billion, as compared with revenues of $11.3 billion in the same quarter of the prior year. The press release also discussed Merck's previously-announced filing of a registration statement with the SEC for an initial public offering of Merck-Medco. Defendant, Gilmartin, commented on this development, stating, in pertinent part, as follows:

> The separation of Merck-Medco will allow Merck to focus more fully on its priorities of turning cutting-edge science into breakthrough medicines and supporting them through targeted and well executed marketing....With the continued growth of our five key franchises - ZOCOR, VIOXX, COZAAR/HYZAAR, FOSAMAX and SINGULAIR - along with our plans to file or launch 11 new medicines by 2006, we expect the core pharmaceutical business to deliver double-digit earnings per share growth in 2003 and top-tier performance over the longer term.

47. Merck's financial results for the first quarter of 2002, the period ending March 31, 2002, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about May 13, 2002, which was signed by Defendants, Frazier and Henriques, and which stated, in pertinent part, the following:

> VIOXX the Company's second-largest-selling medicine, continues to gain acceptance among physicians and patients worldwide. Global sales for the quarter were $650 million. In April 2002, Merck announced that the FDA has approved changes to the prescribing information for VIOXX, under the gastrointestinal (GI) warning section, to include results from the landmark VIOXX Gastrointestinal Outcomes Research (VIGOR) study. The FDA also approved VIOXX 25 mg for the relief of the signs of rheumatoid arthritis in

adults. VIOXX is now the first and only medicine that selectively inhibits the COX-2 enzyme that is proven to reduce the risk of developing clinically important GI side effects in patients with or without the risk factors for such GI side effects compared to the non-steroidal anti-inflammatory drug (NSAID) naproxen. In this study, the number of patients with serious cardiovascular thrombotic events in the group treated with VIOXX 50 mg was higher than in the group taking naproxen. In a placebo-controlled database derived from two other studies, the number of patients with serious cardiovascular thrombotic events among those receiving VIOXX 25 mg was 21 compared to 35 for patients taking placebo. In these two-placebo controlled studies, mortality due to cardiovascular thrombotic events was eight versus three for VIOXX versus placebo, respectively. These data also are reflected in the prescribing information. The significance of the cardiovascular findings from these three studies (VIGOR and the placebo-controlled studies) is unknown.

In addition, new data presented at the American Academy of Pain Management meeting in the first quarter showed a single dose of VIOXX 50 mg provided superior pain relief over six hours compared to the narcotic oxycodone 5 mg/acetaminophen 325 mg in patients with moderate to severe pain following dental surgery. VIOXX remains the only medicine that selectively inhibits COX-2 to offer once-daily 24-hour relief for osteoarthritis, rheumatoid arthritis, and acute pain.

48. Merck's financial results for the second quarter of 2002, the period ending June 30, 2002, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about August 13, 2002, which was signed by Defendants, Frazier and Henriques, and which stated, in pertinent part, the following:

> Global sales of 'Vioxx', the Company's second-largest selling medicine, were $845 million this quarter, an increase of 17% over the 2001 second quarter. On a year-to-date basis, 'Vioxx' sales totaled $1.5 billion, an increase of 24% over the first half of 2001. Wholesaler buying patterns favorably impacted second quarter and year-to-date sales by approximately $155 billion and $115 million, respectively. In April, the FDA approved changes to the prescribing information to include results from the landmark 'Vioxx' Gastrointestinal Outcomes Research (VIGOR) study and a new indication with 'Vioxx' 25 mg. for the relief of the signs and

> symptoms of rheumatoid arthritis in adults. 'Vioxx' now is the only COX-2 specific inhibitor with a label demonstrating the proven risk reductions in clinically important gastrointestinal events compared to the non-asteroidal anti-inflammatory drug (NSAID) naproxen and the only COX-2 specific inhibitor to offer once-daily 24-hour relief for osteoarthritis, rheumatoid arthritis and acute pain.

49. Merck's financial results for the third quarter of 2002, the period ending September 30, 2002, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about November 13th 2002, which was signed by Defendants, Frazier and Henriques, and which stated, in pertinent part, the following:

> VIOXX, the Company's second-largest selling medicine, achieved $755 million in worldwide sales in the third quarter, an increase of 3% over the 2001 third quarter. On a year-to-date basis, VIOXX sales totaled $2.1 billion, an increase of 17% over the first nine months of 2001. While wholesaler buying patterns favorably impacted third quarter and year-to-date sales by approximately $133 million and $238 million, respectively, the Company expects that wholesaler buying patterns will have an unfavorable impact in the fourth quarter. Full-year 2002 sales of ''Vioxx'' and ''Arcoxia'', which is discussed below, are expected to approximate $2.6 to $2.8 billion. Gastrointestinal (GI) safety remains an important consideration when physicians are choosing a medication for the treatment of arthritis. Since the GI outcomes data from the landmark 8,000-patient VIOXX Gastrointestinal Outcomes Research (VIGOR) study were added to the labeling for VIOXX, the number of key managed care accounts with VIOXX in an advantaged position among coxibs continues to grow. More than 20 million people now have exclusive or preferred access to VIOXX through their managed care plans.
>
> In acute dental pain studies, VIOXX has demonstrated superior efficacy to codeine 60 mg with acetaminophen 600 mg as well as oxycodone 5 mg with acetaminophen 325 mg. Outside the United States, VIOXX maintains its leadership position as the most widely prescribed COX-2 inhibitor in Latin America, Canada and Europe, where it is the coxib with the broadest range of indications, including acute pain.

50. Merck's financial results for the Annual Report of 2002 were repeated in the Company's Report on Form 10-Q filed with the SEC on or about March 21, 2003, which was signed by Defendants, Frazier and Henriques, and which stated, in pertinent part, the following:

> VIOXX, Merck's once-a-day coxib, remains the largest and most prescribed arthritis pain medication across many markets worldwide, including Europe, Canada and Latin America. For the year, VIOXX sales grew 8% over 2001, achieving $2.5 billion in sales. Excluding the estimated impact of wholesaler buying patterns, the year-on-year growth of VIOXX approximated 1%. In 2003, worldwide sales of coxibs, *Vioxx* and *Arcoxia* , are expected to approximate $2.6 billion to $2.8 billion.
>
> Pain relief and gastrointestinal (GI) safety remain important considerations when physicians are choosing a medication for the treatment of arthritis. Since the GI outcomes data from the landmark 8,000-patient VIOXX Gastrointestinal Outcomes Research (VIGOR) study were added to the labeling for VIOXX , the number of key managed care accounts with VIOXX in an advantaged position among coxibs continues to grow. More than 35 million people now have exclusive or preferred access to VIOXX through their managed care plans.
>
> An updated analysis combining data from 20 clinical trials of more than 17,000 arthritis patients was presented at the American College of Rheumatology in the fourth quarter of 2002 and underscores the proven GI safety profile of VIOXX. This new data showed that VIOXX significantly reduced by 62 percent the incidence of confirmed upper-GI perforations, ulcers and bleeds compared to four widely used non-selective non-steroidal anti-inflammatory drugs (NSAIDs). The analysis is consistent with the significant reduction of clinically important GI events versus naproxen seen in the VIGOR study.
>
> Also in clinical studies in acute pain, VIOXX has demonstrated superior efficacy to codeine 60 mg with acetaminophen 600 mg as well as oxycodone 5 mg with acetaminophen 325 mg.
>
> . . .A number of federal and state lawsuits, involving individual claims as well as purported class actions, have been filed against the Company with respect to VIOXX . Some of the lawsuits also name as defendants Pfizer Inc. and Pharmacia, which market a

> competing product. The lawsuits include allegations regarding gastrointestinal bleeding and cardiovascular events. The Company believes that these lawsuits are completely without merit and will vigorously defend against them.

51. Merck's financial results for the first quarter of 2003, the period ending March 31, 2003, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about May 14, 2003, which was signed by Defendants, Frazier and Henriques, and which stated, in pertinent part, the following:

> Merck's once-a-day coxib, VIOXX, has been launched in 77 countries worldwide. In the United States, VIOXX is the most widely prescribed and frequently preferred coxib on managed care formularies. VIOXX is the leading coxib outside the United States. Global sales for the quarter were $527 million, 12% lower than the first quarter of 2002. Wholesaler buying patterns unfavorably impacted the quarter by approximately $70 million. In 2003, worldwide sales of coxibs, ''Vioxx'' and ''Arcoxia'', which is discussed below, are expected to approximate $2.6 to $2.8 billion.

52. Merck's financial results for the second quarter of 2003, the period ending June 30, 2003, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about August 13, 2003, which was signed by Defendants, Frazier and Henriques, and which stated, in pertinent part, the following:

> Worldwide sales of Merck''s first once-a-day coxib, VIOXX, were $801 million during the second quarter, representing a 1% increase compared to the 2002 same period. In the United States, VIOXX is the most widely prescribed and frequently preferred coxib on managed care formularies. VIOXX is also the leading coxib outside the United States. Mail-order-adjusted prescription levels in the United States for VIOXX decreased by approximately 7 percent for the quarter. In June, the Company increased the price of VIOXX in the United States. In the aggregate, estimated wholesaler buy-in for VIOXX had a favorable impact of $160 million for the quarter. This is expected to have an unfavorable impact on wholesaler purchases for VIOXX in the remaining quarters of 2003. Estimated wholesaler inventory levels for

> VIOXX remained within a range customary for Merck products. In 2003, worldwide sales of coxibs, ''Vioxx'' and ''Arcoxia'', which is discussed below, are expected to approximate $2.5 to $2.7 billion.
>
> Data presented at the 55th Annual Scientific Meeting of the American Academy of Neurology in April profiled research results for VIOXX in the treatment of acute migraine headaches. VIOXX 25 mg once daily and 50 mg once daily relieved acute migraine pain within two hours and reduced certain symptoms associated with migraine headaches of moderate to severe intensity. VIOXX was well tolerated compared to placebo in this 557-patient study.

53. The statements referenced above in ¶¶ 25-52 were each materially false and misleading when made because they failed to disclose and/or misrepresented the following adverse facts, among others: (i) results of VIOXX studies that were known to Defendants prior to and after the release of VIOXX; (ii) medical studies that demonstrated safety concerns with VIOXX and/or evidence of lack of efficacy; (iii) VIOXX's relatively narrow indication for use compared with other NSAIDs; (iv) the adverse effect on VIOXX sales due to the requirement of new warnings on VIOXX's label by the FDA; and (v) the lack of cardiovascular concerns in VIOXX's number one competitor, Celebrex.

54. The class period ends on or about October 21, 2003. The very next morning on October 22, 2003, Reuters ran a story entitled "Merck to cut 4,400 Jobs, Earnings Flat." The article noted that:

> Merck & Co. Inc. said on Wednesday it would cut 4,400 jobs and reported disappointing earnings, hurt by falling sales of arthritis medicine VIOXX and a paucity of profitable new drugs. . .Sales of VIOXX fell 32 percent in the period to $510 million. The arthritis drug is suffering from clinical trial data suggesting it might slightly raise the risk of heart attacks, and the growing

> perception that its pain-fighting capabilities are no better than traditional painkillers.

55. The following week, on October 30, 2003, The Wall Street Journal published an article entitled "Vioxx Study Sees Heart-Attack Risk." The article revealed that a Merck- funded study at Brigham and Women's Hospital in Boston found an increased risk of heart attack, or acute myocardial infarction compared with patients taking a competing COX-2 inhibitor, Celebrex, which is made by Pfizer. The increased risk was also noted in those who were taking VIOXX compared with those who were not taking any painkillers. As explained in the article:

> Brigham & Women's Hospital rheumatologist and epidemiologist Daniel H. Solomon headed the study, which looked at records of 54,475 Medicare patients. Researchers found that the apparent cardiac risk was greatest in the first 90 days in which a patient is taking VIOXX, which generically is known as rofecoxib. In the first 30 days, the researchers found, VIOXX was linked to a 39% increased heart-attack risk compared with Celebrex. Between 30 and 90 days, that increased relative risk was 37%.

The article also quoted Eric Topol, M.D., the chairman of cardiovascular medicine at the Cleveland Clinic and one of the authors who first raised the issue of cardiovascular problems with VIOXX two years ago. Dr. Topol noted that the best possible study - a forward-looking, randomized one - has not been done yet, but that he had asked Merck to do such a study. "We had implored the makers of rofecoxib over two years ago," he said. "They have never done it."

56. The October 30, 2003 Wall Street Journal ran a second article concerning Merck entitled, "Merck's Slide May Dislodge Company's CEO." The article noted that:

> Last week, the usually low-profile chief executive [Defendant Gilmartin] began to exhibit a sense of urgency. He announced he was laying off 5% of Merck's 63,000 employees and tried to reach out to investors, answering questions on a quarterly earnings conference call and appearing on CNBC. But that didn't stop the company's stock price from falling 6.5% on the day of the announcement.
>
> Ms. Ryan, the Deutsche Bank analyst, wonders why he kept repeating a forecast for double-digit profit growth this year until abandoning it last week. 'You'd have to be crazy at this point to believe their guidance,' she said. Merck's 2003 net income is expected to fall for the second straight year.

57. The market for Merck's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Merck's common stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Merck securities relying upon the integrity of the market price of Merck's securities and market information relating to Merck, and have been damaged thereby.

58. During the Class Period, Defendants materially misled the investing public by issuing false statements and failing to disclose material facts, thereby inflating the price of Merck's securities. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

59. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As

described herein, during the Class Period, Defendants made or caused to be made a series of materially false or misleading statements about Merck's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Merck and its business prospects and operations. Therefore, the Company's securities were overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in the purchase of the Company's securities at artificially inflated prices by Plaintiff and other members of the class, thus causing the damages alleged herein.

SCIENTER ALLEGATIONS

60. As alleged herein, Defendants acted with scienter in that Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading, knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance of dissemination of such statements or documents as primary violations of the federal securities laws. As set forth herein, Defendants, by virtue of their receipt of information reflecting the true facts regarding Merck, their control over, and/or receipt and/or modification of Merck's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Merck, participated in the fraudulent scheme alleged herein.

APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-MARKET DOCTRINE

61. At all relevant times, the market for Merck's securities was an efficient market for the following reasons, among others:

1. Merck's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

2. As a regulated issuer, Merck filed periodic public reports with the SEC and the NYSE;

3. Merck regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

4. Merck was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

62. As a result of the foregoing, the market for Merck's securities promptly digested current information regarding Merck from all publicly available sources and reflected such information in Merck's stock price. Under these circumstances, all of Merck's purchasers of securities during the Class Period suffered similar injury through their purchase of Merck's securities at artificially inflated prices. A presumption of reliance applies.

NO SAFE HARBOR

63. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Merck who knew that those statements were false when made.

FIRST CLAIM
Violation of Section 10(b) Of
The Exchange Act And Rule 10b-5
Promulgated Thereunder Against All Defendants

64. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

65. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) enable Defendants to use the Company's artificially inflated stock as payment for the

Company's $540 million acquisition of Rosetta; and (iii) cause Plaintiff and other members of the Class to purchase Merck's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants took the actions set forth herein.

66. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Merck's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

67. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Merck as specified herein.

68. The Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Merck's value and continued substantial growth. Defendants either made or participated in the making of untrue statements of material facts and omissions. Additionally, Defendants failed to state material facts necessary in order to make the statements of

material facts and omissions made by Merck and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein. Defendants engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Merck securities during the Class Period.

69. Each of the Individual Defendants' primary liability, and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these Defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these Defendants enjoyed significant personal contact and familiarity with the other Defendants and was advised of and had access to other members of the Company's finances, operations and sales at all relevant times; and (iv) each of these Defendants was aware of the Company's dissemination of information to the investing public which they knew, or recklessly disregarded, was materially false and misleading.

70. The Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions

were done knowingly or recklessly and for the purpose and effect of concealing Merck's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and misstatements of the Company's business, operations and earnings throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false and misleading.

71. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Merck's securities was artificially inflated. Relying directly or indirectly on the false and misleading statements made by Defendants and/or upon the integrity of the market in which securities trade and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Merck securities during the Class Period at artificially high prices. Plaintiff and other members of the Class were damaged thereby.

72. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity and believed them to be true. Had plaintiff and other members of the Class and the marketplace known the truth regarding the problems that Merck was experiencing, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Merck securities, or, if they

had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

73. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

74. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

SECOND CLAIM
Violation Of Section 20(a) Of
The Exchange Act Against the Individual Defendants

75. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

76. The Individual Defendants acted as controlling persons of Merck within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading

prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

77. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

78. As set forth above, Merck and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

Wherefore, Plaintiff prays for relief and judgment as follows:

A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands trial by jury.

All of which is hereby respectfully submitted,

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PLEASE SERVE:

Merck & Co., Inc.
Raymond V. Gilmartin
Kenneth C. Frazier
Richard C. Henriques
Judy C. Lewent
Mary M. McDonald

EXHIBIT 3

EXHIBIT 3

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

THE WHITEHEAD FIRM, L.L.C.

TIME REPORT

Inception through February 15, 2016

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Mark Whitehead	1,789.19	$900.00	$1,610,271.00
Of Counsel			
Senior Counsel			
Associates			
Staff Attorneys			
Paralegals			
Elaine Young	14.67	$100.00	$1,467.00
Cylinda McPayne	0.25	$100.00	$25.00
Cindy Charvet	19.5	$150.00	$2,925.00
Litigation Support			
TOTALS	**1,823.61**		**$1,614,688.00**

EXHIBIT 4

EXHIBIT 4

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

THE WHITEHEAD FIRM, L.L.C.

EXPENSE REPORT

CATEGORY	AMOUNT
Court Fees	$1,010.00
On-Line Legal Research	$1,341.24
Telephone/Faxes	$17.55
Postage & Express Mail	$199.77
Hand Delivery Charges	$71.50
Internal Copying	$148.04
Outside Copying	$85.22
Out of Town Travel	$7,638.02
Working Meals	$437.17
Experts	$7,850.00
TOTAL EXPENSES:	**$18,798.51**

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