Exhibit 3J

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	MDL No. 1658 (SRC)
THIS DOCUMENT RELATES TO: THE CONSOLIDATED SECURITIES ACTION	Case No. 2:05-CV-01151-SRC-MAS Case No. 2:05-CV-02367-SRC-MAS

DECLARATION OF LEWIS KAHN IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENTOF LITIGATION EXPENSES FILED ON BEHALF OF KAHN SWICK & FOTI, LLC

I, Lewis Kahn, declare as follows:

1. I am a partner in the law firm of Kahn Swick & Foti, LLC. I submit this Declaration in support of our firm's application for an award of attorneys' 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.

1. My firm was appointed Co-Liaison Counsel in this class action while the case was pending in the U.S. District Court for the Eastern District of Louisiana. During this period of time, the tasks undertaken by my firm included those traditionally handled by liaison counsel, including advising on local rules, handling communications with the court and counsel, handling service, reviewing and commenting on pleadings and motions, and evaluating discovery.

2. The tasks undertaken by my firm subsequent to the transfer to the District of New Jersey included reviewing and analyzing trial transcripts for Vioxx personal injury cases at the request of lead counsel, and handling specific research assignments including those related to the Louisiana Direct Action statute. Additionally, my firm identified and recommended well-

respected New Jersey liaison counsel hired by lead counsel at the time of JPMDL transfer to the District of New Jersey.

3. The schedule attached hereto as Exhibit 1 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 2015 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.

4. 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 been excluded.

5. 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 and/or which have been accepted in other securities or shareholder litigation.

6. The total number of hours reflected in Exhibit 1 from inception through and including February 15, 2016, is 1,109.70. The total lodestar reflected in Exhibit 1 for that period is $606,122.00, consisting of $586,822.00 for attorneys' time and $19,300.00 for professional support staff time.

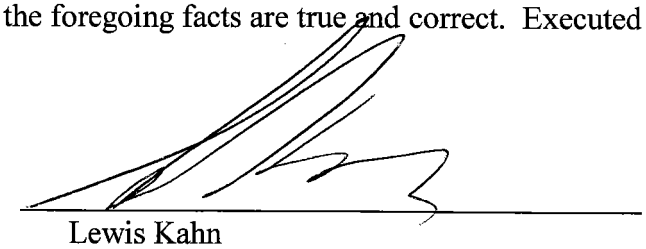
7. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

8. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of $1,901.18 in expenses incurred in connection with the prosecution of this Action.

9. 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.

10. 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 declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on April 26, 2016.



Lewis Kahn

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]

Kahn Swick & Foti, LLC

TIME REPORT

Inception through February 15, 2016

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Lewis Kahn	385.1	$770	$296,527.00
Of Counsel			
Eric O'Bell	40	$600	$24,000.00
Gabe Selig	11	$600	$6,600.00
Senior Counsel			
Associates			
Catherine Gauthier	321.3	$450	$144,585.00
Rebecca Matthews	31.3	$450	$14,085.00
Staff Attorneys			
Patricia ONeil	224.5	$450	$101,025.00
Paralegals			
Bronwyn Gibson	96.5	$200	$19,300.00
Litigation Support			
TOTALS	**1,109.70**		**$606,122.00**

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]

Kahn Swick & Foti, LLC

EXPENSE REPORT

CATEGORY	AMOUNT
Court Fees	$933.00
Postage & Express Mail	$132.43
Hand Delivery Charges	$247.50
Internal Copying	$500.00
Outside Copying	$88.25
TOTAL EXPENSES:	**$1,901.18**

Exhibit 3

KSF

KAHN SWICK & FOTI, LLC

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Madisonville, LA 70447

New York, New York

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The Firm

Kahn Swick & Foti, LLC ("KSF") (www.ksfcounsel.com) is a boutique law firm with offices in New York City, San Francisco and Louisiana. KSF focuses predominantly on class actions, in the areas of securities and consumer fraud, and on shareholder derivative and other complex litigation. Since its inception in 2000, KSF has recovered hundreds of millions of dollars for its clients.

The lawyers of KSF have extensive experience litigating complex cases in the following practice areas: (i) securities litigation; (ii) corporate governance and derivative litigation; (iii) consumer protection litigation; and (iv) shareholder merger and acquisition class action litigation. A sampling of the firm's current cases and recent recoveries is set forth below.

Securities Litigation

Current Cases

Archdiocese of Milwaukee Supporting Fund, et al., v. Halliburton Company, et al.
3:02-CV-1152-M
Northern District of Texas
Special Counsel for Plaintiff Class

Better, et al. v. YRC Worldwide, Inc. et al., 11-CV-2072-KHV/JPO
District of Kansas
Co-Lead Counsel

In re CytRx Corporation Securities Litigation, 2:14-cv-01956-GHK
Central District of California
Lead Counsel

Dougherty v. Esperion Therapeutics, Inc., et al., No. 16-10089
Eastern District of Michigan
Co-Lead Counsel

Dr. Joseph F. Kasper, et. al. v. AAC Holdings, Inc., et. al., 3:15-cv-00923 (Consolidated)
Middle District of Tennessee, Nashville Division
Co-Lead Counsel

In reEletrobras Securities Litigation, 15-cv-5754-JGK
Southern District of New York
Co-Lead Counsel

Ganues, et al. v. World Wrestling Entertainment, Inc., et al., 3:14-cv-1070-AWT
District of Connecticut
Lead Counsel

In re Orexigen Therapeutics, Inc., Securities Litigation, 15cv540 L (KSC)
Southern District of California
Lead Counsel

Pearlstein v. Blackberry Ltd., et al., 1:13-CV-07060-TPG
Southern District of New York
Lead Counsel

In re Petrobras Securities Litigation, 14-cv-9662
Southern District of New York
Member, Plaintiffs' Steering Committee for Individual Actions.

In re Rocket Fuel, Inc. Securities Litigation, 4:14-cv-03998-PJH
Northern District of California
Co-Lead Counsel

In re Tesco PLC Securities Litigation, 14 Civ. 8495 (RMB)
Southern District of New York
Lead Counsel

Recent Victories

Erica P. John Fund, Inc. v. Halliburton Co., et al., No. 3:02-cv-1152 (N.D. Tex. July 25, 2015), District Court certifies a class of securities fraud investors, overcoming Defendants' challenge to price impact in the wake of the Supreme Court's decision in Halliburton Co. v. Erica P. John Fund, Inc., 134 S. Ct. 2398 (2014) (Halliburton II) (Reaffirming the fraud-on-the-market doctrine and limiting Defendants' ability to rebut the presumption of reliance only upon proof that neither the alleged misrepresentations nor corrective disclosures impacted the stock price).

Erica P. John Fund, Inc. v. Halliburton Co., et al., 131 S. Ct. 2179 (2011), Special Counsel, federal securities class action against oilfield services company and a high-level officer, in which KSF was part of the team that obtained a unanimous decision by the U.S. Supreme Court vacating and remanding a decision of the Fifth Circuit regarding class certification.

Roberto Cohen v. NVIDIA Corp., 11-cv-17708 (9th Cir. 2009), federal securities class action brought against technology company and certain officers and directors, in which KSF and co-counsel obtained a unanimous decision by the Ninth Circuit on a petition for writ of mandamus seeking to vacate a lead plaintiff decision. KSF is currently Co-Lead Counsel in this case.

Recent Recoveries

In re Virgin Mobile USA IPO Litigation, 2:07-cv-05619-SDW-MCA (D.N.J.), *Co-Lead Counsel*, federal securities IPO-related class action against a company providing wireless communication services, certain officers and directors, certain controlling shareholder entities, and Virgin's underwriters, resulting in a cash settlement of **$19.5 million** for investors.

In re BigBand Networks, Inc Securities Litigation, 3:07-CV-05101-SBA (C.D. Cal.), *Co-Lead Counsel,* federal securities class action brought against a computer hardware corporation, certain officers and directors of the Company, and the Company's Underwriters, resulting in a cash settlement of **$11 million** for investors.

In re U.S. Auto Parts Networks, Inc. Securities Litigation, 2:07-cv-02030-GW-JC (C.D. Cal.), *Lead Counsel*, federal securities IPO-related class action against an online automotive supply company, certain members of its board of directors, and its underwriters, resulting in a cash settlement of **$10 million** for investors.

In re ShoreTel, Inc. Securities Litigation, 3:08-cv-00271-CRB (N.D. Cal.), *Lead Counsel,* federal securities IPO-related class action brought against an Internet protocol telecommunications company, certain of its officers and directors, and its underwriters, resulting in a cash settlement of **$3 million** for investors.

In re Xethanol Corporation Securities Litigation, 1:06-cv-10234-HB (S.D.N.Y.), *Lead Counsel*, federal securities fraud class action against an ethanol production company and certain of its officers and directors, resulting in a cash settlement of **$2.8 million** for investors.

Mongeli v. Terayon Comm. Systems Inc. et al., 4:06-cv-03936-CW (N.D. Cal.), *Co-Lead Counsel*, federal securities fraud class action brought against a communications systems corporation, the Company's outside auditor, and certain officers and directors, resulting in a cash settlement of **$2.73 million** for investors.

In re Opteum, Inc., Securities Litigation, 2:07-cv-14278-DLG (S.D. Fla.), *Co-Lead Counsel*, federal securities fraud class action brought against a Real Estate Investment Trust and certain of its officers and directors, resulting in a cash settlement of **$2.35 million** for investors.

In re: Meta Financial Group Inc., Securities Litigation, 10-4108-MWB, (N.D. Iowa), *Lead Counsel*, federal securities fraud class action against a bank and certain officers and

directors, resulting in a cash settlement of **$2.1 million** for investors (constituting 37.5% of maximum potential damages).

Corporate Governance and Derivative Litigation

Current Cases

Lowry v. Basile (Violin Memory, Inc. Derivative Litigation), No. 4:13-cv-05768
Nothern District of California
Counsel for Plaintiff

Orrego v. Lefkofsky (Groupon, Inc. Derivative Litigation), No. 12 CH 12420
Circuit Court of Cook County, Illinois, Chancery Division
Co-Lead Counsel

In re Polycom, Inc. Derivative Shareholder Litigation, No. 1-13-CV-256608
Superior Court of the State of California, Santa Clara County
Co-Lead Counsel

Recent Recoveries

In re Bank of America Corp. Securities, Derivative, and Employment Retirement Income Security Act (ERISA) Litigation, 09 Civ.580 (DC) (S.D.N.Y.). As Co-Lead Counsel in this shareholder derivative action filed in the Southern District of New York on behalf of Bank of America Corp. against current and former executive officers and directors of the company related to Bank of America's January 1, 2009, acquisition of Merrill Lynch & Co., Inc. in a stock-for-stock transaction, alleging, among other things, that certain material information was omitted from the joint definitive proxy statement filed with the Securities and Exchange Commission and mailed to stockholders on November 3, 2008 seeking shareholder consent for the issuance of shares necessary to consummate the Merger and certain other related matters and that the individual defendants breached their fiduciary duties in connection with the merger. KSF helped obtain a novel settlement with the defendants in which Bank of America agreed to adopt extensive corporate governance reforms that directly address the alleged deficiencies that gave rise to this action and are directly tailored towards avoiding a recurrence of the failures alleged in the action, including the formation of a board-level committee to oversee certain future acquisitions, and which resulted in a **$62.5 million** cash payment to Bank of America.

In re Barnes & Noble Stockholder Derivative Litigation, C.A. No. 4813-VCS (Del. Ch. Ct.). As Co-Lead Counsel in this shareholder derivative action filed in the Court of Chancery of the

State of Delaware on behalf of Barnes & Noble, Inc. against certain of its officers and directors, including Chairman Leonard Riggio, related to the company's 2009 acquisition of Mr. Riggio's private company Barnes & Noble College Booksellers, Inc., alleging that the purchase price, and the process by which it was agreed to, was not entirely fair to Barnes & Noble, Inc. and harmed shareholders, KSF helped obtain a settlement resulting in the recovery of **$29 million** for Barnes & Noble, Inc. in the form of reductions to the principal and interest payable to Mr. Riggio

In re FAB Universal Corporation Shareholder Derivative Litigation, Lead Case, No. 14-cv-687 (*Southern District of New York*). As Lead Counsel in this consolidated shareholder derivative action involving breach of fiduciary and other claims, brought derivatively on behalf of FAB Universal Corporation, against certain of its current and former directors and officers, including claims for breaches of fiduciary duties of loyalty, due care, good faith, independence, candor and full disclosure to shareholders; misappropriation of material, non-public information of the Company by certain individual defendants; and violations of Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 promulgated thereunder against certain individual defendants in connection with, among other things, the true circumstances of and public statements concerning the Company's kiosk business in China and the failure to disclose the issuance of RMB 100 million ($16.4 million) worth of bonds to Chinese investors in April 2013, KSF obtained a settlement involving numerous corporate governance reforms, including the creation a new disclosure committee to put effective procedures and protocols in place at the Company designed to ensure, to the extent possible, that all of the Company's public statements, including but not limited to SEC filings, press releases, and statements to non-Company individuals at public or private meetings, are vetted for accuracy, integrity, and completeness, and for reviewing with management its ongoing compliance with these protocols and procedures; modifications to the Company's Corporate Governance Guidelines to limit the positions of the Chairperson of the Board, directors' service of other public company boards; modifications to the charter of the Company's Audit Committee to provide that at least one non-executive member of the Audit Committee has general expertise in accounting or financial management; institution of director orientation and continuing education; adoption of a charter for the Compensation Committee; modifications to the Company's Code of Conduct to provide for formalized reporting of any hotline reports to the Company's independent directors; disclosure of the Company's corporate governance practices. The Company has also agreed to implement certain corporate-governance reforms once the Company records revenues at or exceeding $13.5 million in any two, consecutive reporting calendar quarters following six years following the settlement effective date, including modifications to the Company's Corporate

Governance Guidelines to limit memberships on multiple Company committees, including Chairman positions on such committees and Audit Committee memberships; retention of an independent consultant to conduct a yearly analysis of the Company's corporate governance; and creation of the position of Compliance Officer who will be tasked with oversight and administration of the Company's corporate governance policies.

In re Moody's Corporation Shareholder Derivative Litigation, No. 1:08-CV-9323 (S.D.N.Y.). As Lead Counsel for the demand-excused shareholder derivative actions filed on behalf of Moody's Corporation against current and former executive officers and directors of the company, asserting various claims, including for breach of fiduciary duty, in connection with, inter alai, Moody's credit ratings on various mortgage-backed securities, KSF helped obtain a settlement in which the settling defendants agreed that Moody's had implemented or will adopt, enhance and/or maintain certain governance, internal control, risk management and compliance provisions, designed to identify, monitor and address legal, regulatory and internal compliance issues throughout the business and operations of Moody's Investors Service, Inc., the credit rating agency operating subsidiary of the company

In re Morgan Stanley & Co., Inc. Auction Rate Securities Derivative Litigation, No. 1:08-CV-07587-AKH (S.D.N.Y.). As Lead Counsel for shareholders in this federal derivative action against a prominent broker-dealer to redress harms to the company from its sales and marketing of auction rate securities, KSF obtained substantial corporate governance reforms that promised to avoid a recurrence of similar harms in the future.

In re Star Scientific, Inc. Virginia Circuit Court Derivative Litigation, Lead Case No. CL13-2997-6 (*Circuit Court of the City of Richmond, Virginia*). As Lead Counsel in the consolidated state court shareholder derivative action filed on behalf of Star Scientific, Inc. against certain of its current and former directors and officers in connection with the Company's alleged false statements and misrepresentations concerning the benefits of, and market potential, for the Company's product Anatabloc®, including purported claims that Johns Hopkins University School of Medicine was conducting major studies of (and would make favorable findings concerning) the product, alleged concealed private placements and related-party transactions, certain alleged government investigations of the Company, an alleged December 2013 warning letter from the U.S. Food and Drug Administration, and certain alleged compensation packages awarded the Company's former directors and/or employees, KSF helped obtain a settlement involving sweeping corporate governance changes, including but not limited to, the creation of a new board-level committee to review and oversee the Company's legal, regulatory, compliance, and government affairs functions;

modifications to the charter of the Company's Audit Committee to strengthen the committee's oversight of the Company's disclosures and risk management process; modifications to the charter of the Company's Compensation Committee; creation of Corporate Governance Guidelines, which will provide for, among other things, the election of a lead independent director, director term limits, and continuing education for directors; the constitution of a new Governance and Nominating Committee to replace the existing Nominating Committee to monitor the Company's corporate governance guidelines; creation of the position of Compliance Officer who will be tasked with oversight and administration of the Company's corporate governance policies; and changes to the Company's Corporate Code of Business Conduct and Ethics.

Weil v. Baker, No. 08-CA-00787-SS (***In re ArthroCare Corp. Securities Litigation***, No. 08-cv-574-SS) (W.D. Tex.). As Co-Lead Counsel in the consolidated federal derivative action on behalf of ArthroCare Corporation against certain of its officers and directors arising from alleged improprieties in the company's marketing of spine wands, KSF helped obtain a cash settlement of **$8 million**, along with important corporate governance changes.

In re ProQuest Co. Shareholder Deriv. Litig., No. 2:06-cv-11845-AC-MKM (E.D. Mich.). As Co-Lead Counsel in a federal derivative action filed on behalf of ProQuest (now Voyager Learning Company) against certain of its officers and directors, KSF helped obtain a settlement including important corporate governance changes.

Consumer Protection Litigation

Recent Recoveries

In re: General Motors Corp. Speedometer Products Liability Litigation, MDL No. 1896, *Co-Lead Counsel*. Appointed co-lead counsel for national class of 4.2 million purchasers of certain GM trucks with defective speedometers. The case was resolved successfully by GM agreeing to fix defective speedometers for free and to reimburse class members for all past repair costs.

Rose Goudeau, et. al. v. The Administrators of the Tulane Educational Fund, et. al., No. 2004-04758, Sec. 13, Div. J (Civil District Court for the Parish of Orleans), *Class Co-Counsel*. Nationwide class action certified on behalf of near relatives of individuals who donated their bodies to the Tulane Willed Body Program. The complaint alleged that the Tulane Willed Body Program sold the donated bodies and/or body parts to third parties. A settlement of **$8,300,000** was obtained for the class members.

Sterling Savings Bank v. Poleline Self-Storage LLC, No. CV-09-10872 (Idaho Dist. Ct.), *Class Counsel*. In this putative class action, a borrower alleged that the Bank improperly used the 365/360 method of interest calculation on several commercial loans. A settlement of **$3.5 million** was recovered for bank customers.

Shareholder M&A Class Action Litigation

Current Cases

In re BTU International, Inc. Stockholders Litigation, Consol. Case No. 10310-CB
Delaware Court of Chancery
Co-Lead Counsel

In re Concur Technologies, Inc. Shareholder Litigation, Case No. 14-2-26630-8
King County Superior Court, Washington
Lead Counsel

Helen Moore v. Macquarie Infrastructure and Real Assets, et al. (Cleco Corporation Merger), Case No. 251,417, c/q 251,456 and 251,515, Div. "C"
Ninth Judicial District Court for the Parish of Rapides, Louisiana
Interim Co- Lead Counsel

Heron v. International Rectifier Corporation, et al., Case No. BC556078
Superior Court of the State of California, County of Los Angeles
Co-Lead Counsel

In re LCA-Vision Inc. Stockholders Litigation, C.A. 9369-VCL
Delaware Court of Chancery
Co-Lead Counsel

Miller v. Hawaiian Electric Industries, Inc. (Hawaii Electric Industries, Inc. Merger), Civil No. 14-1-2531-12 KTN
First Circuit Court, State of Hawaii
Co-Lead Counsel

In re Paramount Gold and Silver Corp. Stockholders Litigation, Consol. Case No. 10499-VCN
Delaware Court of Chancery
Member of Executive Committee

In re Riverbed Technology Inc Stockholders Litigation, Consol. Case No. 10484-VCG
Delaware Court of Chancery
Member of Executive Committee

In re Saba Software, Inc. Stockholder Litigation, Consol. Case No. 10697-VCN
Delaware Court of Chancery
Member of Executive Committee

In re Sigma-Aldrich Corporation Shareholder Litigation, Case No. 1422-CC09684
Circuit Court for the 22th Judicial Circuit, Missouri
Co-Lead Counsel

In re Susser Holdings Corp. Stockholders Litigation, C.A. 9613-VCG
Delaware Court of Chancery
Co-Lead Counsel

Turberg v. Forest Laboratories, Inc., et al., Index No. 650579/2014
Supreme Court of the State of New York, County of New York
Member of the Executive Committee

In re Zale Corporation Stockholders Litigation, C.A. 9388-VCP
Delaware Court of Chancery
Member of Plaintiffs' Executive Committee

Successfully Resolved Cases

In re Adams Golf Shareholder Litigation, C.A. No. 7354-VCL (Del. Ch. 2012). *Chair of Plaintiffs' Executive Committee.* Class action for breach of fiduciary duties to shareholders relating to a proposed merger of sporting goods companies. Settlement consisted of additional material disclosures to proxy statements.

In re EnergySolutions, Inc. Shareholder Litigation, C.A. 8203-VCG (Del. Ch. 2014). *Plaintiff's Co-Lead Counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of nuclear energy related companies worth $1.1 billion ($375 million in proposed shareholder consideration). Settlement consisted of $0.40 price bump which increased the consideration to shareholders by more than 10% or approximately $38 million. Settlement also included over 20 pages of additional disclosures to proxy statement relating to process and pricing claims.

Hill v. Cohen, et al. (Summit Financial Services Group, Inc.), 2013 CA 017640 (15th Jud. Cir. Ct., Fla.). *Co-lead counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of a financial services company. Contingent and delayed aspects of the proposed merger consideration, worth several million dollars, were accelerated and paid to shareholders ahead of schedule and settlement involved several pages of additional disclosures were made to the proxy statement.

In re Medtox Scientific, Inc. Shareholders Litigation, Court File No. 62-CV-12-5118 (Minn. Dist. Ct. 2013). *Plaintiffs' Lead Counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of medical technology companies. Settlement consisted of additional material disclosures to proxy statement.

Sachs Investment Group v Sun Healthcare Group, Inc., et al. 30-2012-580354-CU-SL-CXC (Sup. Ct. of Cal., 2013). *Plaintiffs' Counsel.* Class action for breach of fiduciary duties to shareholders relating to a proposed merger of healthcare companies. Settlement consisted of additional material disclosures to proxy statement.

Antitrust Litigation

Current Cases

Jaynes, et al. v. American Express Company, et al. , No. 1:15-cv-1598
Eastern District of New York
Member of Plaintiffs' Executive Committee

In re National Football League Sunday Ticket Antitrust Litigation, No. 2:15-ml-02668-BRO-JEM
Central District of California

Attorneys

Partners

Lewis S. Kahn

Lewis Kahn is a founding partner of KSF and serves as the firm's managing partner. A substantial portion of Mr. Kahn's practice is devoted to representing shareholders in connection with damages suffered as a result of securities fraud and breaches of fiduciary duties.

Mr. Kahn has represented lead and representative plaintiffs in numerous national cases, including *In re Bank of America Corp. Securities, Derivative, and Employment Retirement Income Security Act (ERISA) Litigation*, 09 Civ.580 (DC) (S.D.N.Y.) **($62.5 million** cash payment to Bank of America o/b/o Board); *In re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-VCS (Del. Ch. Ct.) (recovery of **$29 million** for Barnes & Noble, Inc. in the form of reductions to the principal and interest payable to CEO); and *In re EnergySolutions, Inc. Shareholder Litigation*, C.A. 8203-VCG (Del. Ch. 2014) ($0.40 price bump which increased the consideration to shareholders by more than 10% or approximately **$38 million**).

Additionally, Mr. Kahn oversees the firm's securities class action practice, which has been responsible for settlements including *In re Virgin Mobile USA IPO Litigation*, 2:07-cv-05619-

SDW-MCA **($19.5 million settlement**), *In re BigBand Networks, Inc Securities Litigation*, 3:07-CV-05101-SBA **($11 million settlement**), and *In re U.S. Auto Parts Networks, Inc. Securities Litigation*, 2:07-cv-02030-GW-JC **($10 million settlement**). Moreover, Mr. Kahn is co-counsel with David Boies in the long-running securities class action against Halliburton, where the firm has twice beaten back Halliburton's attempt in the United States Supreme Court to eviscerate shareholder rights. Mr. Kahn oversees one of the most successful U.S. appellate practices in the securities field.

In addition to securities lawsuits, Mr. Kahn has significant experience with consumer fraud and mass tort class actions. Mr. Kahn has been appointed to various leadership positions in federal class action litigation. Mr. Kahn also manages the firm's portfolio monitoring program for public and private institutional investors.

Mr. Kahn holds a Bachelor's degree from New York University and received a Juris Doctor from Tulane Law School in 1994. He has been a member of the Louisiana State Bar Association since 1995, and is admitted to practice law before the United States Supreme Court, United States Court of Appeals for the 2nd Circuit, and the United States District Courts for the Eastern, Middle and Western Districts of Louisiana.

Michael A. Swick

Michael A. Swick is a co-founding partner of KSF and heads the firm's case starting department, overseeing case evaluation and initiation in the firm's securities, shareholder derivative and mergers & acquisitions practice groups. Prior to founding KSF, Mr. Swick had a distinguished career working at several of the nation's premiere class action litigation firms.

Relying on analytical skills honed at Tulane Law School and Columbia University's Graduate program of Arts & Sciences, throughout his career, Mr. Swick has played an important role in investigating large securities frauds and in developing and initiating litigations against the nation's largest corporations. Over his career, Mr. Swick has also participated in the litigation of cases that have resulted in hundreds of millions of dollars in recoveries for aggrieved shareholders and institutional investors.

Mr. Swick also works closely with the firm's institutional investor clients and participates in the management and development of KSF's portfolio monitoring systems.

In addition to his unique educational background, following law school, Mr. Swick also worked on the New York Mercantile Exchange, where he was involved first-hand, in the open-outcry trading of crude oil and natural gas futures and options contracts.

Mr. Swick received a Juris Doctor from Tulane Law School in 1994, and a Masters of Political Philosophy from Columbia University Graduate School of Arts & Sciences in 1989 as well as a joint B.A. in Philosophy and Political Science from State University of New York at Albany in 1988. Mr. Swick was admitted to the State Bar of New York in 1997 and is admitted to practice before the United States District Court for the Southern District of New York, and the United States Supreme Court.

Charles C. Foti, Jr.

Charles C. Foti, Jr. served as the Attorney General for the state of Louisiana from 2004-2008, after serving for 30 years as one of the most innovative law enforcement officials in the United States as Orleans Parish Criminal Sheriff. Throughout his career, General Foti has remained committed to public service.

As Attorney General for the state of Louisiana, General Foti's achievements include:

- Recovering over $24 million for Louisiana consumers in consumer fraud matters, $8 million in anti-trust litigation, $9.1 million for state employees through Office of Group Benefits, over $2 million for auto complaints, over $33 million in Medicaid Fraud.
- Investigating and apprehending numerous contractor fraud criminals in the wake of one of the worst natural disasters in United States history, Hurricane Katrina.
- Doubling the number of arrests for crime against children through the Louisiana Internet Crimes Against Children Task Force.

Prior to serving as Louisiana Attorney General, over the course of a distinguished career spanning decades, General Foti took countless cases to trial. General Foti served as the head of the criminal division of the city of New Orleans Attorney's Office. He served as the police attorney for the city of New Orleans and prosecuted federal cases including prisoner overcrowding cases. He also served as an assistant District Attorney for Orleans Parish. Even early in his career, he tried cases as in house counsel for the nationally-known insurance carrier, Allstate.

In his tenure as Orleans Parish Criminal Sheriff, General Foti oversaw the enormous expansion of the parish jail, growing from 800 prisoners in 1973 to more than 7,000 currently. As the prison expanded, so did the need for education and rehabilitation skills for prisoners. As Sheriff, General Foti started the first reading and GED programs, work release programs,

drug treatment programs and the nation's first boot camp at the local level, all to prepare prisoners for a future without crime. Administratively, General Foti managed a multi-million dollar budget and a complex organization of more than 1,400 employees.

General Foti has for many years been an advocate for the elderly. As Sheriff, he and a small army of volunteers provided Thanksgiving meals for senior citizens in the New Orleans area. He started a back-to-work program for senior citizens that helps people over the age of 55 get back into the workforce.

General Foti received his Juris Doctor degree from Loyola University Law School in 1965, after serving his country in the United States Army from 1955 through 1958.

Kim E. Miller

Kim E. Miller is a KSF partner who specializes in securities litigation and other complex class action litigation. Ms. Miller also supervises the New York City office of KSF. Prior to joining the firm in 2006, Ms. Miller was a partner at one of the nation's leading plaintiff class action firms. Ms. Miller also spent two years as a securities litigator on the defense side.

Over the course of her career, Ms. Miller has represented many thousands of harmed investors in class actions filed throughout the country. In a recent Order and final judgment in which KSF served as Lead Counsel, *Elgaouni v. Meta Financial Group, Inc.*, 10-4108-MWB (N.D. Iowa) (June 29, 2012) (Bennett, J.) the Federal District Court noted:

> "Indeed, I find that this action has been a model of how complex class actions should be conducted. Counsel for the Lead Plaintiff, Kim Miller, and her firm, Kahn Swick & Foti, L.L.C., and [Defense Counsel] showed the utmost professionalism and civility, required very limited court intervention while diligently pursuing their objectives, and sought and obtained a fair and reasonable settlement before incurring substantial costs for discovery and trial preparation, all to the benefit of the Lead Plaintiff, Class Members, and the Defendants....I applaud their skill, expertise, zealousness, judgment, civility, and professionalism in putting the best interests of their respective clients first and not only foremost, but exclusively ahead of their law firms' financial interests. Ms. Miller and [Defense Counsel] and their respective law firms earned my unyielding admiration and respect in this case for the efficient and exceptionally reasonable way in which they found a prompt, fair, and equitable solution to the complex problems their clients faced in this litigation, and they accomplished all of this with virtually no judicial

> intervention. In sum, my only deeply held regret in this case is that bioscience has not sufficiently advanced to allow the cloning of Ms. Miller and [Defense Counsel] for lead counsel roles in all complex civil class action litigation in the Northern District of Iowa."

At another recent settlement hearing in which KSF served as Lead Counsel, *In re ShoreTel, Inc. Sec. Litig.*, 3:08-cv-00271-CRB (N.D. Cal.), the Federal District Court (Breyer, J.) noted, with respect to Ms. Miller, "You're one of the best lawyers to appear in front of me in a long time..."

In addition to litigating many securities fraud and IPO-related securities cases, Ms. Miller has worked extensively on cases involving allegations of improper directed brokerage arrangements and excessive charges in mutual fund cases brought pursuant to the 1934 Securities Exchange Act and/or the Investment Company Act of 1940. She was also involved in the mutual funds late trading/market timing litigation. Ms. Miller's class action trial experience includes participating as a trial team member in a four-month jury trial involving fraud-based claims the resulted in a jury verdict in favor of Plaintiffs and the Class.

In the course of her career, Ms. Miller has been involved in a variety of cases in which large settlements were reached, including:

- **Settlement value of $127.5 million** *Spahn v. Edward D. Jones & Co., L.P.,* 04-cv-00086-HEA (E.D. Mo.)
- **$110 Million Recovery.** *In re StarLink Corn Products Liability Litigation*, MDL No. 1403 (N.D. Ill.)
- **$100 Million Recovery.** *In re American Express Financial Advisors*, Inc. Sec. Litig., 1:04-cv-01773-DAB (S.D.N.Y.)

Ms. Miller is KSF's lead litigator in its securities class action practice. While at KSF, Ms. Miller has supervised all aspects of the following successful litigations, among many others: *In re Virgin Mobile USA IPO Litig.*, 2:07-cv-05619-SDW-MCA (D.N.J.) **($19.5 million settlement)**; *In re BigBand Networks, Inc. Sec. Litig.*, 3:07-CV-05101-SBA (N.D. Cal.) **($11 million settlement)**; and *In re U.S. Auto Parts Networks, Inc. Sec. Litig.*, 2:07-cv-02030-GW-JC (C.D. Cal.) **($10 million settlement)**.

Ms. Miller is also currently the lead litigator in the following cases in which KSF is Lead or Co-Lead Counsel: *Stan Better and YRC Investors Group v. YRC Worldwide, Inc. et al.*; 2:11-cv-

02072-KHV-JPO (D. Kan.); *In re Tesco PLC Securities Litigation,* 14 Civ. 8495 (RMB), (S.D.N.Y.); *Ganues, et al. v. World Wrestling Entertainment, Inc., et al.*, 3:14-cv-1070-AWT, (D. Conn.); *Pearlstein v. Blackberry Ltd., et al.*, 1:13-CV-07060-TPG (S.D.N.Y.); and *Tony Nguyen v. Endocyte, Inc. and P. Ron Ellis*, 1:14-cv-1048-TWP-MJD, (S.D. Ind.).

Ms. Miller is also currently the lead litigator for the firm in its role as Special Counsel for Plaintiffs in *Archdiocese of Milwaukee Supporting Fund, et al., v. Halliburton Company, et al.*, 3:02-CV-1152-M (N.D. Tex.).

After graduating with honors from Stanford University in 1992 with a double major in English and Psychology, Ms. Miller earned her Juris Doctor degree from Cornell Law School, *cum laude*, in 1995. While at Cornell, Ms. Miller was the Co-Chair of the Women's Law Symposium, Bench Brief Editor of the Moot Court Board, and a member of the Board of Editors of the Cornell Journal of Law & Public Policy. She was also a judicial intern for The Honorable David V. Kenyon in the Central District of California. Her *pro bono* work includes representing families of 9/11 victims at *In re September 11 Victim Compensation Fund* hearings. Ms. Miller has also served as a fundraiser for the New York Legal Aid Society. She is admitted to practice in the States of California and New York and before the United States District Courts for the Southern and Eastern Districts of New York and the Northern, Southern, and Central Districts of California. She is also admitted to the United States Courts of Appeal for the Second, Fifth, Ninth and Eleventh Circuits.

Ramzi Abadou

Mr. Abadou is a KSF partner who oversees KSF's San Francisco office. He specializes in securities litigation and has been responsible for securing securities recoveries exceeding $1 billion for defrauded investors. Before joining KSF, Mr. Abadou was the managing partner of an east coast-based plaintiff class action firm's San Francisco office and a partner at a prominent plaintiff class action firm in San Diego.

He is responsible for numerous precedent-setting decisions at all stages of securities litigation, including *In re HP Secs. Litig.*, 2013 U.S. Dist. LEXIS 168292 (N.D. Cal. 2013); *In re MGM Mirage Sec. Litig.*, 2013 U.S. Dist. LEXIS 139356 (D. Nev. 2013); *Dobina v. Weatherford Int'l*, 909 F. Supp. 2d 228 (S.D.N.Y. 2012); *Minneapolis Firefighters' Relief Ass'n v. Medtronic, Inc.*, 278 F.R.D. 454 (D. Minn. 2011); *In re SemGroup Energy Partners, L.P.*, 729 F. Supp. 2d 1276 (N.D. Okla. 2010); *Borochoff v. Glaxosmithkline PLC*, 246 F.R.D. 201 (S.D.N.Y. 2007); and *In re Cardinal Health, Inc. Sec. Litig.*, 226 F.R.D. 298 (S.D. Ohio 2005).

In 2010, Mr. Abadou was named one of the Daily Journal's Top 20 Lawyers in California under 40 and, since 2012, has been selected for inclusion in either Super Lawyers or Benchmark Litigation as a leading securities litigation practitioner. He has lectured on securities litigation at Stanford University Law School, the University of San Diego School of Law and Boston College Law School and is a faculty member for the Practicing Law Institute's Advanced Securities Litigation Workshops.

Over the years, federal courts have also commended Mr. Abadou for his handling of securities matters. In *Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al.* Case No. 0:08-cv-06324-PAM-AJB (D. Minn.) (November 8, 2012), the Hon. Chief Magistrate Judge Arthur Boylan stated:

> "I've been a judge, as you know, either in state or federal court, for over 26 years, and you get a feel for [] the quality of representation before you. But more than that, the quality of the people, personally and professionally. And [] the gentlemen who are here in the courtroom, [] Ramzi [Abadou], exhibited such professionalism and such hard work and such good faith in pursuing this."

Similarly in Tripp, et al. v. IndyMac Bancorp, Inc., et al., Case No. 2L07-CV-1635-GW (VBK) (January 28, 2013), the Hon. George H. Wu stated in reference to Mr. Abadou that:

> "Counsel actively, thoroughly and impressively litigated a complex subject matter (both factually and legally), all the while confronting formidable defense counsel. Obviously, the plaintiff class did not face a simple path if it continued with this litigation into further discovery, summary judgment motions and, eventually, trials and, potentially appeals. Counsel has obtained a not insubstantial settlement figure as the result of their hard, and capable, work."

Mr. Abadou is a member of the San Francisco Bar Association, the Federal Bar Association for the Northern District of California and is a pro bono panelist with Federal Bar Association Justice & Diversity Project. He is admitted to the California Bar and is licensed to practice in all California state courts, as well as all of the United States District Courts in California and the United States Court of Appeals for the Ninth Circuit.

J.D. Boston College Law School (2002)
M.A. Columbia University in the City of New York (1997)
B.A. Pitzer College (1994)

Melinda A. Nicholson

Melinda A. Nicholson, a partner in KSF's Louisiana office, focuses on shareholder derivative and class action litigation, representing institutional and individual shareholders in corporate governance litigation and securities fraud actions, and antitrust litigation, representing individuals and businesses that have been harmed by anticompetitive behavior of those violating federal and/or state antitrust laws. Prior to joining the firm in 2010, Ms. Nicholson worked for defense firms in New York, handling complex commercial litigations and regulatory investigations involving a variety of legal issues, including fiduciary obligations, securities violations, contractual breaches, antitrust and insurance coverage.

Ms. Nicholson is actively involved in cases pending before various federal and state courts across the United States, including:

- *Dougherty v. Esperion Therapeutics, Inc., et al.,* No. 16-10089 (E astern District of Michigan), Co-Lead Counsel
- *Jaynes, et al. v. American Express Company, et al.*, No. 1:15-cv-1598 Eastern District of New York (Member of Plaintiffs' Executive Committee);
- *Orrego v. Lefkofsky (Groupon, Inc. Derivative Litigation),* 12 CH 12420 (Ill. Cir. Ct., Cook Cnty., Ch. Div.) (Co-Lead Counsel).
- *In re Polycom, Inc. Derivative Shareholder Litigation, 1-13-CV-256608 California Superior Court, Santa Clara County (Co-Lead Counsel)*

Since joining KSF, Ms. Nicholson has also been involved in a number of cases which ultimately resulted in successful settlements, including:

- *In re Bank of America Corporation Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09-MD-2058 (S.D.N.Y.) (Court-approved settlement including **$62.5 million cash recovery** and substantial corporate governance changes);
- *In re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-VCS (Del. Ch. Ct.) (settlement resulted in **$29 million recovery** for the company);
- *In re FAB Universal Corporation Shareholder Derivative Lit*, Lead Case No. 14-cv-687 (D.N.Y.) (settlement involving broad corporate governance reforms);

- *In re Moody's Corporation Shareholder Derivative Litigation*, 1:08-CV-9323 (S.D.N.Y.) (settlement involving comprehensive corporate governance reforms). and

- *In re Star Scientific, Inc. Virginia Circuit Court Derivative Litigation*, Lead Case No. CL13-2997-6 (Circuit Court of the City of Richmond, Virginia) (settlement involving sweeping corporate governance reforms).

Ms. Nicholson completed a joint B.A./J.D. program at Tulane University, receiving a B.A. in Political Science, with a concentration in American Politics and Policies and a minor in Economics, from Tulane in 2003 and a J.D. from Tulane in 2005. While at Tulane Law School, Ms. Nicholson served as a Notes and Comments Managing Editor for the *Tulane Law Review*, which published her comment, *The Constitutional Right to Self-Representation: Proceeding Pro Se and the Requisite Scope of Inquiry When Waiving Right to Counsel*, 79 TUL. L. REV. 755 (2005). She has received numerous awards, including the Dean's Medal for attaining the highest grade point average during the third year, the George Dewey Nelson Memorial Award for attaining the highest grade point average in common law subjects throughout the three years of law study, and Order of the Coif. She graduated from the law school summa cum laude and ranked second in her class.

Ms. Nicholson is admitted to practice in Louisiana and New York, and before the United States District Courts for the Eastern District of Louisiana, Western District of Louisiana, Southern District of New York, and District of Colorado.

Michael J. Palestina

Mr. Palestina practices securities and other complex class action litigation. He focuses his practice on securities litigation involving mergers and acquisitions. In his capacity as a KSF partner, Mr. Palestina currently serves as lead, co-lead, or executive committee counsel in several ongoing M&A cases and has previously served in the same capacity in several successfully resolved M&A cases.

For example, Mr. Palestina took part in the successful resolution of *In re EnergySolutions, Inc. Shareholder Litigation*, Consol. C.A. 8203-YCG (Del. Ch. 2013), a securities class action involving claims for breach of fiduciary duties to shareholders relating to a proposed merger of nuclear energy related companies worth $1.1 billion ($375 million in proposed shareholder consideration), where there was a $0.40 price increase, which increased the consideration to shareholders by more than 10%, or approximately $38 million, and over 20 pages of additional disclosures to the proxy statement relating to process and pricing claims. Mr. Palestina similarly had an active role in the successful resolution of *Hill v. Cohen, et al.*

(Summit Financial Services Group, Inc.), 2013 CA 017640 (15th Jud. Cir. Ct., Fla.), another securities class action, where certain contingent and delayed aspects of the proposed merger consideration, worth several million dollars, were accelerated and paid to shareholders ahead of schedule and several pages of additional disclosures were made to the proxy statement.

Prior to joining KSF, Mr. Palestina clerked for the honorable Catherine D. Kimball, former Chief Justice of the Louisiana Supreme Court, and practiced law at a well-respected New Orleans litigation firm. While there, Mr. Palestina gained valuable trial experience, focused on complex commercial litigation, and represented a number of judges and his fellow lawyers regarding ethical issues before the State's judicial and attorney disciplinary systems.

Mr. Palestina graduated from Tulane University in 2005 with a Bachelor of Arts in Political Science. He earned his J.D. in 2008 from Loyola University of New Orleans College of Law, where he graduated magna cum laude, was a William L. Crowe, Sr. Scholar, and was inducted into the Order of Barristers. While in law school, Mr. Palestina was a member of the Loyola Law Review and Loyola Moot Court, was the first place oralist in the Loyola Intramural Moot Court Competition, and represented Loyola at the Stetson International Environmental Moot Court Competition (where he was the fourth place oralist overall) and on the National Team at the New York Bar Association's National Moot Court Competition (where his team advanced to the finals). Mr. Palestina also served as a research assistant to the Leon Sarpy Professor of Law Professor Kathryn Venturatos Lorio, whom he assisted in a revision of her Westlaw treatise on Louisiana Succession and Donations, and as a Judicial Intern to Magistrate Joseph C. Wilkinson, Jr. of the United States Federal District Court for the Eastern District of Louisiana. Mr. Palestina's Law Review article, Of Registry: Louisiana's Revised Public Records Doctrine, was published in the Loyola Law Review.

Mr. Palestina is licensed to practice in Louisiana state and federal courts.

Of Counsel

Andrew J. Gibson

Mr. Gibson is of counsel to KSF. Andrew focuses his practice on merger and acquisition litigation, shareholder derivative actions, and other complex class action litigation. Mr. Gibson is also responsible for the formation and management of the firm's Business Loss Claim division, wherein he represents hundreds of businesses and non-profit organizations in claims under the Deepwater Horizon Economic and Property Damage Settlement. He also has broad experience representing clients in commercial and casualty litigation in Louisiana state and federal courts and has obtained a consistently successful record for his clients.

Mr. Gibson received his J.D. from Loyola University New Orleans College of Law in 2004. While in school, he served as a Teaching Assistant and Staff member for the Moot Court program, was twice elected to the Executive Board of the Student Bar Association, and clerked at a nationally recognized law firm. During the summer of 2003, he studied Latin American civil law systems and international arbitration at the University of Costa Rica School of Law in San Jose, Costa Rica. He earned a Bachelor of Science degree in Business with a concentration in Pre-Law from the E.J. Ourso College of Business at Louisiana State University in 1997 and went on to work as a manager in the marketing department of a regional telecommunications company.

Mr. Gibson is a proud veteran of the United States Marine Corps where he served in the infantry as a Non-Commissioned Officer.

Mr. Gibson is very active in the local business community and has served on the Board of Directors and as Chairman of the Governmental Affairs Committee for the Saint Tammany West Chamber of Commerce, as a member of the St. Tammany Parish Home Rule Charter Committee (2014-15) and as a member of the St. Tammany Parish Inspector General Task Force (2013-2014).

Neil Rothstein

Neil Rothstein has spent more than twenty years prosecuting class action litigation on behalf of shareholders and consumers. He is a graduate of Case Western Reserve University (B.A. 1986) and the Temple University School of Law (J.D. 1989).

Mr. Rothstein has extensive experience in all plaintiff-side phases of securities, antitrust, consumer, and shareholder derivative litigation. He has always believed that the clients' needs come first. In that light, he focuses on helping to lead Kahn Swick & Foti, LLC in client development and communications, client education and client participation in litigation in which they have been financially and otherwise injured.

Associates

Alexander L. Burns

Alexander L. Burns is an associate in KSF's Louisiana office. Mr. Burns graduated with honors from the University of Southern Mississippi in 2000 with a B.S.B.A. in accounting. In 2001, he earned his Master's In Professional Accountancy. He has been a licensed CPA since 2003. From 2001 to 2004 Mr. Burns was employed by Ernst & Young, L.L.P., auditing the financial statements of both privately held and publicly traded entities spanning a variety

of industries including casino gaming, health care, insurance, and energy. Following the Enron scandal of the early 2000s, and anticipating the need for attorneys with a strong understanding of accounting issues, Mr. Burns left E&Y to attend law school in 2004.

Mr. Burns received his J.D. and B.C.L. from Louisiana State University's Paul M. Hebert Law Center in 2007. While at LSU, he was awarded the CALI Award for Academic Excellence in Contracts, served as Treasurer of the Trial Advocacy Board, and has competed on various interschool mock trial teams. Mr. Burns has since practiced civil litigation, representing his clients' interests in contentious matters in both state and federal courts. All the while, Burns has remained active as an attorney coach and mentor to law students in LSU's Trial Advocacy Program.

Mr. Burns is a licensed Certified Public Accountant, and is admitted to practice in Louisiana, the related Federal District Courts, and the United States Fifth Circuit Court of Appeals.

Bruce W. Dona

Bruce Dona, an associate in KSF's New York office, focuses on federal securities class action, shareholder M&A litigation, antitrust, and shareholder derivative litigation. He is actively involved in cases pending before various federal and state courts across the United States.

Mr. Dona received his J.D. from George Washington University Law School in 2009. During the summer of 2007, he studied international trade law and comparative mergers and acquisitions in Rio de Janeiro, Brazil. He received his B.A. in 2004 with a double major in International Affairs and Foreign Languages (Spanish and French) from Lewis and Clark College. He is fluent in Spanish, French and Portuguese.

Mr. Dona is admitted to practice in New York and is a member of the New York State Bar Association.

J. Ryan Lopatka

J. Ryan Lopatka, an associate in KSF's Louisiana office, focuses on federal securities class action litigation. He is involved in cases pending before federal courts across the United States.

Mr. Lopatka received his J.D. from Tulane University Law School in 2010. During the summer of 2009, he studied international capital markets and securities law at Cambridge University

and Queen Mary School of Law in London, England. He received his B.A. with honors in history from Loyola University New Orleans in 2004.

Mr. Lopatka is admitted to practice in Louisiana and Illinois and is a member of the Louisiana and Illinois State Bar Associations and Chicago Bar Association.

Publications:

- Author, "The Problem of Circumventing the Labor Management Reporting and Disclosure Act by Using the Ancillary Business Model," Hot Topics in the Legal Profession - 2010, Quid Pro Law Books (2010).
- Contributing Researcher, NLRA Rights in the Nonunion Workplace, BNA Books (2010).

Michael R. Robinson

Michael R. Robinson, an associate in KSF's Louisiana office, focuses on federal securities class actions as well as shareholder derivative litigation. He is actively involved in cases pending before various federal and state courts across the United States.

Mr. Robinson received his B.A. in Political Science from the University of California at Irvine in 1995, and J.D. With Distinction from The University of Iowa College of Law in 2002. During his time in law school, Mr. Robinson served as Managing Editor on the school's Journal of Transnational Law & Contemporary Problems, and in the summer of 2000, he studied international corporate law at the University of Heidelberg in Germany. After law school, Mr. Robinson served as a Law Clerk to the Honorable Charles R. Wolle, a federal judge on the United States District Court for the Southern District of Iowa.

Following his judicial clerkship, Mr. Robinson practiced corporate governance litigation in one of Delaware's largest defense firms, and securities arbitration at a prominent New Orleans firm. In 2014, Mr. Robinson earned an LLM degree in Tax from Boston University's School of Law.

Mr. Robinson is admitted to practice in Louisiana, Delaware, and Illinois, and is a member of the Louisiana and Delaware State Bar Associations as well as the Federal and New Orleans Bar Associations.

Christopher Tillotson

Christopher Tillotson, an associate in KSF's Louisiana office, focuses on shareholder M&A litigation and federal securities class action litigation. He is involved in cases pending before courts across the United States.

Mr. Tillotson received his J.D./M.B.A. in 2014 from Washington University in St. Louis, where he focused his studies on the interplay between securities regulations, advanced finance, accounting, and business acquisitions. During his time in law school, Mr. Tillotson served as an associate editor on the Washington University Journal of Law and Policy and earned an Honor Scholar Award for his academic performance. He received his B.A. in Finance from Tulane University in 2009.

Prior to joining KSF, Mr. Tillotson gained valuable experience serving as outside general counsel for several companies headquartered in New York. He also served as an in-house compliance analyst and legal intern for one of the nation's leading healthcare companies.

Mr. Tillotson is licensed to practice in Louisiana and New York.

Matthew P. Woodard

Matthew Woodard, an associate in KSF's Louisiana office, focuses on federal securities class action litigation. He is involved in cases pending before federal courts across the United States.

Mr. Woodard received his J.D. from Tulane University School of Law in 2012, where he served as the Senior Managing Editor for the Tulane Journal of Law & Sexuality: Volume 21. He received his B.A. in English, cum laude with honors, from The University of the South: Sewanee in 2009.

Mr. Woodard is admitted to practice in Louisiana and is a member of the Louisiana State Bar Association.

Exhibit 3K

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 SHELLY A. SANFORD IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF GOFORTH LEWIS SANFORD LLP/SANFORD LAW FIRM

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me the undersigned notary on this day, personally appeared Shelly A. Sanford (hereinafter called Declarant) and on her oath stated:

1. My name is Shelly A. Sanford. I am an attorney licensed in the State of Texas since 1992 and in good standing. I am over 18 years of age, of sound mind and competent to make this Declaration.

2. My firm is Shelly A. Sanford PLLC, also known as the Sanford Law Firm. I am a former partner in firm of Goforth Lewis Sanford LLP (GLS) and am the post-dissolution representative for the firm following the death of Carlene Rhodes Lewis on June 5, 2006.

3. By this Affidavit, I address my time as well as the time of Carlene Rhodes Lewis and the expenses of the GLS firm in the above entitled and numbered proceedings. I submit this Declaration in support of our application for an award of attorneys' fees in connection with services rendered in the Action and have personal knowledge of the facts stated.

4. Attached as Exhibit 1 to this Affidavit is a copy of the New York Times obituary of Carlene Rhodes Lewis, and a file-marked copy of her application for appointment to the Plaintiff's Steering Committee in the Vioxx Products Liability Litigation, MDL No. 1652, in New Orleans. The latter is presented because it provides history for Carlene in the Vioxx litigation, was personally prepared and signed by Carlene on March 15, 2005, and was filed on March 16, 2005. Unfortunately, Carlene did not live to see the resolution of the above entitled and numbered Merck securities MDL cases.

5. Some of the early history of the Vioxx products liability case was also documented by former NPR reporter, Snigdha Prakash, in her 2011 book, All The Justice Money Can Buy: Corporate Greed on Trial, an excerpt of the book is attached as Exhibit 2. Ms. Prakash interviewed and met Carlene during the first Vioxx trial which resulted in the first plaintiff's verdict in the country in the summer of 2005.

6. Carlene was born in Philadelphia, Pennsylvania, and reared in Chesapeake, Virginia. She was a graduate of Harvard University, *cum laude*, and of the University of Virginia School of Law, where she was inducted into the Raven Society. Carlene moved to Houston after law school and began her practice at the firm of Sewell & Riggs before forming Goforth & Lewis in 1989. She was survived by her spouse and two daughters, who were in high school at the time of her death. For purposes of the dissolution of GLS, Shelly A. Sanford PLLC also represents the Estate of Carlene Rhodes Lewis.

7. No history of the Vioxx securities litigation is complete without addressing Carlene's contributions. It was she who first noticed the trend of adverse events, walked into my office and said, "This is a bad drug…We've got to do something about it." It was at her insistence that the instant securities case was first filed on November 6, 2003, despite the fact that there

was no securities firm willing to file it with us until Jules Brody stepped forward.

8. Carlene is widely recognized as a pioneer and visionary in the Vioxx litigation, which began for our firm in the fall of 2000, several years before Vioxx was withdrawn from the market on September 30, 2004. Being a small, boutique firm in Houston, Texas, we sought out and convinced giants in national litigation to help us against the manufacturer of an on-market, blockbuster drug. Among these were Mark Lanier of the Lanier Law Firm in Houston, Tom Girardi of Girardi Keese in Los Angeles, and Chris Seeger of Seeger Weiss in New York City. We worked alongside David Miceli and Andy Birchfield of the Beasley Allen firm in Alabama. We worked alongside Mark Whitehead from 2002 onward, and with David Buchanan, a partner in Seeger Weiss. GLS, with these and other counsel, forged forward with early claims that included a class action in Illinois, individual cases in Texas and Florida, and a third-party payor claim in New Jersey, followed by the formation of statewide MDLs in California and New Jersey.

9. Our colleague and friend, Chris Seeger, whom we enlisted and met in the early litigation process, told Ms. Prakash, "There was something special about them as a team. They were these two little lawyers out of Houston, with no resources, no money. They were disarming. They weren't threatening to anyone's ego,....There *would* be no Vioxx litigation if it weren't for Carlene [Lewis] and Shelly [Sanford] ... We probably wouldn't have had the time to develop the case." Exhibit 2, pp. 7 and 24. Similarly, without the help of giants like Seeger Weiss and the others, the Vioxx case would have buried GLS and been unmanageable both in terms of the workload and finances. In sum, it was a cohesive team that formed the foundation of the national litigation, and much work was accomplished before the withdrawal of Vioxx from the global market on September 30, 2004.

10. That early work was the genesis for Carlene's connection of the public information to insider trades, and the eventual filing of the first securities action in New Orleans on November 6, 2003, by GLS and Mark Whitehead. Our time records reflect a conversation with Professor Dan Posin, the securities expert with whom Mark Whitehead, Carlene and I first discussed the insider trading issues, on June 17, 2003. This conversation cemented our resolve to file the original complaint in this Action.

12. We filed the securities case, when we did, primarily because we could no longer delay its filing while trying to find a securities firm willing to take on the case. This was in spite of the fact that the Wall Street Journal had reported on October 30, 2003 yet another article that detailed risks in drug trial studies. The FDA documents and medical literature increasingly noted potential problems. To us, with the help of Professor Posin (the expert referenced above found by Mark Whitehead and paid by GLS and Mark Whitehead), a valid case existed. Thus, we proceeded to file the *Pringle* case without the backing of a big securities firm. Jules Brody, of Stull, Stull & Brody ("SSB") agreed to the referral, came on board, and entered his appearance on the First Amended Complaint, which was filed on November 20, 2003. To GLS, Jules Brody was a hero among otherwise reticent securities lawyers. The WSJ article and the file-marked copies of the Original Complaint and First Amended Complaint are attached hereto as Exhibits 3 and 4, respectively.

13. Carlene and I held Jules Brody in the highest esteem both as a person and for his willingness to get involved in this litigation. Jules has been committed to this litigation. It was particularly admirable that Jules remained steadfast in his focus on the case after the global withdrawal of Vioxx from the market on September 30, 2004 (and again in 2007) when others sought to oust the lead plaintiffs in favor of themselves and their clients. While GLS only

learned later that Jules had encouraged Milberg Weiss to enter the case, we related that to his desire to have more help on board to fight the coming battles. The group of co-lead counsel that ultimately formed in this case by 2007 admirably and diligently brought this case to its current resolution.

14. Soon after the withdrawal of Vioxx from market and the formation of both MDL 1652 and MDL 1658, Carlene and I helped Mark Lanier in the trial of the *Ernst* case, referenced herein, on behalf of Carol Ernst, the widow of Robert Ernst, in state court in Brazoria County, Texas. The *Ernst* case was not part of any MDL and resulted in the first trial verdict in the country within four months of the formation of the products liability and securities MDLs. While the *Ernst* case was later overturned on appeal, we believed that the early discovery and complex trial work in *Ernst* and other early cases allowed: a) the thousands of articles that comprised the coxib scientific literature to be gathered and indexed; b) the public news articles, media and advertisements to be gathered and indexed; c) a huge volume of FDA documents to be gathered and indexed; and d) allowed the key documents, timelines, and core issues and positions by the parties to be developed. These allowed the case to be well advanced before the formation or significant advancement of the MDLs.

15. I was born in Ralston, Oklahoma, and reared in the small Texas town of Hallettsville. I obtained a Bachelor's of Journalism from the University of Texas at Austin in 1989, and graduated from St. Mary's University School of Law in San Antonio, Texas, in 1992. A copy of my bio is attached as Exhibit 5.

16. I was fortunate enough to work alongside Carlene as this litigation took its national form, and to succeed her on the MDL 1657 PSC and as co-chair of the Science Committee. In addition, I was hired as outside counsel by the Attorney General of the State of Oklahoma

and the Attorney General of the State of Texas, in their separate government-action claims against Merck. After the *Ernst* trial, I participated in five more Vioxx trials, and became even more familiar with Merck's arguments and position on science issues in the case. In this MDL, when called upon by Jules Brody and SSB, both Carlene (while she was able) and I answered questions within our knowledge and reviewed pleadings and discovery as we were requested. For instance, the time records will reflect input on: a) pleadings; b) responsive pleadings; c) science questions; d) employees at Merck; e) the individual defendants; f) experts; and g) help with navigating FOIA issues with the New York Attorney General's office. I attended the MDL panel's arguments on where the case should go, and several important hearings at the request of Jules Brody.

17. The time submitted is from the contemporaneous time records of GLS upon opening the securities file, VOX-025-C, on approximately September 16, 2002. The schedule attached hereto as Exhibit 6 is a summary indicating the amount of time spent by Carlene Rhodes Lewis and myself, and the lodestar calculation at my current billing rate and Carlene's billing rate at the time of the dissolution of GLS. 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. The expenses provided with the time reflects a true and correct copy of the billing records of GLS for the expenses provided from the VOX-025-C file.

18. The total number of hours reflected in Exhibit 6 from inception through and including February 15, 2016, is 908.30. The total lodestar reflected in Exhibit 6 for that period is $558,718.75. The lodestar does 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 7, my firm is seeking reimbursement for a total of $13,797.25 in expenses incurred in connection with the prosecution of this Action. The expenses incurred are reflected on the books and records of my firm and were prepared from expense reports, vouchers, check records and other source materials and are an accurate record of the expenses incurred.

19. As best as I can, I will address the factors set out in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974) as to the time of GLS, as well as myself after Carlene's death. 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 addressed in paragraphs 22 - 26 below and are joined together where appropriate.

20. The time and labor required: GLS committed two of its three partners to the litigation. We operated on as many fronts as possible, including: a) gathering and reviewing the Coxib literature from medical libraries; b) gathering and sorting the public media and FDA documentation; c) gathering competent experts and willing allies in the venture; d) preparing timelines, pleadings, and filing claims that led to further development of the case through discovery; e) tying the public data and news sources to the literature and insider trades; f) securing an expert analysis on the securities matter; and d) ultimately filing the securities action

with Mark Whitehead in New Orleans. It was an intensive and a sustained effort to get as many cases filed as were warranted, including this one where we believed we could wait no longer.

21. The novelty and difficulty of the questions and the skill requisite to perform the legal service properly: This litigation was novel on several fronts. Specifically, the case involved an on-market drug where there were multiple adverse findings, which were hotly contested by Merck & Co., Inc. on both a domestic and international level. Insider trades, and ultimately, stock price fluctuations based upon the expert's independent analysis, required an expert's review. Despite this, other lawyers, including securities lawyers, were hesitant (if even willing) to consider a claim against a company still marketing and heavily advertising the drug at issue. Further, pressure mounted due to continuing news articles (that were contemporaneous to us at the time) that reported adverse findings that failed, in our opinion, to support Merck's continued marketing of the product. The issues raised in Merck's Motions to Dismiss and the Motions for Summary Judgment highlight the complexity of various aspects of the case, including the extensive medical literature, extensive FDA files, extensive news coverage, and extensive advertising and other public data that impacted an array of legal issues, including the statute of limitations, scienter, value and timing of losses, and discovery. These were present from the day the claim was first filed and remained in the case throughout. All of these factors demonstrate that this case involved novel and highly complex issues of fact, science, medicine, substantive law, and procedure. Accordingly, extensive research and complex legal skills were required for the successful prosecution of this lawsuit from its beginning through its resolution. This was perhaps best highlighted by Judge Chesler in his opinion on the motion for summary judgment in this case, wherein the Court wrote:

> While the parameters of the action may appear to be obvious, the arguments presented to the Court on this summary judgment motion reveal that the parties, to some extent, misapprehend the nature of the alleged wrongdoing. This lawsuit is not about whether Vioxx was a fine medication that met an important therapeutic need, as Defendants have maintained, or a product whose great risk to cardiovascular [*37] health was disregarded by Merck in pursuit of profit, as Plaintiffs presentation implies. Nor is it about Merck's conduct in testing and studying Vioxx, both before and after its market introduction. The question at issue is not whether these activities met the appropriate standard of care or performance. The Court feels compelled to draw these boundaries at the outset of this Opinion because the papers submitted to the Court more than occasionally blur the focus of the securities fraud claims. This action is solely about whether Defendants spoke publicly about Vioxx in a way that intentionally or recklessly defrauded investors in Merck. The Court's analysis of the claims pursuant to the summary judgment standard will be guided accordingly.

22. The skill requisite to perform the legal service properly and the preclusion of other employment by the attorney due to acceptance of the case: Our legal background has been provided herein. Our skill and expertise at least extended to that necessary to recognize and bring the securities claim and recognition of the need for a securities specific expert and firm to get involved. This case also required us to engage in extensive complex research regarding scientific and medical issues and to review and analyze hundreds of thousands of pages of complex scientific, medical, and securities documentation. We helped with the drafting of

the various complaints up to the transfer to the present MDL in 2005 and helped review the next two complaints. We remained committed to this litigation throughout and provided assistance when called upon after the cause was transferred from New Orleans to the present MDL. Carlene's last time entry on May 26, 2005, was shortly before the fourth amended complaint was filed on June 9, 2005. We were involved that summer in the *Ernst t*rial. Carlene was afterward diagnosed with the cancer that led to her death. Our experience and knowledge of the litigation from 2000 onward was instrumental when complex issues were brought forth. Because of the time consuming nature of the proceedings, the extensive discovery and document review, and the work necessary for the development of the case, we were unable to perform anything more than minimal legal work outside the cox-2 litigation and we soon lost the ability to do any sustainable billable work at GLS. As a result, Carlene lost a defense client that was a significant income generator for the firm. The cox-2 litigation required high levels of skill and expertise and consistently precluded us from performing other work.

23. The customary fee, whether the fee is fixed or contingent, and time limitations imposed by the client or the circumstances: This case was contingent on all fronts. The time limitations involved two issues — the actual statute of limitations and the fact that resolution on any level for GLS arrived, if at all, from 9-16 years after the contingent litigation began. GLS began seeking out securities counsel in 2002, to no avail. Mark Whitehead and Carlene independently attempted to find willing securities firms, to no avail. We opened our GLS securities specific file, VOX-025-C (Insider Trading/Shareholder), in September of 2002. The "C" stands for contingent. As stated herein, we believed that we could no longer wait to file the claim after the Solomon study article appeared in the WSJ in October of 2003. The post-

withdrawal motion to dismiss and subsequent dismissal of the case each highlight this issue and support why GLS and Mark Whitehead believed it was imperative to file the claim when we did, with or without a securities firm involved. Both appellate courts focused on this filing date in returning the case to this MDL for further prosecution. As to the resolution of the contingency fee cases for GLS, the time delay was significant for our little shop. We began investigation of the claims in the fall of 2000. Much work was done pre-withdrawal in the *Lehr* class action filed in Illinois in 2001, and the *Estate of Ana Guerra* case filed in 2002 in Texas. The *Lehr* case was dismissed on amount in controversy grounds in 2003. The *Guerra* case went into the products liability MDL and did not qualify under the final settlement criteria. The third-party payor case and referral to Seeger Weiss in New Jersey was ultimately dismissed on appeal without recovery. The Ernst case was tried to a verdict and overturned on appeal. Accordingly, much of the work leading to the securities litigation resulted in no compensation for the attorneys involved. For some nine years GLS (and then myself after Carlene's death) had no income from any Vioxx case, but had significant operating costs and debt service incurred in pursuing the claims to their ultimate fruition. Individual cases that were trial ready or set for trial when Vioxx was withdrawn never got to trial because they were pushed into the MDL or otherwise stalled. It was not until October of 2010 that approval of a fee order was entered in the products liability MDL for approximately 109 participating law firms. GLS was a small firm that had been in the case for a decade at that point. Because of our small size, there was no competing with large firms for time or cases. In the case at bar the resolution of the securities matter comes approximately 8 years after the settlement of the products liability MDL, 16 years after we first became involved in the litigation, and 13 years after we filed the initial securities case, referred it, and continued to help where we

could in getting it to resolution. It is customary in complex MDL contingent fee litigation of this nature that attorneys successfully acting in the interests of their clients and in the public interests be compensated for the time expended and further receive a substantial premium for expending many years of labor without compensation and for undertaking the risk of contingency fee work to the exclusion of other matters. For Carlene, the persistence and dedication that it took to form the national Vioxx litigation — that included the securities litigation — was a monumental undertaking and she pushed me, our firm, and other lawyers and firms, to pursue it as vigorously as possible and on every front possible. She believed that her efforts, and the efforts of the national team, resulted in the drug being withdrawn and potential resolution for those injured physically or economically. For this extraordinary effort, I am hopeful she is positively acknowledged. Accordingly, the customary fee, the contingent nature of the fee, the time constraints resulting from the circumstances, and the work of myself and Carlene in the face of these factors support the Court's award of fees in this matter.

24. The amount involved and the results obtained, the experience, reputation, and ability of the attorneys, the undesirability of the case, the nature and length of the professional relationship with 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 our efforts because our original work on this matter was instrumental in its eventual success. Carlene and I were uniquely experienced and highly qualified with regard to Vioxx and Merck due to our many years of experience in the products liability litigation. In 2002, Carlene recognized the insider trades and asked Mark Whitehead to help us with advancing this case. In 2003, when we first filed this lawsuit with Mark, we could not find a securities firms willing to assist us and were frequently unpleasantly received by firms we approached. When Vioxx was eventually

withdrawn from the global market due to unacceptable adverse events, thousands of lawyers entered the litigation and there was no problem finding interested securities firms. Clearly when we undertook to represent the shareholders harmed by the defendants' actions, this was viewed as an undesirable case by the securities bar, therefore our willingness to pursue the case without such assistance weighs in favor of an award for our work in this matter. Because this is contingent fee work in a large MDL setting, the nature and length of the professional relationship with the clients supports an award to Carlene and I for our work on behalf those harmed by the defendants' conduct. 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 our work in this case.

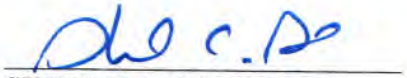
25. By the summary and history of the early part of this litigation, and the ultimate filing of the securities action, it is not my intention to overstate or understate the contributions of GLS, Carlene, or myself in this securities case. While we were not (and I am not now) securities lawyers by trade, I believe the foundation of searching through the scientific literature and public record documents, searching for and finding the insider trades, coordinating with Mark Whitehead, getting the case evaluated by an expert, searching for competent securities counsel based upon the expert's recommendations, making the decision to file the case anyway, and the ultimate referral of the securities litigation and assistance to pursue it to its finality - coupled with the depth of Carlene's and my knowledge and commitment to work against what we considered to be a bad drug with side effects that were seriously downplayed to everyone - were important factors in the resolution of this cause of action. Simply stated, every case has it foundation and we were instrumental in providing that foundation through

the first four complaints filed in New Orleans.

26. Finally, although this case is my only experience with making an application in a securities matter, and with securities lead counsel and lead plaintiff battles amongst a sea of well-qualified securities lawyers, it appeared to me in this process of learning about the PSLRA that, if Carlene, myself, and Mark Whitehead had not filed the instant litigation on November 6, 2003, and had Jules Brody not stepped up later that month, it could likely have been the State of New York (or one of the other petitioners that sought the position) selected as lead plaintiff because New York presented the presumptive losses under the PSLRA when this MDL was formed and attempted to take a sole lead plaintiff position. Please see attached Exhibit 8, Motion of Alan G. Hevesi, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement Systems and as Trustee of the New York State Common Retirement Fund to Intervene, to Vacate the Lead Plaintiff Order, to Appoint NYSCRF as Lead Plaintiff and For Approval of Selection of Co-Lead Counsel. But for the chain of events that began with the filing of the original complaint and Judge Chesler's decisions retaining the leadership structure at the time the MDL was formed, it is likely that none of the current fee applications would now be considered.

27. I am proud that Carlene, Mark and I filed this securities case when we did, am proud of Carlene, and am proud and grateful for Jules Brody and the other co-lead firms in this litigation, each of whom worked so diligently to get this matter in a position to be tried or resolved for the benefit of the clients and class.

FURTHER DECLARANT SAYETH NOT.



SHELLY A. SANFORD

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

Notary Public in ad for the State of Texas

T Gomez

Notary's Name Printed or Typed

Carlene Lewis, 51, Dies; Lawyer Who Fought Vioxx

By JOSEPH B. TREASTER
Published: June 8, 2006

Carlene R. Lewis, a Houston lawyer whose early suspicions about the safety of the pain reliever Vioxx put her in the forefront of what is now a wave of litigation against its maker, Merck, died Monday in Houston. She was 51.

The cause was complications of ovarian cancer, according to her husband, Greg Lewis.

Ms. Lewis first began looking into possible dangers of Vioxx in the fall of 2000. She investigated claims that Vioxx increased the risk of heart attacks and strokes in long-term users. Five years later, in August 2005, she was part of a team of three lawyers that won a verdict of $253.5 million against Merck in a state court in Texas, one of the largest damage awards ever to a single plaintiff.

The Association of American Trial Lawyers said yesterday that before her death Ms. Lewis had been chosen to receive its annual award for public service for her efforts against Vioxx. Her family is to accept the award at the association's convention in Seattle.

"This is a story of her determination," said Miriam Bourdette, a member of the association's board of governors. "She got a lot of other lawyers involved in this at a very early stage."

Merck has said it will appeal the Texas case and two others it has lost. Two juries have ruled in its favor. More than 20 million people had taken Vioxx before Merck took it off the market in September 2004, and the company is facing 11,500 lawsuits in behalf of 23,000 plaintiffs. About a dozen cases are scheduled for trial before the end of this year.

Christopher Seeger, a New York lawyer who joined forces with Ms. Lewis against Vioxx in 2001, said: "She was the first lawyer I know to begin investing money and really investigating whether Vioxx was a safe drug or whether it was causing heart attacks. She concluded in 2001 that this drug ought to be off the market and she was vindicated in 2004."

Ms. Lewis starting investigating Vioxx after a friend of her mother's said she had become ill after taking the drug and soon lost her job, according to Shelly Sanford, one of her law partners. Ms. Lewis wrote two letters to Merck seeking to negotiate a settlement in behalf of her mother's friend, Ms. Sanford said, but both offers were rejected.

"Then she went about the litigation process," Ms. Sanford said.

As lawsuits against Merck began to multiple, Ms. Lewis was appointed by a federal judge to a panel of lawyers charged with overseeing the gathering of records concerning Vioxx from the company. She was also appointed to a similar panel in connection with litigation against Pfizer involving the drug Bextra, which, like Vioxx belongs to a class of pain-reducing drugs known as cox-2 inhibitors.

Carlene Rhodes Lewis was born in Philadelphia on Sept. 28, 1954. She graduated with honors from Harvard in 1976 and received an award as the outstanding female athlete of her class. She taught at the Hotchkiss School in Lakeville, Conn., before going to law school at the University of Virginia. She graduated in 1983.

In 1984, she joined the firm of Sewell & Riggs in Houston and specialized in defending corporations in product liability suits. Five years later, she and a colleague at Sewell & Riggs, Daniel Goforth, formed the firm now known as Goforth Lewis Sanford. She eventually focused on representing plaintiffs.

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Besides her husband, Ms. Lewis is survived by two daughters, Carla and Christy; her mother, Alene Rhodes of Houston; and her brother, Tim Rhodes of South Shores, N.C.

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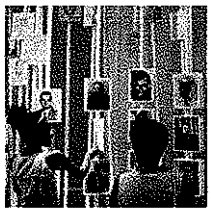

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX	:	MDL NO. 1657
PRODUCTS LIAGILITY LITIGATION	:	SECTION: L
	:	JUDGE FALLON
	:	MAG. JUDGE KNOWLES

APPLICATION FOR APPOINTMENT OF CARLENE RHODES LEWIS[1]
TO PLAINTIFF'S STEERING COMMITTEE

I first filed a Vioxx claim in 2001. I am counsel in 301 pre-withdrawal federal personal injury claims and 3 Texas State claims. I have 450 serious injury cases (out of thousands reviewed) that I expect to file. I am referring counsel and co-counsel in a pre-withdrawal consumer class action, the first-filed securities action and the first-filed third-party payor action with Chris Seeger. I am referring or joint counsel in 15 claims in the California JCCP, and 3 actions in the New Jersey Consolidated Litigation.

In October of 2000, within 5 months of the marketing of Vioxx in the United States, I was retained by a friend of my mother's concerning her Vioxx-related injuries. I attempted to settle the case with Merck's in-house counsel. The negotiations were not successful and I began an in-depth investigation of Vioxx's potential cardiotoxicity. On September 5, 2001, I notified Merck by letter of several hundred serious cardiovascular injuries in clients who ingested Vioxx. With little response, I sought out the best trial lawyers across the country. I also received calls from others who saw the initial filing. In early 2001, I met with Tom Girardi in Los Angeles. The California consolidated litigation soon began. Goforth Lewis Sanford LLP (GLS) has worked

[1] I am a graduate of Harvard University, *cum laude*, and of the University of Virginia School of Law, where I was inducted into the Raven Society. I am a Life Fellow of the Houston Bar Association. I have an AV rating by Martindale Hubbell. I was one of two founding partners of the law firm Goforth Lewis in 1989.

with the California team on all aspects of discovery and development of experts. In Texas, I enlisted Mark Lanier[2] on 6 initial filings. I was directed to Chris Seeger as a lawyer with the ability to aggressively take on Merck. I met with Chris Seeger in Houston in 2001 and received his support and promise to make a joint effort to pursue Merck. Seeger Weiss and GLS have worked cooperatively on all aspects of the litigation and I hold Chris Seeger in the highest regard for pushing the litigation while Vioxx remained on market.

GLS filed a consumer class in 2001 in Illinois (*Lehr*), a few days after the *Cain* case. While *Cain* stalled, the first document production by Merck was in *Lehr* and one of our Texas cases. I sent a team of lawyers to inspect Merck's document repository in Blue Bell, Pennsylvania, prior to bates identification of the documents by Merck. GLS scanned the production to CDs, in searchable format, and provided millions of pages of production without cost to other firms involved in Vioxx litigation. GLS took Merck corporate witness depositions, fact depositions, and presented and took case expert depositions. Motion practice was extensive.

In 2002, David Miceli, then of Beasley Allen, and Shelly Sanford of GLS began the ATLA Vioxx Litigation Group. Shelly Sanford has been the Acting Chair of the group since the summer of 2004. GLS has handled communication and coordination among several hundred ATLA members in the litigation group as well as with many who do not qualify for membership. GLS coordinates committees and handles emails, information and money for the group. GLS hosted multiple pre-withdrawal meetings and conferences for firms involved in Vioxx litigation nationally. I began speaking on Vioxx at major seminars in 2002 and provided participants with questionnaires, intake forms and scientific support for the risks. We hosted many document

---

[2] The Lanier Law Firm and GLS have worked together in all aspects of the cases and have two of the first trial settings in the country. GLS and the Lanier Firm are jointly prosecuting a majority of the Texas cases that were pending at the time of the withdrawal.

reviews and GLS was the initial document repository for millions of pages of paper production before Merck was required to produce the discovery in electronic form in 2004. A substantial number of the hot documents culled from the early GLS document reviews are the core hot documents circulated among counsel today. GLS has prepared and presented experts for deposition, including a Rheumatologist, Pathologist, Cardiologist, Pharmacologist, and Epidemiologist. In one local case, Merck did not challenge the Epidemiologist on general causation or the Cardiologist on mechanism of injury. Since the withdrawal, I have spoken and provided detailed case information at seminars for ATLA, Mealey's, Mass Torts Made Perfect, Harris-Martin, and Med-Expertise, and I have appeared on radio talk shows and given interviews to national media about Vioxx. I am set to co-chair a Mealey's conference in New Orleans with Vance Andrus, and to participate in upcoming seminars in Florida and Toronto.

I have been involved in mass tort litigation for years and have represented plaintiffs in cases involving products liability, pharmaceutical products, medical devices, environmental mass torts, oil and gas mass torts, and in commercial cases and international arbitration. I was a member of the Texas Steering Committee on the Ford/Firestone Litigation. If asked to serve on the Plaintiffs' Steering Committee (PSC), I do not foresee any conflicts or strain on my firm's resources. I assure the Court I will attend the meetings, work cooperatively with my peers, provide meaningful staff, work cooperatively and courteously with defense counsel, and make every effort to ensure that the PSC is prepared to address the needs of the case, clients and the Court in a professional and timely manner until the litigation is closed.

Dated: March 15, 2005

Carlene Rhodes Lewis
GOFORTH LEWIS SANFORD LLP
1111 Bagby, Suite 2200
Houston, Texas 77002
(713) 650-0022

CERTIFICATE OF SERVICE

I hereby certify that the above original and one copy have been filed with the Clerk of the Court of the Eastern District of Louisiana and has been served upon all counsel known to have a federal Vioxx case pending this 15th day of March, 2005.

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"This is a bad drug. We've got to do something about it."

CHAPTER 1

The Beginning

THE LAWSUITS BEGAN WITH a phone call from a saleswoman at a Houston department store to a lawyer named Carlene Lewis. The saleswoman knew Lewis through Lewis's mother, who shopped at the department store. It was the fall of 2000, and Louise Bell, then 73, told Lewis of a car accident the year before in which she had banged up her knee. She was given a prescription painkiller, Bell said, and soon after she started taking it, her blood pressure shot up. It went so high that at the store's Estee Lauder counter, where she worked, the girls would say to her, "Louise, what's wrong with you? You're beet-red."

Eight months later, on her way to a formal dance, Bell had the worst headache of her life. She started babbling, and her date brought her home. Later that evening, Bell suffered a seizure. A cardiologist said it had been brought on by high blood pressure. He blamed the painkiller. Bell was forced to cut back her hours at the department store and was in debt. Could Lewis do anything to help, Bell asked. The painkiller, of course, was Vioxx.

Lewis, a soft-spoken woman who crackled with energy, promised to investigate. Vioxx was still a new drug, and in the United States, the most public controversies over its safety lay in the future. But

in Europe and Great Britain, scientists and regulators had begun to sound alarms.

Lewis's law partner, Shelly Sanford, remembers the day Lewis walked into Sanford's office with the fruits of her research—a stack of folders four inches thick. She threw them on Sanford's desk.

"This is a bad drug," Lewis said. "We've got to do something about it."

Lewis began by writing to manufacturer Merck & Company about Bell's adverse reaction and asking the company for compensation. The company's general counsel wrote back that there was no basis in Texas law for Bell's claim. She said Bell's medical records showed a history of high blood pressure, and that Merck had told doctors to use Vioxx cautiously with such patients. Eventually, Merck offered $7,500 to close the matter. Lewis hadn't thought of Bell's case as a big moneymaker. She'd taken it on mostly because Bell was friendly with her mother. But she thought Merck's offer was entirely inadequate.

She and Sanford decided to dig deeper and find out how big a problem Vioxx really was.

They did it discreetly, with an ad over the July 4 holiday in the Galveston County *Daily News*. Galveston was about 50 miles from Houston, far enough away that the ad was unlikely to tip off other plaintiffs' lawyers in Houston. "If you or your loved one has suffered heart attacks, strokes, high blood pressure, or seizures on Vioxx or Celebrex, call Shelly Sanford," the ad said, and listed an 800 number. The ad elicited responses mostly from people who'd had problems with Vioxx, and they got enough of those to know that bad things were happening to a lot more people than just Louise Bell. The two attorneys followed up with a month of TV and radio ads in Houston, this time focusing exclusively on finding potential plaintiffs with Vioxx injuries. By the end of the summer, Sanford and Lewis had

collected 100 potential cases of heart attacks, strokes, and high blood pressure linked to Vioxx. Lewis sent another letter to Merck, asking if the company wanted to settle. This time the brush-off came from a big New York law firm, Hughes Hubbard & Reed, and it was a little more artful than the earlier one from Merck's general counsel. After several phone conversations with a midlevel partner at Hughes Hubbard, Lewis concluded that he was only interested in gathering information about the claims, and no settlement was in the offing. She had set up a meeting with him in New York. Over Sanford's objection, she cancelled it.

"We need to get serious about this litigation," Lewis told Sanford.

Thus began the two women's crusade against the most respected drug company in America. Sanford would say later that had Merck settled Louise Bell's claim, she and Lewis would never have taken on the fight.

"We would have moved on. I'm certain of it," she said.

LEWIS WAS AN UNLIKELY warrior. A product of Harvard College and the University of Virginia law school, Lewis had spent most of her 18-year legal career defending corporations against exactly the kind of product liability lawsuits she was now planning to bring. She did that first at the Houston firm of Sewell & Riggs, then five years later, in 1989, at the firm she formed with another Sewell & Riggs partner, Danny Goforth. By the time Sanford joined them in 2000, Lewis's heart was set on changing the focus of her practice, from fighting plaintiffs to representing them. Sanford was an old hand at that.

She had cut her teeth as a plaintiffs' lawyer, working for John O'Quinn, the legendary Texan who won billions in jury verdicts and settlements from tobacco, chemical, and drug companies. The two women met in the early 1990s, when O'Quinn brought in Goforth and Lewis to help on a case. Sanford was already assigned to the case,

and wasn't too keen on the new arrangement until her first meeting with Lewis, at which Lewis arrived with a boxful of documents. Many lawyers would have shown up for such a meeting unprepared, Sanford thought, and she was impressed that Lewis had done her homework.

It turned out they were kindred spirits, smart and serious about their work, and a strong religious faith. Each had a stubborn streak. They were devoted mothers—Lewis had two young daughters, Sanford had one—and they were close in age. Lewis was on the cusp of turning 40; Sanford was in her early 30s when they met. As law partners, they often broke away from the office to walk the streets of downtown Houston, talking, always talking, about work, their families, and anything else that crossed their minds. Nothing was out of bounds. In the tight, mostly male club that was the plaintiffs' bar, the lean, blonde-haired Lewis and the big-boned, dark-haired Sanford were fast friends. Their friendship stood them in good stead in the long fight against Merck.

"We didn't know enough to know how tough the road would be," Sanford would say later. "We would get pounded. She would turn to me and ask 'Is this going to work? Are we right?'"

Sanford said she would tell Lewis they *were* right and they would prevail.

"Optimism was one of my gifts. Patience and being right were hers," Sanford said. "She was a real visionary about Vioxx," she said.

TWO THINGS WERE PERFECTLY clear to them from the start: First, being small fry, they needed some plaintiffs' lawyers with fearsome reputations to get Merck's attention. Second, they needed gobs of money, to hopscotch the country questioning Merck executives, hire expert witnesses who could make sense of the science, and fight Merck's stalling maneuvers before state judges from California to Florida.

The firm's third (and senior) partner, Danny Goforth, backed them, but warily, and Sanford and Lewis felt their relations with him grow strained. Both women were working full-time on Vioxx, and neither was bringing much money into the firm. They tried to make their dollars stretch—driving to meetings whenever they could, flying Southwest when they couldn't, taking day trips to avoid spending on hotels, and brown-bagging lunch or skipping it altogether. They worked until 9 or 10 every night, including Saturdays, Sundays, and holidays. There was so much to do, and they couldn't afford to hire other lawyers to help. Vioxx was either going to pay off big or be a financial catastrophe.

Though they hadn't gone into the Vioxx litigation intending to bet the farm, Sanford would say later, "You move forward one step at a time. Eventually, you're all in."

Lewis and Sanford went looking for allies to file additional cases against Merck and bring their firepower to the fight. Many people turned them away because Vioxx was a popular, heavily-marketed drug. Plaintiffs' lawyers liked to wait until problem drugs were taken off the market before filing product liability lawsuits.

"You're crazy! Call us, when Vioxx goes off the market," Lewis and Sanford were told again and again.

But the women persevered, and eventually they persuaded other lawyers to join forces with them. In Los Angeles, they enlisted the veteran plaintiffs' lawyer Tom Girardi. He had made his name and fortune suing companies for dumping toxic wastes, most famously in the case depicted in the movie *Erin Brockovich*. On the East Coast, they enlisted an up-and-coming New York lawyer named Chris Seeger, who had formed a firm with Stephen Weiss, the son of the famed securities class action lawyer Melvyn Weiss. Seeger flew to Houston to meet with Sanford and Lewis over breakfast on a Saturday morning in June 2001. He came prepared to turn them down.

Merck was, as he later put it, "a monster company with a great reputation." But something about Lewis caused him to change his mind.

"It was Carlene's passion. I remember being blown away by it," Seeger said.

Six months later, in early 2002, Seeger flew with Sanford to Vanderbilt University, where they met the author of a new paper published in the British medical journal *The Lancet* that had raised serious concerns about Vioxx's safety. Wayne Ray was well-respected in his field, and as far as Seeger could tell, his concerns about Vioxx were guided by the science. He harbored no grudge against the pharmaceutical industry.

"That's when we went all in," Seeger said.

Lewis and Sanford's hardest sell was in their own backyard, to a Houston lawyer named Mark Lanier, with whom they'd tried a few cases. They'd found him fun to work with, happy during trials, not a jerk, as many trial lawyers could be. And he was brilliant. They hounded Lanier for more than a year. "This will change your career. This is made for you," Lewis told Lanier over and over. But he was reluctant to jump in.

Walking in a spring rain from their downtown office to his in 2002, Sanford suggested Lewis give Lanier a polite ultimatum.

"Tell him, 'If you don't decide today, the case is going to John O'Quinn,'" she said to Lewis. She knew Lanier saw O'Quinn as both mentor and rival.

Sanford and Lewis didn't want the cases to go to O'Quinn. Sanford knew from working with O'Quinn for many years that he was no fun during trials, and she said "he took *all* the money afterwards."

Lewis did as Sanford had suggested. Turning to Lanier on her way out of the meeting, she said gently, "Well, if you don't want it, it's going to O'Quinn." That did the trick.

Lanier intercepted Lewis and Sanford as they were heading out to the elevator. "Come back, come back," he called. "We're doing

this!" Sanford and Lewis walked back to his office, and now Lanier could barely contain his enthusiasm. He squatted with his feet on the couch, as they talked. Sanford and Lewis found his boyish enthusiasm endearing and treasured the memory for a long time.

Years later, Lanier remembered things differently. He said he took all of Lewis and Sanford's cases "almost immediately" after the two women approached him. And he said Lewis had never mentioned the possibility that John O'Quinn might get the cases.

"If I had thought John O'Quinn had been shopped the cases, I would have called John and talked to John about it," Lanier said. He had considered O'Quinn a friend and wouldn't have wanted the cases to come between them, he said. (O'Quinn died in 2009.)

By 2003, Sanford, Lewis, and their allies had all the pieces in place. They had a class action suit on behalf of injured users in Illinois, one on behalf of Merck investors in New Orleans, and a third on behalf of insurers in New Jersey. They also had a couple hundred personal injury cases in courts across the country, the first of which was inching its way towards trial. Merck had turned over millions of pages of internal documents, and there were more to come. In a business filled with sharp elbows and inflated self-regard, Lewis and Sanford had pulled together a diverse coalition of big talents and big egos to work for a common goal.

"There was something special about them as a team. They were these two little lawyers out of Houston, with no resources, no money. They were disarming. They weren't threatening to anyone's ego," Seeger said later, reflecting on how they did it.

Lewis and Sanford had a slightly different take. They said when two women put their mind to something, "Watch out!"

THEN, ON THE MORNING of September 30, 2004, came a bombshell. Shelly Sanford felt her BlackBerry's nonstop buzzing in her sleep. She knew it was somewhere on her bed. When she couldn ignore the buzzing any longer, she roused herself to find it and se what all the fuss was about. It was lawyers on the East Coast, a hour ahead of Houston, sending stunning news. Merck was pull ing Vioxx from the market because of a new study in which Viox subjects had heart attacks and strokes at twice the rate of thos given sugar pills.

Sanford wrote Lewis right away. Lewis's response shot back through the ether, "Is this a joke?"

It was no joke. By the time the markets opened for trading, Merck's stock was in free fall. Vioxx was one of Merck's crown jewels. It had brought in one-eighth of Merck's total revenue, or roughly $2.7 billion in 2003, $2.6 billion in 2002, and $2.4 billion in 2001. Investors grappled all day with the news, and by day's end, the company had lost more than a fourth of its market value.

Sanford and Lewis felt sure that their lawsuits had played a rol in bringing Merck to its costly decision. If nothing more ever hap pened with the Vioxx cases, they felt they had achieved something important. Vioxx could not hurt and kill any more.

When Sanford got to the office, the firm's senior partner, Danny Goforth, greeted her with his arms aloft in a V. "We're rich!" he shouted. The thought hadn't crossed Sanford's mind, and she found it ironic that it had occurred to Goforth, given his grudging support for the lawsuits up to then.

Chris Seeger learned about the withdrawal in the back of a crowded courtroom in downtown Philadelphia. He noticed lawyers all across the courtroom were turning away from the seven federal judges on the bench to bend their heads, almost prayerfully, over their BlackBerries. Something's going on, Seeger thought, and fished out his own BlackBerry. He was filled with the sweet thrill of vindication when he saw the Google news alert. As Seeger left the courtroom

minutes later, lawyers were coming up to him to congratulate him on his prescience. "This is big," they said.

It had been three years since Lewis and Sanford had approached him for help with the Vioxx fight. Afterwards, he had put out the word that Seeger Weiss was looking for Vioxx cases. The cases began to trickle in from smaller firms. Now that trickle would become a flood. The newest front in the tort wars had just opened, and Seeger had the inside track.

A tort (derived from the Latin "torquere," meaning "to twist") is literally "a twisting—an injuring of another that the law empowers the injured person to straighten out by way of a lawsuit," to use the words of the legal scholar Richard Nagareda. Tort law came into its own as a branch of the law in the late 19th century as industrialization gave rise to new injuries, among them, factory accidents. By the mid-20th century, American courts had revolutionized product liability law, first by enabling consumers to sue not only those with whom they had a direct contractual relationship, such as the person from whom they purchased a product, but also the product's manufacturers and designers; and second, by extending the concept of a "defective product" to include "systematic design errors and inadequacies in the provision of risk information to the ultimate consumer." Mass tort litigation took off in the late 20th century as mass production and mass marketing became the norm. With millions of people exposed to a mass-produced product, the number of injuries could run into the tens and even hundreds of thousands, even if the injuries occurred only rarely. Hence, mass torts.

"Vioxx had all the makings of a mega-mass tort. Pain, after all, was a common condition, and almost 20 million Americans had used Vioxx since its introduction in 1999. Changes to federal law around that time had freed drug companies to market prescription drugs directly to consumers, and Merck had blanketed the country with upbeat television commercials. The commercials showed older men and women walking the dog, gardening, bathing a grandchild—in short, enjoying their golden years with the help of a daily Vioxx.

"Ask your doctor about Vioxx," the ads said. "And find out what Vioxx can do for *you*." Millions did. In an article published in *The Lancet* shortly after Vioxx was withdrawn, a senior FDA scientist estimated that Vioxx had caused between 88,000 and 140,000 cases of serious heart disease in the United States over its five-and-a-half-year life on the market. Roughly half were likely fatal.

Within days of pulling Vioxx from the market, Merck moved to get its arms around the anticipated crush of Vioxx cases, filing a motion to have all cases transferred to a single federal court for pretrial proceedings. The transfer procedure has increasingly become the judiciary's primary tool to keep the tens of thousands of individual lawsuits that make up a product liability mass tort from clogging up courts nationwide. The thinking is that it's more efficient for one judge (rather than multiple judges in courts across the country) to supervise those proceedings and make decisions on such important matters as what evidence each side is entitled to demand from the other, which witnesses must be produced to testify under oath in advance of a trial, or whether a scientific expert's testimony is admissible. The bundled cases are known colloquially as an "MDL," short for multidistrict litigation, because the cases are drawn from courts throughout the country. The federal judge in charge of them is called the "MDL judge."

The MDL system's ultimate aim is to bring about negotiated settlements to mass torts with as few trials and as speedily as possible. If a mass tort does not settle, the individual cases are sent back to the courts where they were filed to await trial. (Class actions, in which a plaintiff sues as a representative on behalf of everyone with the same claim, usually cannot be used in mass tort cases because of

the variations in individual injuries, a point the Supreme Court drove home in the 1990s when it rejected two asbestos class actions.)

Corporate defendants like multidistrict litigation because it reduces the burden and expense of fighting in multiple courts around the country, and because the massive proceedings tend to slow down the litigation process. Also, multidistrict litigation puts the litigation's center of gravity squarely in federal court, which corporate defendants tend to favor over state courts. (That is so even when many cases in the mass tort remain in state court.)

Lewis and Sanford didn't know all this about multidistrict litigations. But they were about to find out.

SIX WEEKS AFTER MERCK'S stunning announcement, at the "Mass Torts Made Perfect" conference in Las Vegas's Venetian Resort, Sanford and Lewis found the long, darkened hallway outside the conference rooms packed with lawyers by 7:30 in the morning. Many appeared to have put in a full night at the Venetian's casinos. Their faces were tired and their eyes were bloodshot. But they were humming with purpose.

"How many Vioxx cases do you have? How are we going to get more?" they asked each other, as they stood in tight clusters that took up every inch of available space. "Wouldn't it be great if we got 1,000 cases?" Sanford heard one say.

These were the profession's marketing experts, who had mastered the art of building "inventories" of plaintiffs and cases. They ran television ads, set up phone banks, and sifted through the thousands of callers to find plaintiffs with viable claims. Then they referred the cases to larger law firms and waited for what they hoped would be a quick and generous settlement. In Vioxx, they smelled an easy kill.

"It feels like a poster for tort reform," Lewis remarked wryly to Sanford.

Among trial lawyers, "tort reform" was an epithet. It was the term pro-business interests used to describe the wave of laws in the mid-1980s and after, which were passed to make it harder for people to sue businesses for any kind of personal injury. Lewis was speaking with her tongue planted firmly in cheek, and yet... her sleepy little tort was growing up, and Lewis didn't like all that it was becoming.

In the era of multidistrict litigation, mass torts offer one prize even richer than the large inventories of cases that the marketers at the conference hoped to assemble. The richest prize is a seat on a small committee, called the plaintiffs' steering committee, whose members get a cut of the winnings from each and every case in the tort in which plaintiffs prevail. The MDL judge appoints the committee to supervise the pretrial work and to represent the interests of all lawyers with cases in the MDL "bundle." Members of the committee also finance the work, often through large monthly assessments. After a handful of trials, when the MDL judge pressures the two sides to settle, the plaintiffs' steering committee members play a lead role in negotiating an agreement with the defendants.

For top plaintiffs' lawyers, therefore, the game now was to win a seat on the Vioxx steering committee, and they were using the Las Vegas conference to lobby their peers. Sanford and Lewis learned that two of their early allies, Chris Seeger and Andy Birchfield, were vying to be co-leaders of the plaintiffs' steering committee. (Birchfield, a partner at Beasley, Allen, Methvin, Portis & Miles in Montgomery, Alabama, had been investigating Vioxx independently at about the same time as Lewis and Sanford, and filed his first Vioxx case soon after they did.) Chris Seeger had swung by the conference the night before to float the idea and lobby key lawyers. (The MDL judge appoints the committee, but peer support is vital to securing the top positions.)

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Someone in the group yelled out, "Second!"

"Any nays?" Becnel asked.

There were no dissenters.

"The ayes have it, and we all agree. A toast to our leaders!" he said.

Sanford and Lewis supported their friends as co-leaders, but Sanford was stunned at how quickly that vote happened.

"Wow, this is a weird process," she thought.

Don Barrett, a veteran of the fight against Big Tobacco, spoke up and slowed things down. Hang on, he said, we all need to discuss this with the people who aren't here too. He had the room's unspoken assent, and the moment passed without the toast. Before long, white-coated waiters appeared with platters of fried oysters, fish with jumbo lump crab meat piled on top, and beignets. It was time to eat.

In a speech afterwards, Seeger made a point of singling out Lewis and Sanford's contributions, and Sanford returned the compliment when Seeger invited her to speak. She said Seeger hadn't hesitated for a moment when she and Lewis had approached him for help years earlier. Before she left, Sanford made a point of congratulating Seeger and Birchfield individually. We want you in leadership positions, she said.

Three months later, in February 2005, the Vioxx cases were consolidated under Judge Eldon E. Fallon of the Eastern District of Louisiana in New Orleans. Fallon appointed Seeger and Birchfield as co-leaders of the plaintiffs' steering committee. They had no competition for the positions, which was unusual for a large mass tort. Fallon also named Carlene Lewis to the committee; a proud moment for her. Mark Lanier applied but was not chosen, and put a good face on the snub later.

"There's a real camaraderie" among MDL lawyers, Lanier said. "I had never been in the MDL club," he said.

Still, it was an inauspicious beginning to relations between Lanier and the MDL.

AS IT HAPPENED, LANIER tried the first Vioxx case in the country. It was a Texas state case that had not been consolidated into the federal MDL because one of the named defendants was a Texas doctor who had conducted research for Merck. Lewis and Sanford had filed the case and later turned it over to Lanier. The plaintiff, Carol Ernst, was a widow whose 59-year-old marathoner-husband had died suddenly in 2001, after taking Vioxx for six months. The official cause of death was arrhythmia, or an irregular heartbeat, a condition that Merck said had never been linked to Vioxx. (Merck's defense ignored the fact that heart attacks, which *had* been linked to Vioxx, were known to cause arrhythmia.)

The trial was held in July 2005, about 40 miles south of downtown Houston, in the small town of Angleton, and it was covered by media from around the world.

I remember my first glimpse of Lanier across the packed courtroom a few moments before he was to give his opening statement. (I was covering the trial for National Public Radio.) Lanier was dressed in the sober blue uniform that lawyers favor, but his demeanor was distinctly casual. He sat near the edge of his chair at the plaintiff's counsel table, looking as if he might leap out of it without warning. He grinned irrepressibly. His face was boyish, his glasses nerdy. I thought he looked like a kid in a candy store on allowance day. When he stood up, his 6 foot 1 inch frame looked almost gangly. I gazed at him with disbelief. *This* was the man charged with opening the fight against Merck?

It turned out that Lanier's playfulness concealed an uncommon mix of gifts. He was unafraid to delve into the complicated science underlying the case, he knew how to go toe to toe with Merck's lawyers, *and* he had a strong connection with juries. Funny, self-deprecating, unapologetically idiosyncratic, and *very* well prepared, Lanier was an athlete at the top of his game. After a five-week trial, the jury awarded Carol Ernst a quarter of a billion dollars in damages. Under Texas law, Ernst's damages would be capped at $26 million, but the jury was sending a message.

"Respect us. That's the message," said one juror afterwards. "Respect us."

Theodore Mayer, a partner at the firm of Hughes Hubbard & Reed and the man in charge of coordinating Merck's national defense strategy, had flown in to Angleton for the verdict. Mayer was a slight, soft-spoken man with graying hair. In the months leading up to that trial, he often worked late into the evening at his Manhattan office and, at least sometimes, answered his own telephone. We had spoken a few times on the phone, so when I learned he was in the courtroom I asked his public relations person to introduce us. We shook hands and made small talk as we waited for the jury, and I noted that the man who had been so self-assured over the phone was suffering a case of nerves. His hands on that steamy afternoon in August 2005 were cold and clammy. I caught sight of Mayer after the verdict, looking shaken, almost white.

Outside the courthouse, Lanier was crowing about the victory to a gaggle of reporters and television cameras.

"My message to Merck is: You want to go again?" he said. "We're just getting warmed up."

Lanier had been a big name in Texas even before the Ernst verdict. Now he had won the kind of outsized award that drives companies to settle, and he was a star on the national stage.

THE SECOND VIOXX TRIAL took place a month later, in September 2005, in Atlantic City, New Jersey. Mike Humeston was the plaintiff.

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plane awaited. "Merck said they couldn't be beat in their backyard. Merck said the punitive finding in Ernst was a fluke, a runaway jury, an uneducated jury. I'm smiling." Ernst, of course, was Lanier's first case against Merck.

* * *

IT WAS AROUND THAT time that Carlene Lewis learned she was dying. The first signs of trouble had surfaced during the Ernst trial when Lewis, an avid athlete, was often inexplicably exhausted.

"I don't know what's going on," she confessed to Sanford.

On October 16, 2005, Sanford drove to Lewis's house to pick her up for another Vioxx meeting. She found Lewis tired, out of breath, and in so much pain she could barely get into the car. Lewis's general practitioner had prescribed vitamins after the Ernst trial for her fatigue, which hadn't helped, but Lewis was soldiering on.

"I don't care what you say. We're going to the hospital," Sanford told Lewis that morning, and they did.

At the hospital, an ultrasound revealed a row of blood clots—clot after clot after clot—running along the length of each of Lewis's legs. A massive tumor in Lewis's ovary was pressing against the blood vessels leading to her legs. The doctors said the good news was that the cancer was Stage 2 and treatable. Lewis's friends and family rejoiced. But by spring the cancer had spread to her liver, and Lewis was given three months to live.

"I need to get my kids through high school. Please help," Lewis begged her doctor. Were there any experimental treatments she could try? She had been too stunned to ask those questions minutes earlier when he was breaking the news. Sanford, who had accompanied Lewis to the appointment, watched Lewis scribble the note on a pad of yellow Post-its® in the doctor's front office.

Lanier called from the New Jersey trial when he heard the grim prognosis. "This one's for you," he told Lewis. He offered her his

private plane. Was there any place in the world she wanted to visit with her two teenage daughters, he asked. There wasn't.

It was just after Mother's Day when Lewis entered the hospital. She didn't want to die at home, lest it fall to her teenage daughters to discover her lifeless body. In the final weeks, Lewis's mother and brother kept her company in the hospital's intensive care unit during the day. Her husband shuttled the girls to their mother after school.

After her first night by herself in the ICU, Lewis told Sanford, "It's horrible. You have to stay." Sanford promised she would, and kept watch by Lewis's bed every night.

Lewis's parting words were to Sanford. Stirring briefly from a fitful rest, Lewis, who was oozing copious amounts of fluid by the end (a side effect of her chemotherapy), called out for Sanford. Sanford patted Lewis dry and rearranged her pillow the way she liked it.

"Good night," Lewis said when Sanford was done.

"Good night," Sanford replied.

Twenty minutes later, Lewis suffered a stroke. She lingered for a few days. On June 6, 2006, at around 6:30 P.M., she died. Several hours went by before an orderly came to disconnect Lewis from the equipment that had sustained her at the end. Sanford watched him wheel Lewis into the elevator. She could go no further with her friend. The elevator was headed to the morgue.

Years later, Lewis's mother, Alene Rhodes, recalled her daughter's grace, determination, and modesty. She said Lewis talked often of her work on the Vioxx cases.

"She talked about how she believed in the cause, and she was going to keep fighting," Rhodes said.

And Seeger said, "There *would* be no Vioxx litigation if it weren't for Carlene [Lewis] and Shelly [Sanford]... We probably wouldn't have had the time to develop the case." As it was, Lewis and Sanford

had recognized Vioxx's dangers three years before Merck tacitly acknowledged them and pulled it from the market.

Lanier gave the eulogy at Lewis's funeral. "In fifty-one short years, Carlene came and left a mark [and] truly changed our world for good in ways that will be felt for the history of our civilization," he said.

But the fight Lewis began still had a very long way to go.

PLAINTIFFS' LAWYERS HAD BEEN filing Vioxx cases at a feverish pace since its withdrawal in 2004, adding first hundreds, and then thousands of new cases each month to federal and state dockets around the country. By the end of 2005, there were 10,000 cases against Merck. By the end of 2006, there were 27,000.

In the years leading up to the Vioxx withdrawal, more than one company had offered quick settlements when confronted with a similar onslaught of mass tort claims and large punitive verdicts in initial trials. But those settlements had not bought the defendants what they most craved—an end to the lawsuits and certainty about the size of their liability. Instead, they had spurred plaintiffs' lawyers to file tens of thousands of new claims. Among the best-known examples of failed settlements was the fen-phen litigation. In 1997, drug maker Wyeth withdrew two diet drugs in response to concerns of heart valve injuries. Early trials brought out evidence that Wyeth may have known of the risks well before it stopped selling the drugs. In 1999, faced with 18,000 claims and indications that it may face a large number of punitive jury awards, Wyeth offered plaintiffs roughly $4 billion to settle all existing and future claims. It was anticipated the total number of claims would top out at roughly 36,000. By 2006, Wyeth had spent over $20 billion, and thousands of lawsuits were still pending. It was the defendant's ultimate nightmare—an endless tort.

http://www.wsj.com/articles/SB106747325165054600

HEALTH

Vioxx Study Sees Heart-Attack Risk

Merck Funded Research After Concerns Were Raised About Its Painkilling Drug

By **THOMAS M. BURTON** and
PATRICIA CALLAHAN Staff Reporters of THE WALL STREET JOURNAL
Updated Oct. 30, 2003 12:01 a.m. ET

Research presented at a medical conference this week suggests that Vioxx, a popular painkiller made by Merck & Co., may increase the risk of heart attacks in patients taking the pill.

The study, from Harvard University-affiliated Brigham & Women's Hospital in Boston and funded by Merck, found an increased risk of heart attack, or acute myocardial infarction, compared with patients taking a competing painkiller, Celebrex, from Pfizer Inc.

The researchers also found Vioxx, which has annual sales of $2.5 billion a year, was linked to an increased heart-attack risk compared with patients not taking any painkillers.

Merck, of Whitehouse Station, N.J., funded the research after a landmark medical-journal article by cardiologists at the Cleveland Clinic, who first raised the issue in August 2001 in the Journal of the American Medical Association. The more recent findings were presented this week at the American College of Rheumatology meeting in Orlando, Fla., and are laid out in detail in a medical abstract for that meeting.

Brigham & Women's Hospital rheumatologist and epidemiologist Daniel H. Solomon headed the study, which looked at records of 54,475 Medicare patients, all of them over 65.

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%. After 90 days, there didn't appear to be any increased risk.

The absolute risk -- that is, what percent of Vioxx users in the study actually had heart attacks -- wasn't in the published abstract, and Dr. Solomon declined to comment.

Eric J. Topol, chairman of cardiovascular medicine at the Cleveland Clinic and one of the authors who first raised the issue two years ago, called the research "the best study to date."

Two years ago, Dr. Topol pointed out that "the risk is very low of inducing a heart attack." Even so, he noted, millions of people are taking these painkillers, and thus the issue is of great consequence.

The new study, Dr. Topol said, "greatly substantiates our concern about the cardiac side effects." He observed that the possible cardiac effects of Vioxx appear "worse with the higher doses."

Merck discounted the findings. "Randomized clinical trials are the gold standard" and this isn't such a trial, said Alise Reicin, Merck's executive director of clinical research. "In our placebo-controlled randomized trials, we have found no significant difference between Vioxx and placebo."

The Brigham & Women's researchers tried to see whether any confounding variables, such as smoking, obesity or aspirin use, might have altered the results. But they concluded this wasn't the case.

The conclusions are similar to those reached by researchers at Vanderbilt University last year, who examined records of 24,132 patients taking Vioxx and concluded there was an apparent increased risk of coronary heart disease for Vioxx patients compared with nonusers. Their findings were published in the British medical journal Lancet. However, another study published this February in the Archives of Internal Medicine, on 12,156 Vioxx users, didn't find any increased risk.

RELATED ARTICLE

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Write to Thomas M. Burton at tom.burton@wsj.com and Patricia Callahan at patricia.callahan@wsj.com

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

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

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,

HUGH P. LAMBERT, ESQ. (Bar 7933)
LINDA J. NELSON, ESQ. (Bar 9938)
C. MARK WHITEHEAD, III (Bar 27682)
Lambert and Nelson, PLC
701 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 581-1750
Facsimile: (504) 529-2931

CARLENE RHODES LEWIS, ESQ. (TX Bar 16821600)
SHELLY A. SANFORD, ESQ. (TX Bar 00784904)
Goforth, Lewis, Sanford & Wilson, LLP
2200 Heritage Plaza
1111 Bagby
Houston, Texas 77002
Telephone: 713-650-0022
Facsimile: 713-650-1669

PLEASE SERVE:

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

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 N-2**
VS.	*	**JURY DEMAND**
MERCK & CO., INC., KENNETH C. FRAZIER, RICHARD C. HENRIQUES, RAYMOND V. GILMARTIN, JUDY C. LEWENT and MARY M. MCDONALD,	*	
Defendants	*	

****

FIRST AMENDED COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Plaintiff, FRANK PRINGLE, individually and on behalf of all others similarly situated, and respectfully represents to this Honorable Court that he desires to amend the Original Complaint filed herein in the following exclusive particulars:

1.

By supplementing and amending the Original Complaint to add a paragraph in between paragraphs 8 and 9, hereinafter referred to as paragraph 8a as follows:

8a. Defendant, ABC Insurance Corporation, is Merck's Directors' and Officers' liability insurer. ABC Insurance Corporation is liable jointly and in solido with its insureds, Defendants, Gilmartin, Frazier, Henriques, Lewent and McDonald, under La.R.S. 22:655, the "Direct Action" statute.

2.

By supplementing and amending the Original Complaint to attach the Affidavit of Plaintiff, Frank Pringle (attached hereto as Exhibit "A").

3.

By supplementing and amending the Original Complaint to attach a listing of Merck Securities bought and sold on behalf of Plaintiff, Frank Pringle (attached hereto as Exhibit "B").

WHEREFORE, Plaintiff, reiterating the prayer of his original Complaint, as amended hereinabove, 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.

All of which is hereby respectfully submitted;

HUGH P. LAMBERT, ESQ. (Bar 7933)
LINDA J. NELSON, ESQ. (Bar 9938)
C. MARK WHITEHEAD, III, ESQ. (Bar 27682)
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1111 Bagby
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JULES BRODY, ESQ. (NY 9151)
Stull, Stull & Brody
6 East 45th Street
New York, New York 10017
Telephone: 212-687-7230
Facsimile: 212-490-2022

PLEASE SERVE WITH A COPY OF THE ORIGINAL COMPLAINT AND FIRST AMENDED COMPLAINT:
Merck & Co., Inc.
Raymond V. Gilmartin
Kenneth C. Frazier
Richard C. Henriques
Judy C. Lewent
Mary M. McDonald

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 N-2
VS.	*	JURY DEMAND
MERCK & CO., INC., KENNETH C. FRAZIER, RICHARD C. HENRIQUES, RAYMOND V. GILMARTIN, JUDY C. LEWENT and MARY M. MCDONALD,	*	
Defendants	*	

****

AFFIDAVIT OF PLAINTIFF, FRANK PRINGLE

State of Louisiana
Parish of Orleans

BEFORE ME, the undersigned Notary Public duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana,

PERSONALLY CAME AND APPEARED:

FRANK PRINGLE

a person of the full age of majority and a resident of and domiciled in the Parish of Jefferson, State of Louisiana upon being first duly sworn by me did depose and state as follows:

1. Affiant has reviewed the complaint in the above captioned matter and authorized its filing;

2. Affiant did not purchase the security that is the subject of the complaint at the direction of his counsel or in order to participate in any private action;

3. Affiant is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

EXHIBIT
A

4. Affiant attaches hereto evidence of the transactions of the affiant in the security that is the subject of the complaint during the class period specified in the complaint;

5. Affiant has not sought to serve as a representative party on behalf of a class in any action;

6. Affiant will not accept any payment for serving as a representative party on behalf of a class beyond affiant's pro rata share of any recovery, except as ordered or approved by the court.

FRANK PRINGLE
AFFIANT

WITNESSES:

Sworn to and subscribed before me, Notary Public, this 17th day of November, 2003.

Notary Public
(My commission expires with life)

Alexis

From: Mark
Sent: Tuesday, November 18, 2003 2:15 PM
To: Alexis
Subject: FW: MRK

-----Original Message-----
From: Newburger, F. Kirby [mailto:fkirby.newburger@agedwards.com]
Sent: Tuesday, November 18, 2003 11:35 AM
To: Frank E. Pringle (E-mail)
Cc: Mark Whitehead (E-mail)
Subject: MRK

Frank:

Per your request:

01/29/1997 BOT 70 Shares @ 44.05714 = $3,084.00
07/23/1998 BOT 40 Shares @ 62.625 = $2,505.00
10/12/1998 BOT 200 Shares @ 68.89 = $13,778.00
10/21/1998 BOT 70 Shares @ 66.00 = $4,620.00
03/27/2001 BOT 90 Shares @ 73.91 = $6,651.90

07/11/2001 SLD 270 Shares @ 62.22 = $16,799.40
07/15/2002 SLD 200 Shares @ 43.94 = $8,788.00

Frank E. Pringle

Regards,
Kirby
F. Kirby Newburger
Vice President - Investments
A.G. Edwards & Sons, Inc.
2 Sanctuary Boulevard, Suite101
Mandeville, LA 70471-2951
504-529-7593 direct line from New Orleans
985-626-7717 main line
800-825-7717 toll free
504-450-2820 cellular

EXHIBIT
B

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 N-2
VS.	*	JURY DEMAND
MERCK & CO., INC., KENNETH C. FRAZIER, RICHARD C. HENRIQUES, RAYMOND V. GILMARTIN, JUDY C. LEWENT and MARY M. MCDONALD,	*	
Defendants	*	

****

AFFIDAVIT OF PLAINTIFF, FRANK PRINGLE

State of Louisiana
Parish of Orleans

BEFORE ME, the undersigned Notary Public duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana,

PERSONALLY CAME AND APPEARED:

FRANK PRINGLE

a person of the full age of majority and a resident of and domiciled in the Parish of Jefferson, State of Louisiana upon being first duly sworn by me did depose and state as follows:

1. Affiant has reviewed the amended complaint in the above captioned matter and authorized its filing.

FRANK PRINGLE
AFFIANT

WITNESSES:

Sworn to and subscribed before me, Notary Public, this 20 day of November, 2003.

Notary Public
(My commission expires with life)

Exhibit 5 to Affidavif of Shelly A. Sanford
Page 1 of 2

Shelly A Sanford

Sanford Law Firm
Principal Office in Houston, Texas

Shelly A. Sanford went to school at the University of Texas and St. Mary's University School of Law. Ms. Sanford is licensed by the State Bar of Texas and she and her firm earned an AV-Preeminent rating by the Martindale Hubbell registry of lawyers. Ms. Sanford successfully passed the qualified lawyers transfer test in 2010 for eligibility as a Solicitor in the UK.

Ms. Sanford is a leading member of the Products Liability bar nationally and has been involved as a federally-appointed Plaintiff's Steering Committee member in multiple multi-district litigations across the country. Ms. Sanford has acted as an Executive Committee member on Federal litigation involving governmental actions and has been retained as outside counsel to the State of Texas and the State of Oklahoma on fraud litigation relating to pharmaceutical products.

Ms. Sanford worked for years with renowned Texas Trial Lawyer, John O'Quinn (1941-2009), before joining practices with Carlene Rhodes Lewis (1954-2006) and then forming her own firm in 2007. Ms. Sanford's clients include individuals, corporations and governmental entities.

Ms. Sanford has been frequent speaker for the legal community on matters involving mass torts, pharmaceutical drugs and preemption, and has co-authored journal publications on the issue of preemption. Ms. Sanford is or has been a member of the Association for American Justice, Texas Trial Lawyer's Association, the American Trial Lawyer's Association, the College of the State Bar of Texas, and the Christian Trial Lawyer's Association.

Ms. Sanford was certified by the White Resolution Center at the University of Houston Law Center in Domestic and International Arbitration, which is included in her practice areas.

Free Case Evaluation Form

Name: *
Email: *
Best Phone #: *
Type of Incident:
Date of Incident:
Place of Incident:
Comments:
Anti-Spam Test: *
Send for Case Evaluation

Contacting the Sanford Law Firm by email does not create an attorney-client relationship.

Scroll To Top

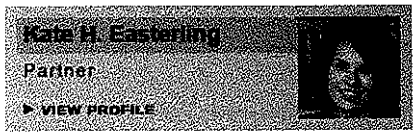
Website by Media A-Team, Inc.

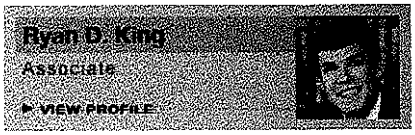
Exhibit 5 to Affidavif of Shelly A. Sanford
Page 2 of 2

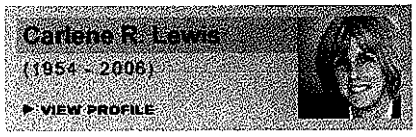
GOFORTH EASTERLING LLP
ATTORNEYS AT LAW

4900 Woodway, Suite 750
Houston, Texas 77056
Office - 713.650.0022
Fax - 713.650.1669

Our Team







Daniel O. Goforth

Born August 25, 1945, in Kerens, Texas.

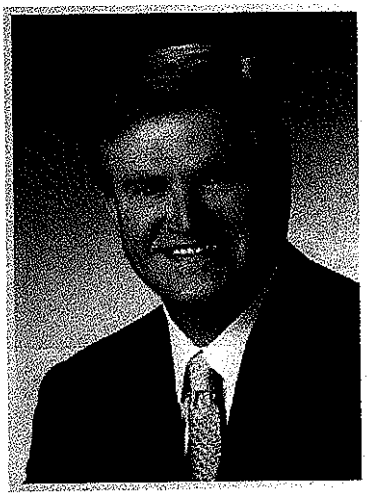
Daniel O. Goforth serves as the firm's lead litigation counsel. Mr. Goforth is certified by the Texas Board of Legal Specialization in personal injury trial law and has tried many cases to verdict in courts throughout Texas and other states.

Mr. Goforth attended Texas Christian University, where he earned his undergraduate degree with honors in 1967. He earned his law degree from the University of Texas, where he graduated with honors in 1970. While in law school, he was a member of the Order of the Coif and the Texas Law Review. Prior to establishing Goforth Lewis in 1989, Mr. Goforth worked for the Attorney General for the State of Texas and was a partner in the Houston firm of Sewell & Riggs.

Education:

Texas Christian University
B.A., 1967

University of Texas
J.D., with honors, 1970



Contact

To contact Daniel Goforth directly, you may email him at:

dangoforth@goforthlaw.com

EXHIBIT 6 to Affidavit of Shelly A. Sanford

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]

SHELLY A. SANFORD AND
GOFORTH LEWIS & SANFORD LLP

TIME REPORT

Inception through February 15, 2016

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Shelly A. Sanford	549.55	625	343,468.75
Carlene Rhodes Lewis	358.75	600	215,250.00
Of Counsel			
Senior Counsel			
Associates			
Staff Attorneys			
Paralegals			
Litigation Support			
TOTALS	**908.30**		**558,718.75**

EXHIBIT 7 to Affidavit of Shelly A. Sanford

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]

SHELLY A. SANFORD AND

GOFORTH LEWIS & SANFORD LLP

EXPENSE REPORT

CATEGORY	AMOUNT
Court Fees	$444.00
On-Line Legal Research	$117.01
Telephone/Faxes	$332.18
Postage & Express Mail	$596.56
Internal Copying	$1199.64
Out of Town Travel	$3167.86
Experts	$7940.00
TOTAL EXPENSES:	**$13,797.25**

#979954