

## CONCLUSION

We have attempted to examine all of the principal allegations of wrongdoing that have been asserted with respect to Merck's development, marketing and data reporting associated with Vioxx to determine whether senior management of the Company acted with integrity. As indicated at the outset, we recognize that our conclusions may not satisfy all of Merck's critics. We believe, however, that the detailed factual examination that is set forth in this Report and the accompanying Appendices fully supports the conclusions we have reached concerning the integrity of Merck's senior management and will enable others to evaluate these conclusions.

As the debate on Merck's conduct continues, we suggest several important points that should be considered. Chief among them is the fact that, at the time Vioxx was developed and marketed, selective Cox-2 inhibitors were viewed as a major improvement in the science of pain management that could prevent painful gastrointestinal problems and even deaths associated with traditional NSAID therapy.

It is noteworthy that, during the pre-approval scientific debate over Dr. FitzGerald's\* prostacyclin hypothesis, neither Merck's outside advisors nor Dr. FitzGerald\* himself thought that the existence of his hypothesis should delay the commercial distribution of Vioxx. Merck's Board of Scientific Advisors considered the "hypothetical adverse effects" of Vioxx in May 1998 but concluded:

The gain in safety achieved by the elimination of serious and fatal gastrointestinal toxicity will free patients from one of the most serious adverse effects in current drug therapy. Thus, there is a strong mandate for introduction of Vioxx into medical practice as soon as possible.

Despite the current claim that the FitzGerald prostacyclin hypothesis established that Vioxx was prothrombotic and posed a cardiovascular danger, we have seen no evidence that any scientist suggested at the time that Vioxx or any other selective Cox-2 inhibitor should be kept off the market on the basis of that hypothesis.

In assessing the reactions of Merck's scientists to post-marketing evidence or theories that some claim showed, or at least suggested, that Vioxx was prothrombotic, it is important to look at the way in which those scientists responded to such information. There is no evidence that MRL scientists ignored or turned a blind eye to any credible evidence or hypothesis that suggested that Vioxx was prothrombotic. As the discussion throughout this Report and in the Appendices demonstrates, even when MRL scientists had doubts about the scientific validity of a significant hypothesis or finding, they gave it careful consideration, often seeking the advice of their outside scientific advisors, and performed detailed tests and analyses. While there may be room for legitimate scientific debate as to whether MRL scientists reached the right conclusion on each occasion, we believe that their conclusions were reached in good faith and were reasonable under the circumstances.

While it is often common to speak of a corporation as a monolith, Merck, like all corporations, is a collection of individuals. During the course of our investigation we have had the opportunity to meet and question most of the top scientists and members of

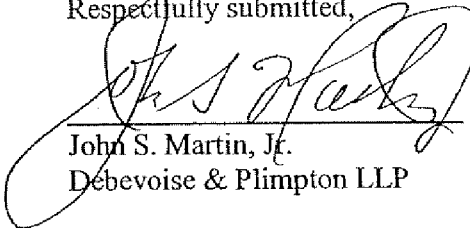
senior management who worked on Vioxx during the time at issue. Drs. Scolnick and Kim, each of whom headed MRL, are extremely impressive scientists who appear on the basis of all available evidence to be fully committed to the scientific process and to firmly believe in the value of that process to yield the truth. The MRL scientists that we interviewed generally described Dr. Scolnick as “data driven.” Dr. Kim, who had been the Associate Head of the Department of Biology of the Massachusetts Institute of Technology, joined Merck because he believed that its resources provided him with a greater ability to develop new drugs that would be of great benefit to patients. In addition, it is worth noting that at the time Vioxx was withdrawn from the market, numerous Merck employees (including Dr. Scolnick and Mr. Kenneth Frazier, Senior Vice President and General Counsel of the Company) and their immediate families (including Mr. Gilmartin’s wife and Dr. Kim’s mother) as well as members of Merck’s Board of Directors were using Vioxx.

The other Merck scientists whom we interviewed impressed us as highly skilled and dedicated professionals. While we lack the scientific expertise to judge the scientific validity of the judgments they made, we are satisfied that, prior to receiving the cardiovascular results of the APPROVe Trial, none of them believed that Vioxx was prothrombotic. Our conclusion in this regard is bolstered by the fact that in the vast documentary record we reviewed, the documents reflect consistent and thoughtful scientific discourse concerning the interpretation of the VIGOR Trial results, but no significant disagreement with the Company’s position that it did not believe Vioxx was

prothrombotic or that the differences in the cardiovascular statistics in the VIGOR Trial were best explained by the cardioprotective effects of naproxen.

Finally, it must be remembered that when Merck scientists were presented with the cardiovascular data from the APPROVe Trial – the first long-term double-blinded placebo-controlled clinical trial in which there was a significantly increased relative risk of cardiovascular events on Vioxx – the Company immediately withdrew the drug from the market, even though some of their outside advisors urged them to keep it on the market with a stronger cardiovascular warning. This conduct is not consistent with the view that Merck's corporate culture put profits over patient safety.

Respectfully submitted,



John S. Martin, Jr.  
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