

June 6, 2008

Merck & Company, Inc.  
One Merck Drive  
P.O. Box 100  
Whitehouse Station, NJ 08889-0100

Dear Sir or Madam:

Sometime in the next few weeks, the Project On Government Oversight (POGO) will update its Federal Contractor Misconduct Database (<http://www.contractormisconduct.org/>), a compilation of information from public resources regarding government contractors, including Merck. I have enclosed the findings relevant to your company, and I am seeking verification of this data.

Any response would be greatly appreciated, as the accuracy of this information is in the best interest of all parties. Out of fairness to Merck, please be assured that any response received by POGO will be posted on the website along with the data.

The biggest change we will be making to the database is the inclusion of more federal contractors (the top 100). We are also adding new instances that we have found in recent months and updating instances already in the database with new information. Please note that the database also includes pending instances, but these are kept separate from resolved instances and are not included in the totals.

If you have any questions, I can be reached at (202) 347-1122. Thank you for your time and consideration.

Sincerely,

Neil Gordon  
Investigator

Enclosure

## **Instances**

### 1. Humeston v. Merck & Co., Inc. (Vioxx Litigation)

Date: 03/12/2007 (Date of Verdict)

Misconduct Type: Health

Enforcement Agency: Non-Governmental

Contracting Party: None

Court Type: Civil

Amount: \$47,500,000

Disposition: Judgment Against Defendant

Synopsis: Frederick Humeston, a postal worker from Boise, Idaho, alleged he suffered a heart attack in 2001, at age 56, as a result of his use of the prescription pain medication Vioxx, which is manufactured by Merck. His heart attack occurred several months before Merck issued a stronger warning about the drug's cardiovascular risks. (Merck pulled Vioxx from the market in September 2004 after its own research showed the drug increased the risk of heart attack and stroke.) At an earlier trial, the jury ruled in favor of Merck, but Humeston later won a new trial, which resulted in a jury awarding him and his wife \$20 million in compensatory damages and \$27.5 million in punitive damages.

### 2. Garza v. Merck (Vioxx Litigation)

Date: 04/21/2006 (Date of Verdict)

Misconduct Type: Health

Enforcement Agency: Non-Governmental

Contracting Party: None

Court Type: Civil

Amount: \$7,750,000

Disposition: Judgment Against Defendant

Synopsis: The family of Leonel Garza claimed he suffered a fatal heart attack as a result of his use of the prescription pain medication Vioxx, which is manufactured by Merck. (Merck pulled Vioxx from the market in September 2004 after its own research showed the drug increased the risk of heart attack and stroke.) A Texas state court jury found in favor of Garza and awarded \$7 million in compensatory damages and \$25 million in punitive damages (automatically capped at \$750,000 under Texas law).

### 3. Ernst v. Merck (Vioxx Litigation)

Date: 08/19/2005 (Date of Verdict)

Misconduct Type: Health

Enforcement Agency: Non-Governmental

Contracting Party: None

Court Type: Civil

Amount: \$24,750,000

Disposition: Judgment Against Defendant

Synopsis: The wife of Robert Ernst claimed he suffered a fatal heart attack as a result of his use of the prescription pain medication Vioxx, which is manufactured by Merck. (Merck pulled Vioxx from the market in September 2004 after its own research showed the drug increased the risk of heart attack and stroke.) A Texas state court jury found in favor of Ernst and awarded her

\$24 million for mental anguish and loss of companionship, and \$229 million in punitive damages (automatically capped at \$750,000 under Texas law).

#### 4. Barnett v. Merck (Vioxx Litigation)

Date: 08/17/2006 (Date of Verdict)

Misconduct Type: Health

Enforcement Agency: Non-Governmental

Contracting Party: None

Court Type: Civil

Amount: \$51,000,000

Disposition: Judgment Against Defendant

Synopsis: Gerald Barnett claimed he suffered a heart attack as a result of his use of the prescription pain medication Vioxx, which is manufactured by Merck. (Merck pulled Vioxx from the market in September 2004 after its own research showed the drug increased the risk of heart attack and stroke.) A Louisiana federal jury found in favor of Barnett and awarded him \$50 million in actual damages and \$1 million in punitive damages.

#### 5. McDarby v. Merck (Vioxx Litigation)

Date: 04/11/2006 (Date of Verdict)

Misconduct Type: Health

Enforcement Agency: Non-Governmental

Contracting Party: None

Court Type: Civil

Amount: \$13,500,000

Disposition: Judgment Against Defendant

Synopsis: John McDarby claimed he suffered a heart attack as a result of his use of the prescription pain medication Vioxx, which is manufactured by Merck. (Merck pulled Vioxx from the market in September 2004 after its own research showed the drug increased the risk of heart attack and stroke.) A New Jersey state court jury found in favor of McDarby and awarded \$4.5 million in compensatory damages and \$9 million in punitive damages. The jury did not award any damages to co-plaintiff Thomas Cona, who also blamed Vioxx for his heart attack, although they did find that Merck had committed consumer fraud against him by not publicizing Vioxx's potential risks.

#### 6. Nominal Pricing Fraud

Date: 02/07/2008 (Date of Announcement)

Misconduct Type: Defective Pricing

Enforcement Agency: Multiple Agencies

Contracting Party: None

Court Type: Civil

Amount: \$650,000,000

Disposition: Settlement

Synopsis: Merck was accused of violating the Medicaid Rebate Statute in marketing its cholesterol drug Zocor, its prescription pain medication Vioxx, and its anti-heartburn drug Pepcid. Merck allegedly offered hospitals large discounts for all three products if hospitals used them instead of competitors' brands. The law requires companies to sell drugs to Medicaid at the

best price they offer to any customer, but in this instance Merck did not offer similar discounts to Medicaid. Merck was also alleged to have induced physicians to use its products through the payment of illegal kickbacks. In February 2008, Merck agreed to pay more than \$650 million to settle the allegations, brought in two separate False Claims Act lawsuits. Merck also entered into a five-year corporate integrity agreement with the Department of Health and Human Services Office of Inspector General.

#### 7. Wissahickon Creek Fish Kills

Date: 12/13/2007 (Date of Settlement)

Misconduct Type: Environment

Enforcement Agency: Multiple Agencies

Contracting Party: None

Court Type: Civil

Amount: \$20,575,000

Disposition: Settlement

Synopsis: On June 13, 2006 Merck discharged potassium thiocyanate from its pharmaceutical plant in Montgomery County, Pa., causing extensive fish kills in nearby Wissahickon Creek and the temporary closing of the Philadelphia Water Department's Schuylkill River drinking water intake. In December 2007, Merck settled a federal-state lawsuit over the resulting violations of the federal Clean Water Act and state water pollution control regulations. Merck agreed to pay \$10 million to put into place systems that will prevent future discharges, spend approximately \$9 million for environmental projects, and pay \$1,575,000 in penalties to the United States and the Commonwealth of Pennsylvania.

#### 8. Medco False Claims Act Litigation

Date: 10/23/2006 (Date of Settlement)

Misconduct Type: Cost/Labor Mischarge

Enforcement Agency: Multiple Agencies

Contracting Party: None

Court Type: Civil

Amount: \$137,500,000

Disposition: Settlement

Synopsis: Two consolidated qui tam lawsuits filed under the False Claims Act charged Merck's pharmacy benefits management unit Medco Health Solutions (formerly Merck-Medco Managed Care, LLC) with cheating federal employees' health plans through various fraudulent practices involving the processing of mail order prescriptions. Medco settled with the government, agreeing to pay \$137.5 million plus interest.

#### 9. Medco ERISA Class Action Settlement

Date: 12/09/2002 (Date of Settlement)

Misconduct Type: Consumer Affairs

Enforcement Agency: Non-Governmental

Contracting Party: None

Court Type: Civil

Amount: \$42,500,000

Disposition: Settlement

Synopsis: Merck agreed to pay \$42.5 million to settle class-action lawsuits against its pharmacy benefits management subsidiary, Medco Health Solutions (formerly Merck-Medco Managed Care, LLC). Medco, which negotiates with drug companies to obtain discounts for employers and health plans, was accused of improperly pocketing billions in rebates and other fees and, by doing so, violating its fiduciary duties to customers under the federal Employee Retirement Income Security Act (ERISA).

#### 10. Medco Drug Switching Settlement

Date: 04/26/2004 (Date of Settlement)

Misconduct Type: Consumer Affairs

Enforcement Agency: Multiple Agencies

Contracting Party: None

Court Type: Civil

Amount: \$29,300,000

Disposition: Settlement

Synopsis: Merck's pharmacy benefits management subsidiary, Medco Health Solutions, agreed to pay \$29.3 million to settle claims filed by the U.S. Justice Department and the attorneys general of 20 states accusing Medco of violating consumer protection and mail fraud laws by switching patients to more expensive drugs, which allowed Medco to pocket billions in incentive rebates from drug manufacturers.

#### 11. Air Pollution (San Diego, CA)

Date: 09/05/1996 (Date of Announcement)

Misconduct Type: Environment

Enforcement Agency: EPA

Contracting Party: None

Court Type: Civil

Amount: \$1,857,395

Disposition: Settlement

Synopsis: Merck, as former owner of the Kelco kelp processing plant in San Diego, California, agreed to pay more than \$1.8 million in penalties to settle an air pollution case with the U.S. Environmental Protection Agency and the U.S. Department of Justice. The government alleged the facility exceeded air pollution limits for smog-causing volatile organic compound (VOC) air emissions for several years and that Merck, which owned the facility until February 1995, made modifications to the facility without obtaining the necessary permits and failed to install the best available emission controls.

#### 12. Nationwide Vioxx Settlement

Date: 11/09/2007 (Date of Settlement)

Misconduct Type: Health

Enforcement Agency: Non-Governmental

Contracting Party: None

Court Type: Civil

Amount: \$4,850,000,000

Disposition: Settlement

Synopsis: In November 2007, Merck & Co. agreed to pay \$4.85 billion to end thousands of federal and state personal injury lawsuits claiming injuries and deaths caused by Merck's prescription pain medication Vioxx. Merck pulled Vioxx from the market in September 2004 after its own research showed the drug increased the risk of heart attack and stroke. Under the agreement, Merck does not admit causation or fault.

### **Pending Instances**

NY State False Claims Act Lawsuit (Vioxx)

Date: 09/17/2007 (Date of Filing)

Misconduct Type: Health

Enforcement Agency: State/Local

Contracting Party: None

Court Type: Civil

Amount: \$0

Disposition: Pending

Synopsis: New York Attorney General Andrew Cuomo and New York City Mayor Michael Bloomberg filed a joint lawsuit under the state's False Claims Act against Merck & Co., Inc. for allegedly concealing the cardiovascular risks posed by its prescription pain medication Vioxx. The lawsuit seeks damages, civil penalties and restitution for tens of millions of dollars the city and state paid for Vioxx prescriptions. Merck pulled Vioxx from the market in September 2004 after its own research showed the drug increased the risk of heart attack and stroke.