

DIRECT RE: PERSONAL/FAMILY USE OF VIOXX

June 8, 2005

<p style="text-align: right;">Page 900</p> <p>1 MR. BUCHANAN: Dave Buchanan, 2 plaintiffs. 3 MR. GRAND: Jeff Grand from Seeger 4 Weiss, plaintiffs. 5 MR. STEVENSON: Marcus Stevenson, 6 Goforth Lewis Sanford, plaintiffs. 7 THE VIDEOTAPE TECHNICIAN: This is a 8 continuation of the videotape deposition of Peter S. 9 Kim, Ph.D. 10 Today's date is June 8, 2005, and the 11 video time is 10:07 a.m. 12 Mr. Kim, I'd like to remind you, 13 you're still under oath. 14 Please proceed. 15 THE WITNESS: Thank you. 16 - - - 17 PETER S. KIM, Ph.D., 18 having been previously sworn, was examined 19 and testified as follows: 20 - - - 21 EXAMINATION 22 - - - 23 BY MR. KIERNAN: 24 Q. Dr. Kim, good morning. 25 A. Good morning.</p>	<p style="text-align: right;">Page 902</p> <p>1 Merck products? 2 A. I am the senior-most scientist 3 responsible for the safety of Merck's products. 4 Q. Dr. Kim, on September 27, 2004 did 5 you recommend to the president of Merck, Mr. 6 Gilmartin, that Merck should voluntarily remove one 7 of its leading products, Vioxx, from the market? 8 MR. SPECTER: Objection, leading. 9 THE WITNESS: Yes, I did. 10 BY MR. KIERNAN: 11 Q. Did Mr. Gilmartin follow your 12 recommendation? 13 A. Yes, he did. 14 Q. I want to talk to you about your 15 recommendation and the events leading up to it in 16 some detail in a bit, but first I want to ask you a 17 little bit about your background. 18 Where are you from originally? 19 A. I grew up in northern New Jersey. 20 Q. Are you married? 21 A. Yes, I am. 22 Q. Do you have children? 23 A. Yes, I do. 24 Q. Where did you attend high school? 25 A. I went to public high school in</p>
<p style="text-align: right;">Page 901</p> <p>1 Q. My name is David Kiernan. I would 2 like to ask you a couple of questions on behalf of 3 Merck. 4 Would you please introduce yourself 5 to the jury? 6 A. Sure. I'm Peter S. Kim. 7 Q. You're a scientist? 8 A. Yes, I am. 9 Q. You work for Merck? 10 A. Yes, I do. 11 Q. How long have you worked for Merck? 12 A. I've worked for Merck for about 13 four-and-a-half years. I started February 1st, 14 2001. 15 Q. What is your position? 16 A. I'm currently president of Merck 17 Research Laboratories. 18 Q. What are your responsibilities as 19 president of Merck Research Laboratories? 20 A. I'm responsible for the discovery and 21 development of Merck's drugs and vaccines, and also 22 for overseeing patient safety with regard to the 23 drugs that we have out there on the market. 24 Q. Who is the senior-most scientist at 25 Merck who bears responsibility for the safety of</p>	<p style="text-align: right;">Page 903</p> <p>1 northern New Jersey. 2 Q. College? 3 A. College, I went to Cornell University 4 in upstate New York, Ithaca, New York. 5 Q. What did you major in in college? 6 A. In college I majored in chemistry. 7 Q. Did you receive any scholarships or 8 financial aid? 9 A. Yes, indeed, I did. I received 10 substantial scholarships and financial aid that made 11 it possible for me to attend Cornell. 12 MR. SPECTER: Objection as to 13 relevance. 14 BY MR. KIERNAN: 15 Q. I note from your resume -- 16 MR. FERRARA: Can we go off the 17 record? 18 BY MR. KIERNAN: 19 Q. -- that you graduated magna cum laude 20 from Cornell; is that correct? 21 A. That is correct. 22 Q. In other words, you did well 23 academically? 24 A. Yes, I did. 25 Q. Where did you go after graduating</p>

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1 peer-reviewed journal and, in fact, an esteemed
2 peer-reviewed journal, the New England Journal of
3 Medicine.
4 The other thing that Merck scientists
5 did was to unblind the safety results from the
6 ongoing Alzheimer's trials, because as I said
7 earlier, the Alzheimer's trials actually compared
8 Vioxx to placebo. And the reason why that was
9 important was in the VIGOR trial, what was being
10 compared were two active drugs, two active
11 comparators, Vioxx and naproxen. And so there was a
12 difference in cardiovascular event rates between
13 patients taking Vioxx and those taking naproxen, but
14 it wasn't possible from the VIGOR study alone to
15 know whether or not the reason for that difference
16 was that there were more heart attacks in those
17 patients taking Vioxx or whether there were fewer
18 heart attacks on those patients taking naproxen
19 because there was no placebo arm, there was no
20 neutral group.
21 And so what the Merck scientists did
22 was to go to these other large studies where Vioxx
23 was being compared to placebo, to a sugar pill, and
24 when they did that and they unblinded those large
25 studies, what they saw, again, was that there was

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1 not a difference in the cardiovascular event rates
2 between patients taking Vioxx and patients taking
3 placebo. So, yet again, the large Alzheimer's
4 studies showed that there was not a significant
5 difference in cardiovascular event rates between
6 patients taking Vioxx and patients taking a sugar
7 pill.
8 So, therefore, that provided an
9 anchor for interpreting the VIGOR results such that
10 the most plausible explanation for the results was
11 that naproxen was actually decreasing the
12 cardiovascular event rate, and that interpretation
13 was consistent with what was known about naproxen.
14 It was known that naproxen had what are called
15 anti-platelet aggregation effects; that is, it
16 prevents the clumping of the platelets that can lead
17 to blood clots. And indeed the label or the
18 prescribing information for naproxen points to the
19 fact that naproxen can increase bleeding times, that
20 is, it prevents the coagulation of the blood, and so
21 this anti-platelet aggregation effect of naproxen
22 could have a protective effect with regard to
23 cardiovascular events.
24 One other important point in terms of
25 thinking about all of this that the Merck scientists

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1 paid attention to was the fact that in the VIGOR
2 study, naproxen was used at a prescription strength
3 dosage of 500 milligrams twice a day. And that dose
4 of using 500 milligrams twice a day leads to a very
5 high and continuous suppression of the anti-platelet
6 activity in these -- in the blood, and so,
7 therefore, consistent with it having a protective
8 effect in a manner very analogous, in fact,
9 mechanistically the same as the way in which aspirin
10 protects, has a cardioprotective effect.
11 BY MR. KIERNAN:
12 Q. After you joined Merck, did you
13 personally review the analyses that followed the
14 VIGOR study?
15 A. Yes, I did.
16 Q. Did you reach your own conclusions?
17 A. Yes, I did.
18 Q. With respect to the medication
19 naproxen, you believe even today that it has a
20 protective effect on the heart?
21 A. Yes, I do.
22 Q. Now, did Merck continue to study
23 Vioxx after the VIGOR study?
24 A. Yes, we did.
25 Q. Dr. Kim, let me ask you, have you

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1 personally ever taken Vioxx?
2 MR. SPECTER: Objection.
3 MR. MEADOW: Objection.
4 THE WITNESS: Yes, I have.
5 BY MR. KIERNAN:
6 Q. Did you, as the head of all science
7 at Merck, believe Vioxx was safe when you took it?
8 MR. MEADOW: Objection.
9 THE WITNESS: Yes, I did.
10 BY MR. KIERNAN:
11 Q. Has anyone in your family taken
12 Vioxx?
13 MR. MEADOW: Objection.
14 MR. SPECTER: Objection.
15 THE WITNESS: Yes. My mother has
16 taken Vioxx.
17 BY MR. KIERNAN:
18 Q. What condition did your mother take
19 Vioxx for?
20 A. For arthritis.
21 Q. Did Vioxx work for your mother?
22 A. Yes, it did.
23 Q. Did you recommend that your mother
24 take Vioxx after the results of the VIGOR study
25 became available?

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1 MR. MEADOW: Objection.
2 THE WITNESS: Yes, I did.
3 BY MR. KIERNAN:
4 Q. How long did your mother take Vioxx?
5 MR. SPECTER: Objection.
6 THE WITNESS: My mother took Vioxx up
7 until the day it was withdrawn from the market.
8 BY MR. KIERNAN:
9 Q. Were you ever worried that members of
10 your family were taking Vioxx?
11 MR. SPECTER: Objection.
12 THE WITNESS: No, I was not.
13 BY MR. KIERNAN:
14 Q. Why were you not worried?
15 A. Well, because I had reviewed and was
16 very familiar with the safety data surrounding Vioxx
17 and indeed had studied it very carefully.
18 Q. Now, Dr. Kim, let me change topics
19 again and bring you up to the events of 2004, this
20 past year, the events leading up to the withdrawal
21 of Vioxx.
22 Let me ask you first, who at Merck
23 made the recommendation to withdraw Vioxx?
24 A. I made the recommendation to the
25 president and CEO of Merck, Mr. Ray Gilmartin, that

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1 Merck voluntarily withdraw Vioxx from the market.
2 Q. Was that recommendation based on the
3 results of a specific study?
4 A. Yes. That recommendation was based
5 on the results of a study called APPROVe, and it was
6 based on the results of that study and the analysis
7 that followed.
8 Q. Was the APPROVe study a study that
9 Merck itself designed?
10 A. Yes, it was.
11 Q. A study that Merck itself funded?
12 A. Yes, Merck funded the APPROVe study.
13 Q. Who actually carried out the APPROVe
14 study?
15 A. The APPROVe study was carried out by
16 independent investigators, academic investigators,
17 that use a protocol or a procedure that was provided
18 by Merck. So, Merck designs the study, Merck
19 actually establishes the procedures and the
20 protocols that should be used, but then it's given
21 to independent investigators around the world who
22 then are responsible for recruiting the patients and
23 conducting the studies.
24 Q. Can you tell us what the APPROVe
25 study looked at?

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1 A. Yes. The purpose of the APPROVe
2 study was to see whether or not treatment with Vioxx
3 could prevent the recurrence of colon polyps in
4 patients that already had a history of colon polyps,
5 and the reason why Merck was interested in that
6 application was that colon polyps are a what's
7 called a precursor, or they predispose people to a
8 higher incidence of colon cancer. And so, the
9 question was, if you had a patient population -- if
10 you had a patient who had a history of colon polyps,
11 could you use Vioxx to prevent that reoccurrence?
12 Q. Was Merck also looking at heart
13 safety in the APPROVe study?
14 A. Yes, it was.
15 Q. Were there other Merck studies that
16 were also looking at cardiovascular or heart safety
17 at this time?
18 A. Yes. In fact, in many studies we
19 were looking at cardiovascular heart safety. In one
20 particular case, what was done was what's called a
21 prespecified manner, which is to say that you state
22 this up front before you know the results of a
23 trial. What Merck decided to do was to take the
24 cardiovascular or heart safety results from three
25 different trials, one of them being the APPROVe

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1 trial that we're talking about, and then two other
2 trials which were looking at cancer prevention, and
3 in a prespecified manner to look at all of the
4 cardiovascular heart outcomes results from those
5 three trials as a test and as a check on the
6 cardiovascular safety of Vioxx.
7 Q. How was the APPROVe trial relevant to
8 that effort?
9 A. Well, that was one of the three
10 trials that was part of this prespecified endpoint
11 in terms of looking at cardiovascular heart safety.
12 But when we got the results of the APPROVe study
13 itself, those study results, together with the
14 analysis that followed, led to my recommendation to
15 the president and CEO of Merck that we withdraw the
16 drug voluntarily.
17 MR. KIERNAN: Can we take a short
18 break?
19 THE WITNESS: Sure.
20 THE VIDEOTAPE TECHNICIAN: Stand by,
21 please. The time is 10:54. We're going off the
22 record.
23
24 (Whereupon, a recess was taken from
25 10:54 a.m. until 11:11 a.m.)

15 (Pages 944 to 947)

ESQUIRE DEPOSITION SERVICES

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1 Q. Was anybody from the board present
2 aside from those persons you already mentioned?
3 A. The only person on the board that was
4 present is Mr. Gilmartin himself.
5 Q. Ms. Lewent was there, she's the chief
6 financial officer; is that correct?
7 A. That's correct.
8 Q. Did her job include being concerned
9 about profits and losses; is that correct?
10 A. She's the chief financial officer,
11 which includes consideration of profit and losses.
12 Q. Was that the meeting in which you
13 made sort of those back-of-the-envelope calculations
14 as to what it was going to cost Merck to take the
15 drug off the market?
16 A. No, it was not.
17 Q. Do you recollect we discussed those
18 calculations you had made in that regard?
19 A. Yes, I do.
20 Q. When was that calculation made by
21 you?
22 A. I don't recall, but I know explicitly
23 that there were no discussions of any financial
24 matters up until after we informed the board of
25 directors of our decision to voluntarily withdraw

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1 Vioxx from the market.
2 Q. Well --
3 A. -- which is Tuesday, following the
4 Monday that we're currently talking about.
5 Q. You recognize that my question was
6 when was that calculation made by you; correct?
7 A. And my answer is --
8 Q. I know what your answer was. I just
9 want to know if you know what my question was. Do
10 you know what it was?
11 A. You asked me when --
12 Q. When was the calculation made by you?
13 A. I said I don't know, but I know that
14 it was after the Tuesday following that Monday
15 meeting.
16 Q. Now, you told Mr. Kiernan in response
17 to his questions that the FDA said that there was a
18 small increased risk associated with Vioxx from a CV
19 standpoint. Do you recollect that?
20 A. I'm sorry, could you restate that.
21 Q. You told Mr. Kiernan in response to
22 his questions that the FDA characterized the
23 increased CV risk as, quote, small or "very small."
24 Correct?
25 A. Yes. The FDA in their press release

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1 characterized the increased cardiovascular risk seen
2 in the APPROVe study as "very small."
3 Q. In fact, the event rate was
4 approximately double, is that correct, in comparing
5 it to placebo?
6 A. That's correct.
7 Q. Now, you told Mr. Kiernan that the
8 APPROVe study showed in the first 18 months of use
9 the same CV event rate. Do you recollect that?
10 A. I recollect something along those
11 lines, but, yes. I mean, basically for the first 18
12 months, the cardiovascular risk associated with
13 Vioxx and placebo were indistinguishable.
14 Q. Do you know whether APPROVe had
15 significant enough statistical power to determine
16 whether there was a different CV rate in those first
17 18 months?
18 A. As we discussed on one of the earlier
19 days, that question cannot be answered the way you
20 asked it because sufficient power needs to be
21 defined in terms of what confidence intervals one is
22 looking for when one asks for that particular power.
23 What I do know is that that result for the first 18
24 months was consistent with the totality of the data
25 that we had on Vioxx versus placebo up until that

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1 point.
2 Q. Well, you said "consistent with."
3 You had a study 090 that was against placebo;
4 correct?
5 A. 090 was one of the studies in which
6 Vioxx was compared to placebo.
7 Q. And that showed a statistically
8 significant increased CV rate in that study;
9 correct?
10 A. That did not show a statistically
11 significant increase in CV rate in that study.
12 Q. We'll come back to that.
13 Now, Dr. Kim, I don't like asking you
14 about your personal health or that of your mother,
15 but since your lawyer asked you about it and you
16 chose to answer, I'm obligated to ask you some
17 questions.
18 So, let's start with your mother.
19 What is her name?
20 A. My mother's name is Mi Heh Kim.
21 Q. How is that spelled sir?
22 A. M-I, H-E-H, K-I-M.
23 Q. MI?
24 A. H-E-H, K-I-M.
25 Q. Where does she live, sir?

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<p>1 A. She lives in New Jersey. 2 Q. Where? 3 A. In Ridgewood, New Jersey. 4 Q. Who is her physician? 5 A. I don't know. 6 Q. Who prescribed Vioxx for her? 7 A. Her physician. 8 Q. You don't know who that is? 9 A. No, I don't. 10 Q. Do you know if that's a 11 rheumatologist or an internist, orthopedist? 12 A. No, I don't. 13 Q. Do you know what dose she was taking? 14 A. I know that she was taking 25 15 milligrams, and sometimes she took 12-and-a-half 16 milligrams. 17 Q. For how long did she take the Vioxx? 18 A. For some time. 19 Q. I'm sure that's true. 20 A. I don't know exactly, but, yeah, it 21 was for some time. 22 Q. Days, months, years? 23 A. Oh, certainly months. 24 Q. Would she take it as needed or would 25 she take one every day?</p>	<p>1 stop taking Vioxx? 2 A. No. I said, tomorrow we're going to 3 have a press conference announcing that we're going 4 to withdraw Vioxx, I didn't want you to be 5 surprised, so, I'm giving you this heads up, 6 something that is going to occur tomorrow morning. 7 Q. What did she say? 8 A. I don't recall exactly what she said, 9 but she's very proud of me and my commitment to 10 improving human health, so, she probably said 11 something along the lines of, I'm sure you're doing 12 the right thing. 13 Q. Did she ask you whether you thought 14 she should continue to take Vioxx? 15 A. Not that I recall. 16 Q. Did she indicate to you whether she 17 was going to keep taking Vioxx? 18 A. Not that I recall. 19 Q. How do you know that's the last day 20 she took Vioxx? 21 A. Well, because subsequently she told 22 me that she still had her Vioxx, but that she wasn't 23 taking it anymore. 24 Q. What was your response to that? 25 A. That's true of many people I know.</p>
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<p>1 A. She would take it as needed. 2 Q. Was that common with patients as far 3 as you knew, that people who take it as needed? 4 A. It depends on the disease. Patients 5 with osteoarthritis often take it as needed during 6 what are called -- well, patients with 7 osteoarthritis tend to take it more on an as-needed 8 basis, whereas patients with rheumatoid arthritis 9 tend to take it on a more regular basis. 10 Q. She was taking it for which 11 indication? 12 A. For osteoarthritis. 13 Q. How old is she, sir? 14 A. She is 76 years old. 15 Q. When is the last time that she took 16 Vioxx? 17 A. The last time she took Vioxx was, I 18 think, the day before we withdrew Vioxx from the 19 market. 20 Q. The day before? 21 A. Yes. 22 Q. Did you give her a heads up? 23 A. I actually gave her a heads up the 24 night before we had the press conference. 25 Q. Did you tell her, Mom, you ought to</p>	<p>1 Q. Has she had a cardiac workup since 2 the September occasion when she stopped taking 3 Vioxx? 4 A. Not that I'm aware of. 5 Q. Do you know whether she has sustained 6 a heart attack while on Vioxx? 7 A. No, she has not. 8 Q. How do you know that without a 9 cardiac workup? 10 A. I don't know that she's had a cardiac 11 workup. I'm not aware of her having an MI. 12 Q. You could not know if she had 13 suffered a heart attack without a cardiac workup; 14 correct? 15 A. If -- fine. I'm not aware of it. 16 Q. Am I correct, sir, that you could not 17 know if a person has suffered a heart attack without 18 an EKG being performed? 19 A. I don't know the answer to that 20 question. 21 Q. Have you told your mother that she 22 ought to go get a cardiac workup? 23 A. No, I have not. 24 Q. Does your mother know that you were 25 going to be discussing her personal health today?</p>

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1 MR. KIERNAN: Objection to form.
2 THE WITNESS: No, she doesn't.
3 BY MR. SPECTER:
4 Q. Do you think she'd mind about that?
5 A. I don't know.
6 Q. Are you going to tell her?
7 A. I think so.
8 Q. Let's talk about you, again, since
9 you brought it up. You didn't bring it up, but your
10 lawyer did, and you answered.
11 For what reason did you take Vioxx?
12 A. I took Vioxx because I've had a back
13 problem, so, occasionally there are flare-ups, I
14 took it for that, as well as for pain in my foot. I
15 have a syndrome called plantar fasciitis.
16 Q. Do you have osteoarthritis?
17 A. Not that I'm aware of.
18 Q. What kind of a back problem do you
19 have?
20 A. It's an old problem which was a
21 slipped disk.
22 Q. What is it now?
23 A. Sorry?
24 Q. What is it now?
25 A. Just a pain in my back once in a

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1 while.
2 Q. That sounds familiar.
3 Were you taking it for indications
4 that were recognized on the label?
5 A. Acute pain is probably the closest
6 having to do with the plantar fasciitis in my foot.
7 Q. Is that also true of the back?
8 A. The back was also on an acute basis.
9 Q. So, you would not have taken --
10 strike that.
11 What dosage were you taking?
12 A. Generally speaking, I was taking 25
13 milligrams.
14 Q. How about when that wasn't the case?
15 A. Sometimes I would take 50 milligrams.
16 Q. Would that depend upon how much pain
17 you had?
18 A. Yes. It would depend on whether or
19 not -- yes, on the pain relief, I would say.
20 Q. The more you took, the more pain
21 relief you would get?
22 A. If it was for an acute flare-up and I
23 was in extreme pain, I would take 50 milligrams.
24 Q. What was associated with your having
25 an acute flare-up?

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1 A. I don't know.
2 Q. Swinging a golf club or being out in
3 the yard gardening or --
4 A. I don't know.
5 Q. You don't know. Okay.
6 Now, what is the longest you ever
7 took Vioxx 50 milligrams?
8 A. Oh, just a few days.
9 Q. Less than five?
10 A. Yes.
11 Q. How about 25 milligrams?
12 A. Probably similar, less than a week.
13 Q. You would take it as needed?
14 A. Yes.
15 Q. How many times do you think you took
16 Vioxx all told?
17 A. Maybe 50.
18 Q. Did you ever take Vioxx before you
19 were an employee of Merck?
20 A. No, I did not.
21 Q. When is the first time you took
22 Vioxx?
23 A. Oh, I don't recall.
24 Q. Can you give me a rough estimate?
25 A. A rough estimate? After I joined

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1 Merck, a year or two after that, so, 2002/2003. You
2 are asking for a rough estimate?
3 Q. Yes, I am.
4 When was the last time you took
5 Vioxx?
6 A. I don't recall.
7 Q. Before or after the recall?
8 MR. KIERNAN: Objection to form.
9 BY MR. SPECTER:
10 Q. Before or after the withdrawal?
11 MR. KIERNAN: Voluntary withdrawal.
12 BY MR. SPECTER:
13 Q. Before or after the involuntary
14 withdrawal?
15 MR. KIERNAN: Objection to form.
16 THE WITNESS: The last time I took
17 Vioxx was actually after the withdrawal.
18 BY MR. SPECTER:
19 Q. Okay. That's interesting.
20 When was that?
21 A. That was January of 2005.
22 Q. Okay.
23 It wouldn't surprise you if other
24 people had taken Vioxx after the withdrawal since
25 you've done it yourself, correct?

35 (Pages 1024 to 1027)

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<p style="text-align: right;">Page 1028</p> <p>1 MR. KIERNAN: Objection to form. 2 THE WITNESS: I think that's 3 speculative. 4 BY MR. SPECTER: 5 Q. Would it be speculative? 6 A. I'm sorry. Your question is, it 7 would not surprise me? 8 Q. Yes. 9 A. It would not surprise me. 10 Q. And you wouldn't fault somebody who 11 took Vioxx after the drug was withdrawn, would you, 12 sir? 13 MR. KIERNAN: Objection to form. 14 THE WITNESS: Oh, I wouldn't fault or 15 not fault someone. 16 BY MR. SPECTER: 17 Q. Right. 18 How many times did you take Vioxx 19 after it was withdrawn from the market? 20 A. Just that one time for a few days. 21 Q. What was that associated with? 22 A. It was associated with some acute 23 pain. 24 Q. Where? 25 A. Actually on a skiing vacation.</p>	<p style="text-align: right;">Page 1030</p> <p>1 you must have had some Vioxx with you when you went 2 out to Utah; is that right? 3 A. That's correct. 4 Q. You packed it in your bags before you 5 left from Bryn Mawr? 6 A. Actually, it was in the bag, never 7 took it out. 8 Q. Still there? 9 A. I don't know. 10 Q. Did you know that you had it when you 11 went to Utah? 12 A. I don't know. 13 Q. Well, when you felt the pain, did it 14 occur to you, gee, I have Vioxx with me, I guess I 15 can take it? 16 A. At some point it did, because I did 17 that. 18 Q. Right. 19 When you went to your, I guess it was 20 your toiletries bag? 21 A. Yes. 22 Q. When you went to your toiletries bag, 23 were you surprised to see it in there? 24 A. No. 25 Q. What dosage did you take?</p>
<p style="text-align: right;">Page 1029</p> <p>1 Q. I meant where in your body, but 2 thanks for telling me. 3 A. It was acute pain in -- I can't 4 remember where it was. 5 Q. In Aspen? 6 A. It was actually in Utah. 7 Q. Where in your body? 8 A. In my legs. 9 Q. Was this that plantar fasciitis issue 10 or something else? 11 A. It was not that issue. 12 Q. Where in your legs do you have pain? 13 A. It was generally both of my legs from 14 the skiing. 15 Q. Was that muscular or was it skeletal? 16 A. I don't know. 17 Q. Did it provide relief? 18 A. Yes, it did. 19 Q. Now, you don't live in Utah, do you? 20 A. No, I don't. 21 Q. You don't have a house there, do you? 22 A. No, I don't. 23 Q. You were staying in a hotel? 24 A. Yes. 25 Q. So, if you were staying in a hotel,</p>	<p style="text-align: right;">Page 1031</p> <p>1 A. 25 milligrams. 2 Q. And for how long? 3 A. I can't remember exactly, but two or 4 three days. 5 Q. How long was the trip? 6 A. One week. 7 Q. Did you experience this pain after 8 your first day on the ski slopes? 9 A. No. It was towards the middle of the 10 week. 11 Q. Did it provide relief? 12 A. Yes, it did. 13 Q. Now, did your doctor know that you 14 were taking Vioxx after the drug was withdrawn from 15 the market? 16 A. No. 17 Q. Have you told him since then, him or 18 her, since then? 19 A. No. 20 Q. What doctor prescribed Vioxx to you? 21 A. I don't remember his name offhand. 22 It's a physician in the Merck health system. I 23 don't remember his name exactly right now. 24 Q. Is he a treating doctor for you? 25 A. What do you mean "treating doctor"?</p>

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1 Q. Well, that's a good question.
 2 Does he have an office?
 3 A. Yes. Well, he's part of the Merck
 4 healthcare system, and he is responsible for
 5 treating Merck employees that go to the healthcare
 6 system.
 7 Q. This would be in Montgomery County,
 8 Pennsylvania; is that correct?
 9 A. Correct.
 10 Q. Did you see him in his office?
 11 A. No, I did not.
 12 Q. Did you call him on the telephone?
 13 A. Yes, I had a discussion with him on
 14 the telephone.
 15 Q. Did you say something to him like,
 16 I'd like some Vioxx, I have some pain?
 17 A. Something like that. I described to
 18 him the issues that I had with my foot and that I
 19 thought that -- I described to him the issues that I
 20 was having with my foot, and we discussed the
 21 possibility of getting a Vioxx prescription.
 22 Q. And he said yes?
 23 A. Yes, he did.
 24 Q. And he sent over a script for you to
 25 fill?

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1 A. Correct.
 2 Q. Did you ever meet this guy?
 3 A. I've met him, but not -- this
 4 discussion was over the phone.
 5 Q. Have you ever met him in a
 6 professional context where he's been treating you?
 7 A. No.
 8 Q. Do you generally approve of having a
 9 pharmaceutical prescribed based upon a phone
 10 conversation?
 11 A. Oh, I don't have -- I mean, I think
 12 that depends on the circumstances, but I don't have
 13 a strong opinion on that.
 14 Q. Did he provide any warnings to you
 15 about the drug?
 16 A. Not that I recall.
 17 Q. Did he ask you about your own
 18 cardiovascular health history when he prescribed the
 19 drug to you?
 20 A. Not that I recall.
 21 Q. If he had, what would you have said?
 22 A. That to the best of my knowledge, I
 23 was healthy.
 24 Q. Is that the same view that you have
 25 today about your own CV health?

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1 A. Yes, it is.
 2 Q. Have you had an EKG yourself?
 3 A. Have I had an EKG?
 4 Q. Yes.
 5 A. There's been an EKG done on me.
 6 Q. When?
 7 A. Oh, jeez. Quite a while ago.
 8 Q. Have you had one since you
 9 discontinued Vioxx?
 10 A. No, I have not.
 11 Q. Do you know whether you have suffered
 12 a silent heart attack, Dr. Kim?
 13 MR. KIERNAN: Objection to form.
 14 THE WITNESS: Not to my knowledge.
 15 BY MR. SPECTER:
 16 Q. Now, when you get Vioxx from the
 17 Merck doctors, are you required to pay for it?
 18 A. No, I'm not. Well, I mean -- no, I'm
 19 not required to pay for it. Merck provides its
 20 drugs to Merck employees at no cost.
 21 Q. Did you ever take a sample of Vioxx?
 22 A. I don't understand what you mean
 23 there.
 24 Q. Do you know what a sample is?
 25 A. A sample is used in terms of --

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1 Q. Sampling?
 2 A. By the sales representatives, is that
 3 what you're asking me?
 4 Q. Yes.
 5 A. I'm not aware that I've taken a
 6 sample of Vioxx, no.
 7 Q. Did you have access to samples from
 8 the company without getting a script?
 9 A. No.
 10 MR. SPECTER: We've been going for I
 11 think exactly an hour. Let's take a break.
 12 THE VIDEOTAPE TECHNICIAN: Off the
 13 record at 1:01.
 14 - - -
 15 (Whereupon, a luncheon recess was
 16 taken from 1:01 p.m. until 1:47 p.m.)
 17 - - -
 18 THE VIDEOTAPE TECHNICIAN: The time
 19 is 1:47. We're back on the record.
 20 BY MR. SPECTER:
 21 Q. Dr. Kim, we've come back from lunch.
 22 I want to pick up with something that
 23 you said in response to one of my questions just
 24 before lunch. I had asked you about study 090, and
 25 you told me that it did not show a statistically

<p style="text-align: right;">Page 1036</p> <p>1 significant increased CV rate. Do you recollect 2 that?</p> <p>3 A. Yes, I recollect saying something to 4 that effect.</p> <p>5 Q. Do you want to correct that?</p> <p>6 A. No, I do not.</p> <p>7 Q. Do you recollect telling me that it 8 did when we discussed this issue a few weeks ago?</p> <p>9 A. I recollect when we discussed this 10 issue a few weeks ago you showing me a copy of Dr. 11 Topol's paper with the results of 090 and you 12 directing me to a table and you asking me what the 13 p-value in that table was. And then you asked me 14 whether or not that p-value was statistically 15 significant. I don't remember the exact details, 16 but I remember that course of questioning. And I 17 remember telling you something along the lines that 18 the p-value was less than .05, which is considered 19 normally to be statistically significant.</p> <p>20 In answering your question today, 21 what I pointed out was in that analysis, the 22 analysis actually combined the results for the 23 placebo group with the results from a group that was 24 receiving a different drug, nabumetone, and, 25 therefore, I considered that analysis to be flawed,</p>	<p style="text-align: right;">Page 1038</p> <p>1 on study 090."</p> <p>2 And I said: "What's the p-value?"</p> <p>3 And you said: "The p-value that he 4 quotes here is 0.03."</p> <p>5 And then I said: "That's less than 6 0.05; correct?"</p> <p>7 And you said: "That's correct."</p> <p>8 And I said: "If that is accurately 9 reported, that would be statistically significant; 10 correct?"</p> <p>11 And your answer was: "Yes. Formally 12 speaking, this is statistically significant. The 13 point that I was referring to is that the number of 14 events is very small, 5 versus 1."</p> <p>15 And then I asked you: "But it is 16 formally statistically significant; correct?"</p> <p>17 And you answered: "Yes."</p> <p>18 And I'm going to pass over to you 19 that testimony which I know you didn't have it in 20 front of you when I read it to you, but I would like 21 you to glance at it and tell me whether you think I 22 said anything that was incorrect.</p> <p>23 A. You did say things that were 24 incorrect. You are asking me whether you read the 25 transcript correctly?</p>
<p style="text-align: right;">Page 1037</p> <p>1 and that when the analysis is done properly, 2 comparing the Vioxx group to the placebo group, that 3 the results are not statistically significant.</p> <p>4 Q. Well, Dr. Kim, you were asked, this 5 appears at Page 787 of this transcript, you were 6 asked: "That study, 090, that we looked at before, 7 you told us that that was not statistically 8 significant; correct?"</p> <p>9 "Answer: If I did say that, I 10 shouldn't have. I said -- what I should have said 11 is that the study was small. And although 12 numerically there was a difference, I don't think 13 that it was statistically significant. If it was, 14 that is in terms of the 0.05?"</p> <p>15 "I don't actually recall whether or 16 not it was .05 or not, but it was a small study and 17 it was numerical --"</p> <p>18 And then I said to you: "Well, it's 19 right in front of you, isn't it?"</p> <p>20 And you then you said: "I don't know 21 that. Is it?"</p> <p>22 And I said: "Yes, it's in that chart 23 in Dr. Topol's article."</p> <p>24 And then you said: "There is a chart 25 here in front of me in which Dr. Topol is reporting</p>	<p style="text-align: right;">Page 1039</p> <p>1 Q. That's true.</p> <p>2 A. (Witness reviewing document.) 3 I believe you read the transcript 4 correctly.</p> <p>5 Q. Were you under the impression when 6 you gave those answers that 090 was reported to have 7 a p-value of less than .05?</p> <p>8 A. Well, I think it's very clear what I 9 was under the impression here. I said in response 10 to your question, "I don't actually recall whether 11 or not it was .05 or not."</p> <p>12 Q. Right. Then I showed you the table, 13 or you had it in front of you, and you saw that it 14 was beneath 0.5, which is the line that's used in 15 that field; correct?</p> <p>16 A. What this document -- what this 17 transcript shows is that you showed me a document, 18 which is a copy of Dr. Topol's argument, and in 19 asking me about whether or not it was statistically 20 significant, I said: "There is a chart in front of 21 me in which Dr. Topol is reporting on study 090."</p> <p>22 Q. Well, are you saying that the chart 23 was in some way misleading?</p> <p>24 A. I'm saying that when Dr. Topol 25 prepared that chart and presented the data, that he</p>