

CHART III – COURT’S RULINGS ON MERCK’S OBJECTIONS TO RECOMMENDATIONS THAT THE SPECIAL MASTER REFUSED TO MODIFY IN RESPONSE TO MERCK’S JULY 16, 2007 LETTER SEEKING CLARIFICATION



Special Master Final Document Number	Bates	Special Master Initial Document Number	Special Master Final Assessment	Special Master Final Basis	Court’s Ruling	Court’s Reasoning
Appendix A 357	<p align="center">MRK- ACR0003979- MRK- ACR0003979</p> <p>Identical Duplicate As To Which Merck Seeks Same Ruling:</p> <p>Appendix B Final # 463</p>	3:149	Denied	<p>Olson, a non-lawyer, requested that information be sent to him by the author of the message. There was an inadequate explanation of why. Advice was not sought by Keyser.</p> <p align="center">Special Master Supplemental Basis</p> <p>Information was requested by Olson but no reason was given for the request. No advice was sought by the one conveying the information sought by Olson.</p>	Granted	Merck’s explanation is now adequate. The report is for general counsel and was requested by a corporate attorney who supervised the investigation.

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Appendix A 358	MRK- ACR0003980- MRK- ACR0003981 Identical Duplicate As To Which Merck Seeks Same Ruling: Appendix B Final # 464	3:150	Denied	Attachment to a non-privileged communication is not privileged. Special Master Supplemental Basis Attachment to a non-privileged communication is not privileged.	Granted	See explanation for previous document.

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Appendix A 946	MRK- ACX0004235- MRK- ACX0004236	4:260	Denied	<p>Attorney-Client Privilege - Denied. Reveals no confidential information about the attorney-client relationship.</p> <p align="center">Special Master Supplemental Basis</p> <p>Attorney-Client Privilege - Denied. Scheduling of meetings is not a confidential communication protected by the attorney-client privilege.</p> <p>Work Product – Denied. Hughes Hubbard worked with Merck on many projects and all of them did not relate to anticipated litigation. Some related only to advertising. Work product cannot be claimed without identifying the specific litigation for which the communication was in preparation. The fact that something was “prepared by an employee at the request of a lawyer is not dispositive.</p>	Denied	Reveals no confidential information.

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Appendix A 857	MRK- AFQ0008484- MRK- AFQ0008485	4:171	Denied	<p>Whole e-mail thread is not listed on the privilege log. Relaying to large number of people a paper that a number of scientists had written on a comparison of drugs. Limited comment by attorney in attachment to his e-mail is editorial in nature, not legal assistance.</p> <p align="center">Special Master Supplemental Basis</p> <p>Comment of Cromley seemed more policy oriented than legal in substance. Denied.</p>	Denied	For the reasons given by the Special Master.