



» **Print**

This copy is for your personal, non-commercial use only.

Elan ethics report scrutinized over lawyer links

1:22am BST

- * Concerns about independence of governance report
- * Experts question wisdom of hiring McKenna, Long
- * Cite prior relationship between investigator and Elan

By Toni Clarke and Bill Berkrot

BOSTON/NEW YORK, Sept 22 (Reuters) - New questions have arisen about the independence of a report prepared by a U.S. law firm that cleared Irish drugmaker Elan Corp Plc (ELN.I: [Quote](#), [Profile](#), [Research](#)) of any breaches of corporate governance or other wrongdoing.

Elan, which faces mounting criticism from investors over its disclosure practices and perceived conflicts of interest in its business dealings, hired the firm of McKenna, Long & Aldridge earlier this year to investigate the allegations.

The firm's recently completed report "found no legal breaches or other wrongdoing of any nature by Elan management, any members of its Board of Directors or its advisors," according to Elan, which has not released the contents of the report.

But some experts and investors, including Ib Sonderby, an outspoken activist who has been campaigning for greater transparency at Elan, question the company's wisdom in hiring McKenna, Long & Aldridge.

For one thing, the firm had conducted an investigation into Elan's corporate governance in 2009 and gave it a clean bill of health. A second, or updated, critical report could have undermined the credibility of the first.

Secondly, William Ide, the attorney who led the investigation for McKenna Long & Aldridge, had a prior working relationship with Richard Collier, who was until recently Elan's general counsel and is now executive vice president and senior advisor to Elan's chief executive and board.

"In any inquiry into potential conflicts of interest the integrity of the inquirer itself has to be unquestioned and unquestionable," said Nell Minow, editor of The Corporate Library, an independent research firm specializing in corporate governance. "You would hope the inquirer does not have a relationship with anyone in the company."

Ide and Collier's paths first crossed in 1999, when they sat at opposite ends of the table in the merger talks between drugmaker Pharmacia & Upjohn and the Monsanto Company, which made drugs and chemicals. Ide was general counsel for Monsanto and Collier held the same post at Pharmacia.

After the merger in March 2000, Collier remained general counsel of Pharmacia, which now included Monsanto's pharmaceutical assets, while Ide remained general counsel for the Monsanto division, which comprised its agricultural assets and was later spun out to the public.

"During this period, Monsanto had a separate board of directors to which I reported as general counsel," Ide said in an interview. "I never worked for Rick Collier; we had an arm's length relationship."

Ide left the company in 2001 and returned to McKenna Long & Aldridge. In 2003 Pharmacia was acquired by Pfizer Inc (PFE.N: [Quote](#), [Profile](#), [Research](#)) and in 2004 Collier joined Elan as its general counsel.

In 2005, McKenna, Long & Aldridge did some work in preparation for a potential assignment for Elan that did not come to fruition, Ide said, and in 2009 and 2010 he conducted the investigation work into the company's corporate governance.

But some experts said Elan was injudicious, at the very least, in hiring McKenna, Long & Aldridge.

"Why would you pick somebody with even a whiff of a conflict of interest to investigate this?" said Timothy Pollock, professor of management at Pennsylvania State University and a specialist in corporate governance and executive compensation. "It doesn't matter what the truth is; it's the perception. You need to manage the perception as carefully you can."

Elan rejected the notion that there could be any perceived conflict of interest with Ide.

"The suggestion that the independence of McKenna Long's report is somehow compromised because Mr. Ide - a former head of the American Bar Association -- and Mr. Collier -- Elan's former general counsel -- worked for different companies 10 years ago on opposite sides of a transaction is beyond ridiculous," a company spokesman said in an email.

Concerns that McKenna Long & Aldridge's report might not be fully independent had prompted two Elan directors, Jack Schuler and Vaughn Bryson, to request a parallel inquiry by the law firm Bird Marella, Boxer, Wolpert, Nessim, Drooks and Lincenberg. Elan denied Bird Marella access to the firm, prompting Schuler and Bryson to threaten to sue.

In early September Elan was granted an Irish High Court injunction to prevent the two directors from taking action, saying the move would prejudice the review by McKenna, Long & Aldridge.

"I find it hard to believe that it is a coincidence that they chose to do this report with a company and a lawyer that Rick Collier had worked with," said investor Sonderby, a Danish investor who controls more than 2 million Elan shares between his own holdings and those of companies on whose boards he sits. "From the outside it looks awkward that an independent investigation is conducted by a former colleague."

Sonderby has raised numerous questions about potential conflicts of interest at Elan, including, on Wednesday, his concerns about the connection between Collier and Ide, on his website, www.saveelan.com. And he has proposed four candidates for the company's board.

"Just as troubling as these potential conflicts is the fact that we have little or no information about the impetus for an investigation, the case for infighting, the director resignations or details of the investigation's finding," Sonderby said in a letter to fellow shareholders.

Ide, who has a long track record of corporate governance investigations, said he was told he had been recommended to Elan by the general counsel of another of his clients.

"When I do independent reviews, some people are happy I am doing them and some are not," he said. "When you are not happy you look for a way to discredit them."

Regardless of whether or not Ide's report was compromised by his prior relationship, Elan would have been better served choosing a firm that had no ties to anyone in the company, experts said.

"What you hope for is to forestall any question ever being asked, not just to have a good answer when it is asked," said Minow.

"Even if this firm is qualified, there is no unique qualification that this firm has that someone else couldn't have done as well or better." (Reporting by Toni Clarke and Bill Berkrot; Editing by Richard Chang)

© Thomson Reuters 2010. All rights reserved. Users may download and print extracts of content from this website for their own personal and non-commercial use only. Republication or redistribution of Thomson Reuters content, including by framing or similar means, is expressly prohibited without the prior written consent of Thomson Reuters. Thomson Reuters and its logo are registered trademarks or trademarks of the Thomson Reuters group of companies around the world.

Thomson Reuters journalists are subject to an Editorial Handbook which requires fair presentation and disclosure of relevant interests.

This copy is for your personal, non-commercial use only.