

**Wilder Wilder & Langtry
Barristers and Solicitors**

**VIOXX CLASS ACTION
(Update February 23, 2010)**

Since the filing of the Statement of Claim in the Manitoba Court of Queen's Bench, we have provided you from time to time with progress updates. We have been working with a national group of leading law firms to pursue a national class action against the makers of Vioxx. There has been considerable progress in this action of late.

In order to bring you up to date on this progress, please find below a synopsis of the developments since our class action was commenced in October of 2004.

Synopsis:

Vioxx Canada - Legal Proceedings:

In October 2004, a number of class action lawsuits, including ours, were commenced against Merck Frosst Canada Ltd., Merck Frosst Canada & Co., and Merck & Co., Inc. ("Merck") relating to Vioxx.

Wilder Wilder & Langtry teamed up with nineteen law firms across Canada to prosecute the class action. A steering committee of seven counsel firms was appointed from within this group of law firms to direct the conduct of the lawsuit and to appear as counsel in the proceedings.

On February 2, 2006, The Honourable Mr. Justice Winkler granted carriage of this lawsuit to the Vioxx Litigation Group, which group is comprised of the nineteen law firms referred to above. A copy of Mr. Justice Winkler's Reasons for Decision may be accessed at the National Team's Website (vioxxnationalclassaction.com)

On March 8, 2006, Counsel attended before Mr. Justice Winkler to set a schedule for certification. Certification is where a judge determines whether it is appropriate to treat the action as a class action.

At Merck's request and subsequently as a result of a pre-certification motion brought by Merck, the certification hearing, originally scheduled to occur in October 2007, was delayed until June 2008. During the week of June 24, 2008, Counsel attended before Mr. Justice Cullity to argue for certification. We are pleased to advise that the action was certified on July 28, 2008. [see [Decision/Reasons on National Website](#)]

Since the certification Order was issued, Merck has continued to contest the lawsuit on numerous grounds. Plaintiffs' Counsel have been working hard to stave off these attacks and continue to drive the lawsuit forward:

- On the same day that Justice Cullity certified this Ontario action as a national class action (excluding Saskatchewan and Quebec¹) in July 2008, Justice Cullity also dismissed a motion by Merck seeking to stay this action (i.e. to temporarily or permanently halt this Ontario class action) on the basis of a Saskatchewan class action lawsuit (which lawsuit was also in respect of Vioxx use but differed significantly from the Ontario proceedings). In November 2008, counsel attended the Divisional Court in Ontario as Merck sought Leave to Appeal both the Certification Decision and Decision with respect to a stay of proceedings. On November 24, 2008, Justice Bellamy of the Divisional Court, denied leave to appeal the Certification Decision but granted leave to appeal with respect to the stay of proceedings. [see [Decision/Reasons on National Website](#)]
- In February 2009, Counsel attended the Divisional Court to argue the appeal with respect to the stay of proceedings. The Divisional Court dismissed Merck's appeal from the stay motion. [see [Decision/Reasons on National Website](#)]
- Merck sought further leave to appeal (i.e. permission to appeal) to the Ontario Court of Appeal, but was refused. Merck then sought leave to appeal to the Supreme Court. The Supreme Court refused to grant it permission to appeal on October 22, 2009.
- In June 2009, Merck brought a motion for leave to appeal the decision of Justice Bellamy (November 24, 2008) refusing it leave to appeal in respect of certification and, alternatively, asking Justice Bellamy to reconsider her earlier decision. Merck relied on the Saskatchewan Court of Appeal's decision overturning the Saskatchewan certification, to argue that certification should also be overturned in Ontario as well. The parties appeared before Justice Bellamy on August 14, 2009, In December 2009, Justice Bellamy released her decision which ultimately denied the defendant's motion and put an end to the question of certification. [see [Decision/Reasons on National Website](#)]

As a result of the recent decisions of the Ontario Divisional Court in December 2009 and that of Supreme Court of Canada, in October 2009, this Ontario class action is the only certified national class action in Canada relating to Vioxx. It does not include persons resident in Quebec or Saskatchewan.

The case against Merck should now be moving ahead quickly.

A Case Management Master has been appointed by Justice Cullity to assist, if necessary, in preparing a plan for examinations for discovery and production of and examination of all documents.

The Defendants, (Merck) have been given until no later than April 9, 2010 to file their defence.

If you believe that you have a potential claim against the makers of Vioxx, please contact our office immediately at (204)947-1456 or toll free at 1-800-470-0847 (ask for Cindy Gaudry) or

¹ At this time, separate class proceedings had been certified in each of these provinces. Today, only a separate Quebec class action remains. The Saskatchewan certification was overturned by the Saskatchewan Court of Appeal and leave to appeal this decision was recently denied by the Supreme Court of Canada.

fill out the form entitled “Questionnaire for Potential Claimants” on this website by first clicking on “Vioxx”.

For those who have already registered with our office, we will continue to post updates on this website from time to time to ensure that you have up to date information regarding your case. You should make sure that you contact our office if your mailing address or telephone number has changed and to provide your email address. We would once again remind you to ensure that you have the proper documentary evidence to support your claim, which will be required, once this matter is successfully concluded against Merck.

Doctors and pharmacies are only required to keep patient records for a limited amount of time (usually between six to ten years) and if you have not already provided us with same, you would be well advised to obtain copies of the following documents:

1. Pharmacy records from all pharmacies that filled the Vioxx prescriptions for you;
2. Medical records from all doctors and/or hospitals where treatments was sought for symptoms experienced related to the use of Vioxx;
3. Medical records from all doctors who prescribed Vioxx to you;
4. Medical records predating your use of Vioxx by at least one year through to the present date which outline your past and current health status (i.e. family physician records, including clinical notes, lab reports, specialist reports, hospital reports, etc.

We further advise that if you obtain such records to keep them in a safe place or if you prefer to transfer the safe keeping of these records to us, we would be happy to receive them.

If you have any questions that cannot be answered by reading the material on this website, please contact us by telephone or email as follows: Samuel I. Wilder, Q.C. at 204-957-4030 or swilder@wilderwilder.com or Cindy Gaudry at 204-947-1456 or cgaudry@wilderwilder.com

Court Documents:

Sixth Amended Statement of Claim

http://www.classaction.ca/pdf/Sixth_Amended_Statement_of_Claim.pdf

Carriage Decision

http://www.classaction.ca/pdf/Vioxx_Carriage_Reasons_for_Decision.pdf

Certification Decision

<http://www.classaction.ca/pdf/Vioxx%20Reasons%20for%20Certification.pdf>

Decision denying leave to appeal
Certification but granting leave with
respect to the Stay issue

http://www.classaction.ca/pdf/bellamy_endorsement.pdf

Divisional Court Decision denying the
appeal with respect to the Stay Issue

http://www.classaction.ca/pdf/judgment_reasons.pdf

Divisional Court Decision denying leave to
appeal Certification

[PROVIDE LINKS WITHIN NATIONAL WEBSITE - the current links are to postings on the Siskinds LLP website only]

Vioxx in the News:

Canada

- "Vioxx: lessons for Health Canada and the FDA"
CMAJ – Canadian Medical Association Journal – January 4, 2005
<http://www.cmaj.ca/cgi/content/full/172/1/5>
- "Vioxx risk highest in first two weeks"
Globe & Mail – May. 02, 2006
<http://www.theglobeandmail.com/life/article824437.ece>
- "Merck 'misrepresented' risks and ghost-authored papers: studies"
Globe & Mail – Apr. 16, 2008
<http://www.theglobeandmail.com/life/health/article32412.ece>
- "Health care, under the influence"
Globe & Mail – Apr. 26, 2008
<http://www.theglobeandmail.com/life/health/article34854.ece>
- "Canada Supreme Court Refuses Hearing on Vioxx Appeals (Update3)"
Bloomberg News – 22 Oct 2009
<http://www.bloomberg.com/apps/news?pid=20601082&sid=a5k5qGMcf26c>

Around the World:

Australia

- "Vioxx maker Merck and Co drew up doctor hit list"
The Australian – April 1, 2009
<http://www.theaustralian.news.com.au/story/0,25197,25272600-2702,00.html>
- "Trial Puts Spotlight on Merck"
NYT – May 13, 2009
<http://www.nytimes.com/2009/05/14/business/14vioxx.html>
- "Name in Merck journal surprised doctor"
WAToday – May 8, 2009
<http://www.watoday.com.au/national/name-in-merck-journal-surprised-doctor-20090508-ay0v.html>
- "The danger of drugs and data"
The Guardian – Saturday May 9 2009
<http://www.guardian.co.uk/commentisfree/2009/may/09/bad-science-medical-journals-companies>
- "Statement From Michael Hansen, CEO Of Elsevier's Health Sciences Division, Regarding Australia Based Sponsored Journal Practices Between 2000 And 2005"
Elsevier – May 2009
http://www.elsevier.com/wps/find/authored_newsitem.cws_home/companynews05_01203

USA

- "Follow-Up Study on Vioxx Safety Is Disputed"
NYT – May 13, 2006
<http://www.nytimes.com/2006/05/13/business/13merck.html>
- "Medical Journal Retracts Part of a Paper on Vioxx"
NYT – June 27, 2006
<http://www.nytimes.com/2006/06/27/business/27vioxx.html>
- "Studies Find Higher Rates of Heart Risk With Vioxx"
NYT – September 13, 2006
<http://www.nytimes.com/2006/09/13/health/13vioxx.html>
- "Merck Agrees to Settle [US] Vioxx Suits for \$4.85 Billion"
NYT – November 9, 2007
<http://www.nytimes.com/2007/11/09/business/09merck.html>
- "Merck Wrote Drug Studies for Doctors"
NYT – April 16, 2008
<http://www.nytimes.com/2008/04/16/business/16vioxx.html>

" Merck Paid for Medical 'Journal' Without Disclosure" http://www.nytimes.com/2009/05/14/business/14vioxxside.html?_r=1
NYT - May 13, 2009