

WILDER WILDER & LANGTRY

BARRISTES & SOLICITORS

Re: Vioxx Class Action
Update: March 24, 2010

As we reported in our update of February 23, 2010, the Ontario Supreme Court has now certified the class action originating in that jurisdiction as a national class action (with the exceptions of Quebec and Saskatchewan). The Defendant, Merck, contested the certification at every level of Court, including the country's highest court, The Supreme Court of Canada. Their efforts to overturn the certification were unsuccessful.

We are posting for your information a copy of the Court ordered Notice of Certification. The class action applies to:

- a) persons (including their estates) who were prescribed and ingested Vioxx; and
- b) family members of such persons who suffered personal injury or death.

If you do not want to participate in or be bound by the class action or a settlement of it, you must opt out of the class action **not later than July 1, 2010** in the manner prescribed in the Notice.

We understand that there are approximately 350,000 class members in Canada. The litigation plan for the action involves on the part of Class Counsel:

- a) reading and analysis of thousands of documents;
- b) analysis of complex legal arguments; and
- c) extensive expert evidence.

The Court will be requested to set a litigation schedule for: production of documents; discovery of witnesses; exchange of expert reports; and trial. Class counsel have retained experts in epidemiology, haematology, cardiology and clinical pharmacology to provide expert advice and reports from time to time.

The Court will be asked to hold a trial on the common issues within six months of completion of pre-trial matters. If the trial on common issues is successful, the Court will be asked to set a procedure for determining individual claims. This will include a request for the appointment of a referee in each province to decide questions including eligibility, causation and amount payable. It may be possible to categorize claims on the basis of the nature and severity of claimant damages while allowing claimants with claims of serious personal injury or death to assert a claim for additional damages.

The time schedule to complete this case depends upon: the completion of pre-trial procedures, trial, hearing of appeals and the determination of claims on an individual basis. This process could still take a number of years. If the case settles, the process could be considerably shorter. The likelihood of settlement will be improved if Merck agrees to participate in mediation or other non-binding dispute resolution.

Information concerning the national Canadian class action may be obtained from time to time as indicated in the Notice of Certification or on our website. If you intend to remain part of the class action, there is no need to submit any documentation at this time.

If you have any questions please contact Samuel I. Wilder, Q.C. at (204)957-4030 or swilder@wilderwilder.com or Cindy Gaudry at (204)947-1456 or cgaudry@wilderwilder.com.

SCHEDULE 1

**Authorized by the Ontario Superior Court of Justice
—NOTICE OF CERTIFICATION OF THE VIOXX CLASS ACTION
AGAINST MERCK FROSST CANADA LTD. AND AFFILIATES—
Read this notice carefully as it may affect your rights.**

THE CLASS ACTION

This notice is directed to:

- (a) the "Class" which is defined as all persons in Canada, including their estates, other than residents of Quebec and Saskatchewan, who were prescribed and ingested Vioxx; and
- (b) the "Family Class" which is defined as all persons who by reason of his or her relationship to a member of the Class are entitled to make claims under any of the Dependents Statutes in Canada as a result of the death or personal injury of such member of the Class.

The class action seeks, among other things, damages for personal injury suffered by Class members who ingested Vioxx and consequential damages suffered by the Family Class.

THE CERTIFICATION ORDER

On July 28, 2008, the action was certified as a class proceeding by order of the Ontario Superior Court of Justice. The order appointed Benny Mignacca as the representative plaintiff for the Class and Elaine Mignacca as the representative for the Family Class.

COSTS TO THE CLASS IF THE ACTION IS SUCCESSFUL

Counsel have entered into an agreement with the representative plaintiffs with respect to legal fees and disbursements. The agreement provides that Counsel will not receive payment for their work unless and until the class action is successful or costs are received from the defendants.

The agreement provides that, if the action is successful, counsel will be entitled to a fee payable out of the amount recovered under a judgment or settlement of the action. The amount of the fee would require court approval.

PARTICIPATION IN THE CLASS ACTION

Members of the Class and Family Class who want to participate in the class action are automatically included and need not do anything at this time. *The Class Proceedings Act* provides that no such member, other than the representative plaintiffs, will incur liability for legal costs if the action is dismissed.

If the Court determines the common issues in favour of the class, the Court may consider that the participation of individual Class and Family Class members is required to determine individual issues unique to each individual member. Each class member will be entitled to decide whether to participate further. If a member chooses to participate further in individual proceedings he or she may have to bear the legal costs of that individual proceeding and, if unsuccessful,

could be liable to pay a portion of the defendants' costs incurred in respect of that individual proceeding.

YOU MUST OPT OUT IF YOU DO NOT WANT TO PARTICIPATE IN THE CLASS ACTION

Class members and the Family Class members who do not want to participate in the class action must opt out. If you want to opt out of the class action, you must send a written, signed election, including your name, address, telephone number to: Howie & Partners, Chartered Accountants, 3063 Walker Road, Windsor, ON. **No Class member or Family Class member will be permitted to opt out of the class action unless the election to opt out is received by Howie & Partners before July 1, 2010 at 5:00 p.m. E.T.**

Each Class member and Family Class member who does not opt out of the class action will be bound by the terms of any judgment or settlement whether favourable or not and will not be allowed to prosecute an independent action. If the class action is successful, he or she may be entitled to share in the amount of any award or settlement recovered.

No person may opt out a minor or a mentally incapable member of the Class or Family Class without permission of the court after notice to The Children's Lawyer and/or the Public Guardian and Trustee, as appropriate.

The family members of any Class member who opts out will be deemed to have opted out.

If a Class member is deceased, his or her estate trustee has the right to opt out.

A Class member or Family Class member who opts out will not be entitled to participate in the class action. His or her right to pursue a claim in a separate proceeding will not be affected.

PRESERVATION OF MEDICAL RECORDS

Each member of the Class, including estates, who wishes to participate in the Vioxx class action should take all reasonable steps to preserve pharmaceutical and medical records. For further information on how to request the preservation of records or for assistance respecting same, please contact Class Counsel.

ADDITIONAL INFORMATION

This Notice was approved by order of the Ontario Superior Court of Justice. The court offices will be unable to answer any questions about the matters in this Notice. The certification order and other information are available on the Vioxx web site at

<http://www.vioxxnationalclassaction.com>. Questions for Class Counsel should be directed by email or telephone to:

Harvey T. Strosberg, Q.C. Tel: 1.800.229.5323 (toll free)
Fax: 1.866.316.5308 (toll free)
Email: vioxxclassaction@strosbergco.com

Michael J. Peerless Tel: 1.800.461.6166 ext. 2409 (toll free)
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