

**For immediate Release**

**VIOXX: Ontario Court Certifies National Class Action**

**July 29, 2008** (Toronto, ON) – In reasons released yesterday afternoon, Justice Maurice Cullity of the Ontario Superior Court of Justice ordered that an action relating to VIOXX be certified as a national class action excluding residents of the provinces of Quebec and Saskatchewan. VIOXX, a prescription pain reliever and anti-inflammatory drug, was voluntarily withdrawn from the worldwide market by Merck on September 30, 2004.

In the court's decision, two classes were approved. The first class includes all persons in Canada, including their estates, who were prescribed and ingested VIOXX, other than residents of Quebec and Saskatchewan. The second approved class includes family members of the first class, including spouses, children, grandchildren, parents, grandparents, brothers and sisters.

This decision is significant as it certifies national classes notwithstanding the fact that similar classes were certified in Saskatchewan.

Among the eleven issues the Ontario court approved for determination are whether Vioxx was defective or unfit for the purpose for which it was intended and sold, and whether Merck had a duty to warn the class members of the risks of harm from Vioxx and, if so, whether Merck failed to warn in a timely manner. Another issue approved for determination is whether the classes can elect to require Merck to account for all or part of the gross revenue or net income received from the sale of Vioxx. The court will also determine whether punitive damages should be awarded.

In the United States, a proposed national class action was rejected by the US federal court in 2006. Merck subsequently entered into a settlement of the outstanding US litigation against it by establishing a settlement fund of approximately \$4.85 billion to compensate persons who suffered harm from ingesting VIOXX. Residents of Canada were not included in that settlement.

The plaintiff classes are represented by a national consortium of 17 law firms, which the court recognised in its reasons includes many pre-eminent class action counsel from across Canada.

“It has been a long, hard fought battle but we finally wrestled Merck into the court room. We are obviously delighted with the result and the well reasoned decision of Justice Cullity. Our national team is pressing on with the next stage of this litigation,” said Harvey Strosberg, who argued the motion along with Michael Peerless.

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