

**VIOXX**  
**NATIONAL WEBSITE UPDATE:**

**Vioxx Canada - Legal Proceedings:**

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

On February 2, 2006, The Honourable Mr. Justice Winkler granted carriage of this lawsuit to the Vioxx Litigation Group, which group is comprised of nineteen law firms across Canada. A "Steering Committee" of four counsel was appointed from this group of firms to direct the conduct of the lawsuit and to appear as counsel in the proceedings.

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.

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 Quebec<sup>1</sup>) 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 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.
- 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.

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<sup>1</sup> 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.

- 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.

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.

## Court Documents:

Sixth Amended Statement of Claim	<a href="http://www.classaction.ca/pdf/Sixth_Amended_Statement_of_Claim.pdf">http://www.classaction.ca/pdf/Sixth_Amended_Statement_of_Claim.pdf</a>
Carriage Decision	<a href="http://www.classaction.ca/pdf/Vioxx_Carriage_Reasons_for_Decision.pdf">http://www.classaction.ca/pdf/Vioxx_Carriage_Reasons_for_Decision.pdf</a>
Certification Decision	<a href="http://www.classaction.ca/pdf/Vioxx%20Reasons%20for%20Certification.pdf">http://www.classaction.ca/pdf/Vioxx%20Reasons%20for%20Certification.pdf</a>
Decision denying leave to appeal Certification but granting leave with respect to the Stay issue	<a href="http://www.classaction.ca/pdf/bellamy_endorsement.pdf">http://www.classaction.ca/pdf/bellamy_endorsement.pdf</a>
Divisional Court Decision denying the appeal with respect to the Stay Issue	<a href="http://www.classaction.ca/pdf/judgment_reasons.pdf">http://www.classaction.ca/pdf/judgment_reasons.pdf</a>
Divisional Court Decision denying leave to appeal Certification	

## Vioxx in the News:

### Canada

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

## Around the World:

### Australia

- " Vioxx maker Merck and Co drew up doctor hit list" <http://www.theaustralian.news.com.au/story/0,25197,25272600-2702,00.html>  
The Australian – April 1, 2009
- " *Trial Puts Spotlight on Merck*" <http://www.nytimes.com/2009/05/14/business/14vioxx.html>  
NYT – May 13, 2009
- " *Name in Merck journal surprised doctor*" <http://www.watoday.com.au/national/name-in-merck-journal-surprised-doctor-20090508-ay0v.html>  
WAToday – May 8, 2009
- " *The danger of drugs and data*" <http://www.guardian.co.uk/commentisfree/2009/may/09/bad-science-medical-journals-companies>  
The Guardian - Saturday May 9 2009
- " *Statement From Michael Hansen, CEO Of Elsevier's Health Sciences Division, Regarding Australia Based Sponsored Journal Practices Between 2000 And 2005*" [http://www.elsevier.com/wps/find/authored\\_newsitem.cws\\_home/companynews05\\_01203](http://www.elsevier.com/wps/find/authored_newsitem.cws_home/companynews05_01203)  
Elsevier – May 2009

### USA

- " *Follow-Up Study on Vioxx Safety Is Disputed*" <http://www.nytimes.com/2006/05/13/business/13merck.html>  
NYT – May 13, 2006
- " *Medical Journal Retracts Part of a Paper on Vioxx*" <http://www.nytimes.com/2006/06/27/business/27vioxx.html>  
NYT - June 27, 2006
- " *Studies Find Higher Rates of Heart Risk With Vioxx*" <http://www.nytimes.com/2006/09/13/health/13vioxx.html>  
NYT - September 13, 2006
- " *Merck Agrees to Settle [US] Vioxx Suits for \$4.85 Billion*" <http://www.nytimes.com/2007/11/09/business/09merck.html>  
NYT - November 9, 2007
- " *Merck Wrote Drug Studies for Doctors*" <http://www.nytimes.com/2008/04/16/business/16vioxx.html>  
NYT - April 16, 2008
- " *Merck Paid for Medical 'Journal' Without Disclosure*" [http://www.nytimes.com/2009/05/14/business/14vioxxside.html?\\_r=1](http://www.nytimes.com/2009/05/14/business/14vioxxside.html?_r=1)  
NYT - May 13, 2009