

04-CV-4543500 CP

Court File No. 04-CV-45435CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE MAURICE CULLITY

) *FRIDAY*, THE *12th*
)
) DAY OF FEBRUARY, 2010

BETWEEN:

BENNY MIGNACCA and ELAINE MIGNACCA

Plaintiffs

- and -

**MERCK FROSST CANADA LTD., MERCK FROSST CANADA & CO.
and MERCK & CO., INC.**

Defendants

Proceedings under the Class Proceedings Act, 1992

ORDER

THIS MOTION, made following a Case Management Conference held on January 20, 2010 and on consent of the parties, to vary certain terms of the Order of Justice Cullity Order dated July 28, 2008 (the "Order"), was heard this day at Toronto, Ontario.

ON READING the Consent of the parties, filed,

1. THIS COURT ORDERS that the notice of certification of the action as a class proceeding (the "Notice") referred to in paragraph 11 of the Order is amended to the form of Notice attached hereto as Schedule 1, which is hereby approved.
2. THIS COURT ORDERS that subparagraph 12(a) of the Order is varied to provide as follows:

- (a) publishing the Notice once on a Saturday in a half page advertisement in the national edition of the *Globe and Mail* newspaper;

3. THIS COURT ORDERS that paragraph 13 of the Order is varied to provide as follows:

13. THIS COURT ORDERS that the Defendants shall pay \$27,540.50, plus GST and the Plaintiffs shall pay \$11,344.50, plus GST in respect of the costs of publishing the Notice on a Saturday in the *Globe and Mail* newspaper, and the parties each shall pay 50% of the cost of the mailings of the Notice, in each case reserving to the parties the right to claim these expenditures as a disbursement in this proceeding.

4. THIS COURT ORDERS that pursuant to paragraph 14 of the Order:

- (a) the date by which the Notice Program shall be implemented is March 31, 2010;
- (b) the date on which the Notice shall be published in the *Globe and Mail* is Saturday, February 27, 2010; and
- (c) the date ~~of~~^{by} which an opt-out notice must be received in order to be effective is June 30, 2010.

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Hanni Beuch

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 05 2010

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

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 Dependants 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)
Fax: 519.672.6065
Email: megan.johnston@siskinds.com

Bonnie Tough Tel: 1.416.348.7500
Fax: 1.416.348.7505
Email: kp@toughcounsel.com

Joel Rochon Tel: 1.866.881.2292 (toll free)
Fax: 1.416.363.0263
Email: jrochon@rochongenova.com



**BENNY MIGNACCA and ELAINE
MIGNACC**
Plaintiffs

and
**MERCK FROSST CANADA LTD.,
MERCK FROSST CANADA & CO.
and MERCK & CO., INC.**
Defendants

Court File No: 04-CV-45435EPCC SP.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at ~~«place»~~ *LONDON*

ORDER

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