



## **The Supreme Court of Canada Will Not Review the Saskatchewan Court of Appeal Judgment Overturning a Class Certification Order in VIOXX® Action**

**MONTREAL, Oct. 22, 2009** - Merck Frosst Canada Ltd. and Merck & Co., Inc. have learned that the Supreme Court of Canada has decided not to review the judgment Merck won in the Court of Appeal for Saskatchewan overturning an order of the Court of Queen's Bench that had certified a class proceeding on behalf of Canadian residents of all provinces except Quebec who purchased or ingested Vioxx.

Today's decision means that the Judgment of the Court of Appeal for Saskatchewan overturning the Saskatchewan multijurisdictional class certification order remains in effect.

Merck will continue to argue against class certification of personal injury claims in Canada, because each plaintiff's case is unique and depends on an individual set of facts. The three-Justice panel of the Court of Appeal for Saskatchewan concluded unanimously in March 2009 that the lower court had erred in finding that the plaintiffs had established an identifiable class, in defining common issues, and in holding that a class action represents the preferable procedure for resolving the claims. In her opinion for the Court, Madam Justice Smith concluded, "It is my view that this action vastly overreaches what is reasonably manageable in a class action in a fair and efficient way."

"In short," wrote Madam Justice Smith, "the diversity of claims sought to be asserted, combined with the lack of clarity of what facts are alleged in relation to each, present insurmountable challenges, in my view, to the identification of issues which are common to all claims and therefore to all members of the class."

The Supreme Court also denied Merck's application to review an Ontario order declining to stay Ontario certification motion proceedings pending final disposition of the Saskatchewan multijurisdictional certification order, which had been entered previously. Merck's appeal of the Ontario multijurisdictional certification order remains pending before the Ontario Court of Appeal, as does a related application before the Ontario Divisional Court.

Merck intends to defend these Vioxx cases vigorously over the coming years, and is confident that the courts will decide these cases based on sound science.

The evidence will show that Merck acted responsibly – from researching VIOXX prior to approval in clinical trials involving almost 10,000 patients – to monitoring the medicine while it was on the market – to voluntarily withdrawing the medicine in September 2004.

**About Merck Frosst Canada Ltd .**

At Merck Frosst, patients come first. Merck Frosst Canada Ltd. is a research-driven pharmaceutical company. Merck Frosst discovers, develops and markets a broad range of innovative medicines to improve human health. The Merck Frosst Centre for Therapeutic Research, one of the largest biomedical research facilities in Canada, has the mandate to discover new therapies for the treatment of infectious diseases. More information about Merck Frosst is available at <http://www.merckfrosst.com>.

**Forward-Looking Statement**

This statement contains “forward-looking statements” as that term is defined in the Private Securities Litigation Reform Act of 1995. These statements are based on management’s current expectations and involve risks and uncertainties, which may cause results to differ materially from those set forth in the statements. The forward-looking statements may include statements regarding product development, product potential or financial performance. No forward-looking statement can be guaranteed, and actual results may differ materially from those projected. Merck undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events, or otherwise. Forward-looking statements in this press release should be evaluated together with the many uncertainties that affect Merck’s business, particularly those mentioned in the risk factors and cautionary statements in Item 1A of Merck’s Form 10-K for the year ended Dec. 31, 2008, and in its periodic reports on Form 10-Q and Form 8-K, which the Company incorporates by reference.