

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC. SECURITIES, DERIVATIVE &
"ERISA" LITIGATION

MDL No. 1658 (SRC)
Case No. 2:05-CV-01151 (SRC) (CLW)

THIS DOCUMENT RELATES TO: THE CONSOLIDATED
SECURITIES ACTION

Case No. 2:05-CV-02367 (SRC) (CLW)

NOTICE OF PENDENCY OF CLASS ACTION

To: All persons and entities who, from May 21, 1999 to September 29, 2004, inclusive (the "Class Period"), purchased or otherwise acquired Merck & Co., Inc. ("Merck") common stock or call options, or sold Merck put options (the "Class").

A federal court has authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**

This Notice is being sent pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of New Jersey (the "Court") to inform you (a) of a class action lawsuit that is now pending in the Court under the above caption (the "Action") against (i) Merck; and (ii) Dr. Edward Scolnick ("Scolnick") (the former President of Merck Research Laboratories) and Dr. Alise Reicin ("Reicin") (the former Executive Director of Clinical Research at Merck Research Laboratories) (collectively, the "Individual Defendants" and, together with Merck, the "Defendants"), and (b) that the Action has been certified by the Court to proceed as a class action on behalf of the Class.

1. The "Class," as certified by the Court, consists of:

All persons and entities who, from May 21, 1999 to September 29, 2004, inclusive (the "Class Period"), purchased or otherwise acquired Merck & Co., Inc. ("Merck") common stock or call options, or sold Merck put options (the "Class").

Excluded from the Class by definition are:

(a) Defendants; (b) Merck's affiliates and subsidiaries; (c) the officers and directors of Merck and its subsidiaries and affiliates at all relevant times; (d) members of the immediate family of any excluded person; (e) the legal representatives, heirs, successors, and assigns of any excluded person or entity; and (f) any entity in which any excluded person or entity has or had a controlling interest.

2. This Notice is directed to you because you may be a member of the Class. If you are a member of the Class, your rights will be affected by this Action. If you do not meet the Class definition, this Notice does not apply to you. If you are uncertain whether you are a member of the Class, contact Class Counsel listed in paragraph 24 below, or your own attorney.
3. Defendants deny any wrongdoing in this Action and maintain that they are not liable for the harm alleged by Lead Plaintiffs (defined below in paragraph 8). This Notice is not an expression of any opinion of the Court concerning the merits of the Action, or a finding by the Court that the claims asserted by Lead Plaintiffs in this case are valid. This Notice is intended solely to advise you of the pendency of the Action and of your rights in connection with it. This Action has not yet been scheduled for trial, and there is no judgment, settlement or monetary recovery at this time.
4. The Class definition may be subject to change by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure. In addition, membership in the Class is subject to all applicable laws and rules.

OVERVIEW AND STATUS OF THIS ACTION

5. Vioxx was a prescription pain medication manufactured and sold by Merck from May 21, 1999, when the U.S. Food and Drug Administration approved it for the treatment of osteoarthritis, until September 30, 2004, when Merck voluntarily withdrew Vioxx from the market. Lead Plaintiffs allege in their complaint that beginning on May 21, 1999, and throughout the Class Period, Merck knowingly or recklessly made false and misleading statements to the public in Merck press releases, public filings, and public statements (collectively "the Statements") about the cardiovascular safety profile of Vioxx and Vioxx's commercial prospects, and knowingly or recklessly withheld material facts about Vioxx's safety that rendered certain of the Statements materially false and misleading. On September 30, 2004, when Merck voluntarily withdrew Vioxx from the market, the price of Merck securities declined significantly.
6. Beginning in November 2003, numerous putative securities fraud class actions were filed in various federal courts across the country, including in the Eastern District of Louisiana and the District of New Jersey, against Merck and certain Merck officers and directors, alleging that certain of Merck's Statements regarding Vioxx had been materially false and misleading.

7. By Order dated February 23, 2005, the Judicial Panel on Multi-District Litigation transferred the pending securities fraud cases to the District Court of New Jersey for coordinated pretrial proceedings, and the Court subsequently consolidated these cases as a consolidated securities action, now proceeding as the Action.
8. By Orders dated February 26, 2004 and January 26, 2007, the Court appointed the Public Employees' Retirement System of Mississippi, Richard Reynolds, Steven LeVan and Jerome Haber to act as lead plaintiffs in the Action (collectively, "Lead Plaintiffs"), and appointed the law firms of Bernstein Litowitz Berger & Grossmann LLP; Brower Piven, A Professional Corporation; Stull, Stull & Brody; and Milberg LLP as Co-Lead Counsel for Lead Plaintiffs and the Class.
9. As Lead Plaintiffs have developed the alleged facts concerning Vioxx during the prosecution of the Action, they have filed consolidated and amended complaints against Defendants that incorporated new allegations. Thus, amended complaints were filed on August 9, 2004, November 8, 2004, June 14, 2005, March 10, 2009, and on June 20, 2013 (the Sixth Amended Complaint or "Consolidated Complaint").
10. The Consolidated Complaint asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder. The Consolidated Complaint alleges that during the Class Period Defendants violated the federal securities laws by making materially false or misleading statements or omitting material information about the safety profile and commercial viability of Vioxx. The Consolidated Complaint further alleges that those false statements and omissions caused the price of Merck common stock and call options to be artificially inflated and the price of Merck put options to be artificially depressed during the Class Period and that the price of Merck stock and call options declined and the price of put options increased when the truth about the safety profile of Vioxx was disclosed, causing Lead Plaintiffs and other Class members to suffer damages. The Consolidated Complaint also asserts a claim under Section 20A of the Exchange Act against Defendant Scolnick, alleging that he sold Merck stock while allegedly in possession of material, non-public information and that such sales were made contemporaneously with purchases of Merck stock by a Lead Plaintiff and other members of the Class. Plaintiffs also previously alleged claims under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933, but Lead Plaintiffs voluntarily dismissed those claims by Stipulation dated October 25, 2012 after the Court ruled on August 29, 2012 that certain alleged misstatements and omissions underlying those claims were not actionable. Defendants deny the allegations in the Consolidated Complaint and maintain that they are not liable to the Class.
11. Between April 12, 2007 and April 27, 2010, Lead Plaintiffs overcame Defendants' motion to dismiss the Action in its entirety on statute of limitations grounds. Specifically, on April 12, 2007, the Court granted Defendants' motion to dismiss an earlier consolidated amended complaint on statute of limitations grounds and dismissed the case as time-barred. On May 9, 2007, Lead Plaintiffs appealed the dismissal to the U.S. Court of Appeals for the Third Circuit. On September 9, 2008, following briefing and argument by Co-Lead Counsel and counsel for Defendants, the U.S. Court of Appeals for the Third Circuit reversed the Court's dismissal of the Action. Defendants appealed that decision to the U.S. Supreme Court. On April 27, 2010, following briefing and oral argument by the parties, the U.S. Supreme Court unanimously affirmed the decision of the U.S. Court of Appeals and returned the Action to the District Court.
12. On June 18, 2010, Defendants again moved to dismiss the Action, on grounds other than the statute of limitations. On August 8, 2011, the Court granted in part and denied in part Defendants' motion. The Court allowed the Action to proceed with respect to (a) Lead Plaintiffs' Section 10(b) claims against Merck, Defendant Scolnick and Defendant Reicin alleging that Defendants knowingly or recklessly made materially false and misleading statements concerning the cardiovascular safety profile of Vioxx, including by withholding material facts about Vioxx's safety that rendered certain of the Statements materially false and misleading; and (b) Lead Plaintiffs' Section 20A claim against Defendant Scolnick. The Court dismissed, without prejudice, Lead Plaintiffs' Section 10(b) claims against all other defendants named under Section 10(b).
13. On May 3, 2012, Defendants filed a motion for judgment on the pleadings, arguing that (a) certain of Merck's alleged misrepresentations were not actionable under the securities laws; and (b) Lead Plaintiffs did not state a claim under Section 20(a) of the Exchange Act for control person liability. Lead Plaintiffs opposed that motion. On August 29, 2012, the Court granted in part and denied in part Defendants' motion, dismissing all of Lead Plaintiffs' claims concerning Merck's statements of "prior earnings and commercial successes" and the control person claims against certain previously-named defendants.
14. Based on the Court's prior rulings, the claims currently asserted against Defendants are claims under the Exchange Act for: (a) violations of Section 10(b) and Rule 10b-5 against Defendants Merck, Scolnick and Reicin (for allegedly making materially false and misleading statements); (b) violation of Section 20(a) against Drs. Scolnick and Reicin (for allegedly controlling Merck's alleged violations of the Exchange Act); and (c) violation of Section 20A against Dr. Scolnick (with respect to his sales of Merck stock while allegedly in possession of material adverse information).
15. On April 10, 2012, Lead Plaintiffs filed their motion to certify the Action as a class action. On January 30, 2013, and following discovery into class certification-related issues, the Court issued an Order granting Lead Plaintiffs' motion for class certification, certifying the Class as set forth above, and appointing Lead Plaintiffs as Class Representatives and Co-Lead Counsel as Class Counsel. On August 7, 2013, the Court entered an order directing that this notice be sent to potential Class members.
16. The Action is currently in the discovery phase, in which the parties attempt to develop additional evidence in further support of their claims and defenses. Discovery is set to conclude on October 25, 2013.

17. Defendants deny that they have violated the securities laws and have asserted affirmative defenses to Lead Plaintiffs' allegations.

YOUR RIGHTS AS A CLASS MEMBER

18. A class action is a type of lawsuit in which one or several individuals or entities prosecute claims on behalf of all members of a group of similarly-situated persons and entities to obtain monetary or other relief for the benefit of the entire group. Class actions avoid the necessity of each member of a class having to file his, her, or its own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of a class.
19. If you purchased or acquired Merck common stock or call options and/or sold Merck put options during the period from May 21, 1999 through and including September 29, 2004, and you are not excluded from the Class by definition, you are a member of the Class. If you are a member of the Class, you have the right to decide whether to remain a member of the Class. ***If you choose to remain a member of the Class, you do not need to do anything at this time other than to retain your documentation reflecting your transactions in Merck common stock and options on Merck common stock as discussed below in paragraph 20.*** If you are a member of the Class and wish to be excluded from the Class, you must request exclusion in accordance with the procedure set forth in paragraph 21, below. Your decision is important for the following reasons:
- a. **If you choose to remain a member of the Class**, you will be bound by all past, present, and future orders and judgments in the Action, whether favorable or unfavorable. If any money is awarded to the Class, either through a settlement with Defendants or a judgment of the Court, you may be eligible to receive a share of that award, subject to all applicable law. However, if you remain a member of the Class, you may not pursue a lawsuit on your own behalf with regard to any of the issues in this Action. Pursuant to Rule 23(e)(4) of the Federal Rules of Civil Procedure, it is within the Court's discretion whether to allow a second opportunity to request exclusion from the Class if there is a settlement or judgment in the Action. Please note that if you remain a member of the Class, you will not be personally responsible for Class Counsel's attorneys' fees or costs. Class Counsel have agreed to represent the Class on a contingent fee basis, which means that they will be awarded fees and costs only if they succeed in obtaining a recovery from one or more Defendants. Any attorneys' fees for Class Counsel will be awarded by the Court from the fund created by the settlement or judgment, if any, obtained on behalf of the Class. If there is no recovery for the Class, Class Counsel will receive nothing. As a member of the Class, you will be represented by Class Counsel. You may remain a member of the Class and elect to be represented by counsel of your own choosing. If you do retain separate counsel, you will be responsible for those attorneys' fees and expenses and such counsel must enter an appearance on your behalf by filing a Notice of Appearance with the Court and mailing it to Class Counsel at the addresses set forth in paragraph 24 below **on or before November 3, 2013**.
- b. **If you choose to be excluded from the Class**, you will not be bound by any judgment in this Action, nor will you be eligible to share in any recovery that might be obtained in this Action. You will retain any right you have to individually pursue any legal rights that you may have against any Defendants with respect to the claims asserted in the Action. **Please note**, if you decide to exclude yourself from the Class, you may be time-barred from asserting the claims covered by the Action by a statute of repose. Please refer to paragraphs 21-23 below if you would like to be excluded from the Class.
20. Members of the Class will be eligible to participate in any recovery that might be obtained in the Action. While this Notice is not intended to suggest any likelihood that Lead Plaintiffs or members of the Class will recover any such damages, should there be a recovery, members of the Class will be required to support their requests to participate in the distribution of any such recovery by demonstrating their membership in the Class and documenting their purchases and sales of Merck common stock and options on Merck common stock, and their resulting damages. ***For this reason, please be sure to keep all records of your transactions in these securities.***

HOW TO BE EXCLUDED FROM THE CLASS

21. If you wish to be excluded from the Class, you must specifically request exclusion in accordance with the following procedures. To exclude yourself from the Class, you must send a letter by first-class mail stating that you "request exclusion from the Class in *In re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation*, Civil Action No. 05-2367 (SRC) (CLW)." Your request must (a) state the name, address and telephone number of the person or entity requesting exclusion; (b) state the number of shares of Merck common stock and the number of call or put options on Merck common stock purchased, acquired, and/or sold during the Class Period as well as the dates and prices of each such purchase, acquisition, and/or sale; and (c) be signed by the person or entity requesting exclusion or an authorized representative. You must mail your exclusion request, postmarked by **no later than November 3, 2013**, to:

In re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation
Exclusions
c/o The Garden City Group, Inc.
P.O. Box 10014
Dublin, OH 43017-6614

You cannot exclude yourself from the Class by telephone or by e-mail and a request for exclusion shall not be effective unless it contains all the information called for by this paragraph and is postmarked by the date stated above, or is otherwise accepted by the Court.

22. If your request for exclusion complies with the requirements set forth above, you will not be bound by any judgment in this Action, nor will you be eligible to share in any recovery that might be obtained in this Action.
23. Do not request exclusion from the Class if you wish to participate in this Action as a member of the Class.

CLASS COUNSEL

24. As a member of the Class, you will be represented by Class Counsel, who are:

Salvatore J. Graziano
David Wales
**BERNSTEIN LITOWITZ
BERGER & GROSSMANN LLP**
1285 Avenue of the Americas
New York, NY 10019
(800) 380-8496

Jules Brody
Mark Levine
STULL, STULL & BRODY
6 East 45th Street, 5th Floor
New York, NY 10017
(800) 337-4983

David A.P. Brower
**BROWER PIVEN
A Professional Corporation**
475 Park Avenue South, 33rd Floor
New York, NY 10016
(212) 501-9000

Matthew A. Kupillas
MILBERG LLP
One Penn Plaza
New York, NY 10119-0165
(877) 692-1965

25. As noted above, unless you elect to retain your own personal lawyer, by remaining in the Class, you will not subject yourself to any direct obligations to pay the costs of the litigation. In the event there is a recovery by the Class in this Action, all costs and expenses of the Action, including Class Counsel's attorneys' fees, will be paid from that recovery in an amount approved by the Court.

PLEASE KEEP YOUR ADDRESS CURRENT

26. To assist the Court and the parties in maintaining accurate lists of Class members, you are requested to mail notice of any changes in your address to:

In re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation
c/o The Garden City Group, Inc.
P.O. Box 10014
Dublin, OH 43017-6614

27. If this Notice was forwarded to you by the postal service, or if it was otherwise sent to you at an address that is not current, you should immediately contact the Administrator, The Garden City Group, Inc., at the address above or by calling toll free (888) 985-9298 and provide them with your correct address. If the Administrator does not have your correct address, you may not receive notice of important developments in this Action.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

28. This Notice gives only a summary of the lawsuit and the claims asserted by Lead Plaintiffs. For more detailed information regarding the Action, including copies of the Consolidated Complaint and the Court's decisions discussed in this Notice, you may contact Class Counsel or visit www.MerckVioxxSecuritiesLitigation.com.

PLEASE DO NOT CALL OR WRITE THE COURT.

NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

29. If, for the beneficial interest of any person or entity other than yourself, you purchased or acquired Merck common stock or call options and/or sold Merck put options during the period from May 21, 1999 through and including September 29, 2004, you must either (a) within seven (7) calendar days of receipt of this Notice, request from the Administrator sufficient copies of the Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to the Administrator at *In re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation*, c/o The Garden City Group, Inc., P.O. Box 10014, Dublin, OH 43017-6614. If you choose the first option, you must send a statement to the Administrator confirming that the mailing was made and you must retain your mailing records for use in connection with any further notices that may be provided in the Action. If you choose the second option, the Administrator will send a copy of the Notice to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Administrator with proper documentation supporting the out of pocket expenses for which reimbursement is sought.

Dated: September 4, 2013

BY ORDER OF THE COURT:
United States District Court
for the District of New Jersey