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Frost Brown Todd Obtains Reversal of Class Certification in Vioxx Litigation

In *Merck & Co. v. Ratliff*, Frost Brown Todd appealed for its client, Merck, a class certification order entered by the Pike County Circuit Court. The trial court had certified a class of Kentucky residents who purchased and took the drug Vioxx and who contacted or will contact physicians seeking advice regarding Vioxx. This was the first appeal that was filed with the Kentucky Court of Appeals under the new Rule 23 interlocutory appeal process that became effective Jan. 1, 2011.

In an opinion written by Judge Wine, the Court of Appeals found that class certification was inappropriate because, in addition to his state-law statutory claim, the plaintiff alleged common law fraud, negligent misrepresentation, and unjust enrichment claims. The court found that a determination of these claims would hinge on individualized issues of proof.

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