

Mary Elizabeth Bartkus
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004-1482
+1 212 837 6736 office
+1 908 342 5520 mobile
mary.bartkus@hugheshubbard.com

Professional Experience

- **Hughes Hubbard & Reed LLP** (Jan 2017-present)
 - Special Counsel
 - International Litigation and Arbitration
 - Life Sciences Licensing, R&D Collaborations, Projects, Transactions
- **Merck & Co., Inc.** (Dec 1995-Dec 2016)

International litigation and arbitration including antitrust and life sciences product litigation and investigations, class, multiparty, multijurisdictional, cross border, and other complex litigation. Joint ventures and partnerships (Merck/Schering Plough; DuPont/Merck; losartan), life sciences licensing, and R&D collaborations for Merck Research Laboratories. Merck Genome Research Institute.

 - Executive Director & Senior Counsel (Aug 2012-Dec 2016)
 - Director & Counsel (May 2006-Aug 2012)
 - Assistant Counsel (Dec 1995-May 2006)
- **Shanley & Fisher, P.C.**, now Drinker Biddle & Reath LLP (Sep 1980-Dec 1995)
 - Partner (Equity Partner, Jan 1988-Dec 1995) (Mary Elizabeth Tracey)
 - Associate (Sep 1980-Jan 1988)

Master of the Bench, John C. Lifland American Inn of Court

AV Preeminent® Peer Review Rating, Martindale-Hubbell® 1995-present

Representative Matters

Merck Sharp & Dohme (I.A.) LLC v. The Republic of Ecuador, PCA Case No. 2012-10, UNCITRAL (Berman, Schwebel, Simma), Partial Final Award for Claimant (Jan 2018). Instructing counsel for Claimant (2012-2016); co-counsel with WilmerHale (2017) (Born, Ogden, Kent, Beene, Salas, Bejarano).

International Vioxx Litigation. Chief counsel to Merck & Co., Inc. and subsidiaries for the defense and coordination of all international Vioxx litigation and related proceedings after the company's voluntary withdrawal of Vioxx from markets worldwide, from November 2004 to 2017, including:

Australian Litigation. Defense of Merck & Co., Inc. and its subsidiary in *Peterson v Merck Sharp & Dohme (Australia) P/L & Anor*, VID451/2006, and *Reeves v Merck Sharp & Dohme (Australia) P/L & Anor* (VID 859 of 2008), in the Federal Court of Australia, Victoria Registry, Melbourne:

- *Peterson v Merck Sharp & Dohme (Australia) Pty Ltd* [2010] FCA 180, 5 March 2010, reasons for judgment, following a 43-day class action trial during 2009, dismissing all claims against Merck & Co., Inc.; dismissing all group member claims against its Australian subsidiary MSDA for conditions other than myocardial infarction; dismissing all statutory product defect claims on a class-wide basis; and dismissing all of the individual claims of the applicant except for his implied warranty claims based on sections of the Trade Practices Act.
- *Merck Sharp & Dohme (Australia) Pty Ltd v Peterson* [2011] FCAFC 128, 12 October 2011, the Full Federal Court's reasons for judgment granting MSDA's appeal and reversing the 2010 judgment for the individual applicant on the implied warranty claims; affirming dismissal of all

group members' statutory defect claims and of all claims for conditions other than myocardial infarction; dismissing the group members' cross-appeal against a causation finding that limited the number of claimants that might proceed; and making other findings affecting the viability of group members' claims against the company.

- *Peterson v Merck Sharp & Dohme (Australia) Pty Ltd* [2012] HCAB 05, refusing the applicant's and the group members' requests for special leave to appeal the Full Court's orders to the High Court of Australia, with costs awarded to the company.
- Lead negotiator for Merck & Co., Inc. and subsidiaries for the resolution, release, and dismissal of all claims in Australia, including the claims of 1,660 registered group members in *Peterson*, for the sum of AUD 542,500. *Peterson v Merck Sharp & Dohme (Australia) Pty Ltd (No 7)* [2015] FCA 123, approving class settlement in *Peterson* and *Reeves*.

Canadian Litigation. Defense of class and other proceedings in Canada's ten provinces, particularly in Saskatchewan, Ontario, and Quebec, in *Wuttunee v. Merck Frosst Canada Ltd.*, in the Court of Queen's Bench, Saskatchewan; *Mignacca v. Merck Frosst Canada Ltd., sub nom Tiboni v. Merck Frosst Canada Ltd., sub nom Settingerton v. Merck Frosst Canada Ltd.*, in the Ontario Superior Court of Justice; and *Sigouin c. Merck & Co. Inc.*, in the Superior Court of Quebec, including:

- *Settingerton v. Merck Frosst Canada Ltd.*, 2006 CanLII 2623 (ON SC), [2006] O.J. No. 376, 145 A.C.W.S.(3d) 566 (S.C.J.) (Winkler, J.), granting plaintiffs' 19-law firm consortium carriage of Ontario multijurisdictional class proceedings; staying parallel action filed in Ontario by Saskatchewan counsel.
- *Sigouin c. Merck & Co. Inc.*, 2006 QCCS 5325 (CanLII) (Denis, J.), certifying class of Quebec residents.
- *Tiboni v. Merck Frosst Canada Ltd.*, 2008 CanLII 6872 (ON SC), disqualifying former Minister of Health from acting as claimants' counsel on motion to certify class proceedings; *Tiboni v. Merck Frosst Canada Ltd.*, 2008 CanLII 11372 (ON SC), endorsement; *Tiboni v. Merck Frosst Canada Ltd.*, 2009 CanLII 46641 (ON SCDC), dismissing appeal from disqualification order.
- *Wuttunee v. Merck Frosst Canada Ltd.*, 2008 SKQB 229 (CanLII), certifying, in Saskatchewan, on an opt-out basis, a multijurisdictional class of all residents of Canada except Quebec; declining to stay Saskatchewan proceedings pending the outcome of certification proceedings in Ontario.
- *Wuttunee v. Merck Frosst Canada Ltd.*, 2008 SKCA 79 (CanLII), granting Merck leave to appeal Saskatchewan multijurisdictional certification order.
- *Wuttunee v. Merck Frosst Canada Ltd.*, 2008 SKCA 80 (CanLII), denying Ontario-led consortium leave to appeal multijurisdictional aspects of Saskatchewan certification order.
- *Tiboni v. Merck Frosst Canada Ltd.*, 2008 CanLII 37911 (ON SC), 295 D.L.R. (4th) 32, (Ont. Sup. Ct.), certifying, in Ontario, on an opt-out basis, a multijurisdictional class of all residents of Canada except for Quebec and Saskatchewan; declining to stay overlapping Ontario multijurisdictional class proceedings pending outcome in Saskatchewan.
- *Mignacca v. Merck Frosst Canada Ltd.*, 2009 CanLII 10059 (ON SCDC) (J.M. Wilson, Reilly and Karakatsanis JJ.; JM Wilson, J.), dismissing appeal from denial of stay of overlapping multijurisdictional certification proceedings; Ontario court not bound by principles of comity and full faith and credit to defer to Saskatchewan multijurisdictional certification order; permitting two

multijurisdictional class proceedings to proceed is not an abuse of process; leave to appeal to the Ontario Court of Appeal refused, M37315 (May 15, 2009); leave to appeal to the Supreme Court of Canada refused, [2009] S.C.C.A. No. 261.

- *Merck Frosst Canada Ltd. v. Wuttunee*, 2009 SKCA 43 (CanLII), granting Merck's appeal from Saskatchewan multijurisdictional certification order and overturning order; *Merck Frosst Canada Ltd. v. Wuttunee*, 2009 CanLII 57570 (SCC), denying plaintiffs leave to appeal to Supreme Court of Canada.
- *Bear v. Merck Frosst Canada & Co.*, 2010 SKQB 284 (CanLII) (Currie, J.), striking class allegations in new statement of claim filed by *Wuttunee* counsel the day after the Supreme Court of Canada denied plaintiffs leave to appeal in *Wuttunee*, as an abuse of process.
- *Bear v. Merck Frosst Canada & Co.*, 2011 SKCA 152 (CanLII), dismissing plaintiffs' appeals from orders striking class allegations as an abuse of process and an improper re-litigation or attempted litigation by installments, of the previously dismissed *Wuttunee* class proceedings.
- Lead negotiator for Merck & Co., Inc. and subsidiaries for the nationwide resolution, release, and dismissal of all claims in Canada:
 - *Mignacca v. Merck Frosst Canada Ltd.*, Court File No. 04-CV-045435 CP, Ontario Superior Court of Justice (Leitch J.), order, in Ontario, approving nationwide class settlement.
 - *Bray v. Merck Frosst Canada Ltd.*, Q.B. No. 1727 of 2004 (Currie, J.), order, in Saskatchewan, approving nationwide class settlement.
 - *Sigouin c. Merck & Co. inc.*, 2012 QCCS 2014 (CanLII), judgment, in Quebec, approving nationwide class settlement; 2012 QCCS 4733 (CanLII), English language version.
- Recognition and enforcement orders entered in all other provinces.

English Litigation. Hundreds of cases abandoned by claimants: *English claims against Vioxx manufacturer are on brink of collapse*, BMJ 2005; 331:1292 (Dec. 1, 2005); neither legal aid, nor insurers, nor claimants' law firms, willing to invest in litigation, *Patients lose Vioxx legal [aid] appeal*, <http://news.bbc.co.uk/2/hi/health/4481248.stm> (Nov. 29, 2005). Several putative group or multi-party actions filed in the English High Court by different law firms eventually were abandoned by claimants.

Scottish Litigation. Defense, resolution, and dismissal of more than 200 individual actions case managed by the Court of Sessions in Edinburgh, including *Cooper v Merck Sharp & Dohme Limited* [2012] CSOH 48, and *Hamilton & Ors v Merck & Co., Inc. and Merck Sharp & Dohme Limited* [2012] CSOH 144.

Dutch Litigation. Defense, resolution, and dismissal of individual actions and claims in The Netherlands.

European Litigation. Defense and dismissal of hundreds of individual actions and related proceedings in 12 other European countries, including actions commenced by private parties before criminal investigative administrative authorities or courts in five countries.

Brazilian Litigation. Defense of class and individual actions in 27 jurisdictions in Brazil, including a nationwide consumer class action decided in favor of the company.

Israeli Litigation. Defense, resolution, and dismissal of class and individual actions in Israel.

South African Litigation. Defense and abandonment of individual claims made in South Africa.

Canadian Fosamax Litigation. Chief counsel to Merck & Co., Inc. and subsidiaries for the defense of all Fosamax and Fosavance litigation in Canada; lead negotiator for the resolution, release, and dismissal of all claims in Canada resulting in the nationwide class settlement announced in April 2015, approved in 2016, and enforced in 2017: *Peters v. Merck Frosst Canada Ltd.*, Ontario Superior Court File No. 07-CV-333698CP (30 Sep 2016), approving class settlement; *Options Consommateurs (Brousseau) c. Merck Frosst Canada ltée*, 2016 QCCS 5075 (CanLII) (05 Oct 2016), approving class settlement; and *Macmillan v Merck Frosst Canada & Co.*, 2016 SKQB 325 (CanLII) (06 Oct 2016), approving class settlement; *Markovich v. Merck Frosst Canada & Co.*, Court of Queens Bench Alberta, No. 1001-14447 (18 Jan 2017), enforcing Ontario and Saskatchewan approval orders; and *Marcano v. Merck Frosst Canada Ltd.*, Supreme Court of British Columbia N. 5073863 (20 Jan 2017), enforcing Ontario and Saskatchewan approval orders.

International Antitrust and Complex Litigation and Investigations. Chief counsel to Merck & Co., Inc. and subsidiaries for the defense of antitrust and unfair competition investigations and litigation in South Africa, South Korea, Brazil, Ecuador, Belgium, France, Hungary, Italy, The Netherlands, Poland, and Spain, and before the European Commission. Defense and early dismissal as against Merck & Co., Inc., of multi-defendant Alien Tort Claims Act litigation in the United States District Court for the Southern District of New York.

Merck / Schering Plough International Joint Venture. Lead international counsel for Merck & Co., Inc. on negotiations for the international master, marketing, promotion, distribution, and sales joint venture agreements executed in December 2001 for the Merck / Schering-Plough joint venture for ezetimibe and ezetimibe/simvastatin. Chief counsel to Merck & Co., Inc. and subsidiaries for the implementation and operations of the international joint venture.

European Inventory Management System. Lead international counsel to Merck & Co., Inc. and subsidiaries on the implementation, operation, and defense of its European Integrated Inventory Management System and product distribution operations in Europe.

Licensing and Joint Ventures. Chief licensing lawyer for Merck & Co., Inc. and subsidiaries in the negotiation and implementation of numerous in-licensing and other transactions supporting Merck Research Laboratories throughout research and development. Counsel to the Merck Genome Research Institute.

DuPont / Merck. Chief counsel to Merck & Co., Inc. and subsidiaries for the relationship with DuPont for losartan; and for DuPont Merck Pharmaceuticals, an independent joint venture company, from December 1995 through Merck's disposition of its interest in the joint venture in 1999.

United States General Counsel to affiliated German companies for all U.S. legal matters including the importation, marketing, distribution, and sale to U.S. customers of the companies' machines and equipment for the manufacture of pharmaceuticals, from establishment of a U.S subsidiary during the 1980's until December 1995 when I left private practice to join Merck & Co., Inc.

Litigation in United States Courts. Over the first 15 years of my practice, the representation of numerous companies in successful intellectual property, antitrust, business tort, unfair competition, franchise practices, trade practices, and other commercial litigation in state and federal courts, including: the defense of automobile manufacturers in dealer termination and vehicle allocation litigation brought under state and federal franchise and antitrust legislation; the defense of an oil company in Petroleum Marketing Practices Act litigation; the defense of electronics manufacturers in antitrust litigation; the local representation of an oil company in patent litigation; representation of a toy company challenging unfair

and infringing practices in import trade; local representation of an aerospace, automotive, and engineering company in antitrust litigation; the defense of Merck & Co., Inc., with Frank L. Bate, before state chancery and appellate courts in an action brought by a former executive to compel an award of stock options made contingent on non-competition and continued availability for consultation; the representation of a Dutch company in a commercial dispute with a U.S. business partner; the defense of a German pharmaceutical equipment company in the termination of its exclusive United States distributor; the defense of a chemical company in an antitrust investigation; the defense of a beer distributor in a state antitrust investigation; the defense of a beer distributor in federal antitrust litigation; the defense of the government of Iran including its Air Force in litigation pending in the United States District Court for the District of New Jersey during the Iranian hostage crisis; and the defense of a German manufacturer of electronic equipment for the automobile industry resisting actions to enjoin termination and replacement of its United States distribution network.

Bar and Court Admissions

- State of New Jersey
- State of New York
- United States Supreme Court
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Federal Circuit
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the District of New Jersey
- United States District Court for the Eastern District of New York
- United States District Court for the Southern District of New York

Education

- J.D. Rutgers University School of Law – Newark, 1980
 - *Clerkship*: Adjutant Law Clerk to United States District Judge H. Curtis Meanor, United States District Court for the District of New Jersey, Spring and Summer 1979
- B.A. *magna cum laude*, Philosophy, Kean University, then Kean College of New Jersey, 1977
 - Student Representative to Board of Trustees, to Faculty Senate, to All-College Budget and Promotion Committees, and to President's Legislative Impact Committee; Philosophy Club President
 - Evening and Part-Time Student Council Vice President

Boards and Appointments

- The Johns Hopkins University Wilmer Eye Institute Board of Governors
- American Arbitration Association International Centre for Dispute Resolution Life Sciences Subcommittee
- European Justice Forum
- The Supreme Court of New Jersey District X Ethics Committee (1995-1998)
- Editorial Board, New Jersey Law Journal (1994-1998)

Selected Publications and Presentations

- *The New Hungarian Arbitration Act from the Perspective of a US International Dispute Resolution Practitioner*, paper presented in Budapest on January 14, 2019 at *Hungary's New Arbitration Law in an International Context*, ELTE Law, Eötvös Loránd University.
- *Six Class Action Lawsuits for 16 Microliters*, Bartkus, Mary E. and Jampel, Henry D., Ophthalmology Glaucoma, Issue 2, pp. 85-87 (September – October 2018), <https://doi.org/10.1016/j.ogla.2018.05.006>.

- Bartkus, Mary E., *Six Class Actions for 16 Microliters: Eye Drop Litigation Reopens in New Jersey, Is Dismissed in Massachusetts, and Is on Appeal to the First Circuit. Hedging and Forum Shopping. A Media Rush to Judgment.* (February 13, 2018). Available at SSRN: <https://ssrn.com/abstract=3123337>
- *Injunctions*, in New Jersey Federal Civil Procedure, and Annual Supplements, New Jersey Law Journal Books, 1999-2014
- *Globalization of Class Actions*, International Association of Defense Counsel Mid-Year Meeting, Program Speaker, February 2012
- *Competition Policy in the Pharmaceutical Sector, Article 82 EC: can it be applied to control sales by pharmaceutical manufacturers to wholesalers?* with Lawyers Working Group, European Federation of Pharmaceutical Industries and Associations (EFPIA), November 2004
- *Pharmaceutical Product Market Definition, Competition Policy in the Pharmaceutical Sector*, Presentation for EFPIA to Conférence Bleue, European Lawyers' Conference on Pharmaceutical and Health Care Affairs, Brussels October 2004
- Featured in *15 Up and Comers at the Top 15 Firms*, 124 N.J.L.J Index Page 383, August 17, 1989

Memberships

- International Bar Association
 - Dispute Resolution and Antitrust Sections
- International Association of Defense Counsel
 - Membership, International Arbitration, International, and Class Action Committees
- American Bar Association
 - Antitrust Law, International Law, and Dispute Resolution Sections
- Association of the Federal Bar of New Jersey

January 2019