

[First Fosamax Trial In Federal Court MDL Will Start As Scheduled On August 11, 2009](#)

Judge Keenan Denies Merck's Summary Judgment Motion, But Rules That Merck Will Not Face Possible Punitive Damages In This Case Involving Shirley Boles

(Posted by Tom Lamb at www.DrugInjuryWatch.com on July 30, 2009; see <http://bit.ly/m1tFS>)

According to a July 29, 2009 *Bloomberg* article, "[Merck Won't Face Punitive Damages in Fosamax Trial](#)":

U.S. District Judge John Keenan said at a hearing today in New York that he'll release a decision as early as July 31 knocking out the possibility of punitive damages in the case. He'll deny Merck's request to rule in its favor on liability, which means the case will go to trial Aug. 11, he said.

"I am not granting summary judgment on anything else," Keenan said.

Keenan has scheduled three so-called bellwether trials through January to show each side the other's strategy and possibly point the way to settlements....

At the present time, about 700 Fosamax lawsuits filed in the federal court system have been consolidated in *In Re Fosamax Products Liability Litigation*, MDL 1789, U.S. District Court, Southern District of New York (Manhattan), with Judge Keenan presiding. This consolidation of Fosamax cases is commonly referred to as the Fosamax MDL -- short for multi-district litigation.

This first Fosamax trial in the federal court Fosamax MDL involves Shirley Boles, 71, of Walton Beach, Florida, who used Fosamax from 1997 to 2006 and eventually developed osteonecrosis of the jaw (ONJ), which has been described as jawbone tissue death.

As regards the legal theory being presented by the plaintiff in this *Boles* case, according to the July 29 *Bloomberg* article;

[Plaintiff Boles] argues Merck had a duty to change the Fosamax label to warn doctors about a connection to the disease as early as the mid-1990s. She also said her condition worsened because the company's failure to warn meant she kept taking the drug.

Merck and Boles disagree about when she was diagnosed with the condition. [Judge] Keenan said today the evidence showed "she developed her injury by September 2003 at the latest" and [Judge Keenan] won't allow evidence about Merck's conduct after that date.

The same *Bloomberg* article also re-caps the most recent (albeit a bit dated) information about the extent of this ongoing Fosamax litigation:

- Merck, which is buying rival Schering-Plough Corp., had a reserve of about \$24 million for the litigation, including lawyers' fees, as of March 31, having spent \$9 million on the cases in the first quarter, the company said in May. It hasn't set aside any money to pay damages, it said.
- As of March 31, Merck faced about 856 Fosamax cases, including suits with multiple patients, in state and federal court, the company said. About 700 of the lawsuits have been consolidated before Keenan in New York federal court for evidence-gathering. About 130 cases are before Judge Carol Higbee in state court in Atlantic City, New Jersey, Merck said.

By comparison, [at about this time last year 655 Fosamax lawsuits had been filed against Merck.](#)

<http://www.jdsupra.com/post/documentViewer.aspx?fid=7c78f042-b9f0-4818-85c1-32b0426871ae>
We will be watching closely this first Fosamax trial in the federal court MDL, *Boles v. Merck*, as well as the second and third bellwether cases, *Fleming v. Merck* -- currently set for trial on October 27, 2009 -- and *Greene v. Merck* -- which is scheduled to begin January 11, 2010.

P.S. ["Statement by Merck & Co., Inc. Regarding FOSAMAX® \(alendronate sodium\) and Rare Cases of Osteonecrosis of the Jaw"](#) issued July 29, 2009.

Attorney Tom Lamb represents people in personal injury and wrongful death cases involving unsafe prescription drugs or medication errors. The above article was posted originally on his blog, **Drug Injury Watch** – with live links and readers' Comments.

<http://www.DrugInjuryWatch.com>