

## [Graves v. Merck Fosamax MDL Trial Begins After Pre-trial Motions Rulings By Judge Keenan](#)

### **Merck Issues Its "No Liability" Press Release On First Day Of Trial; 1092 Fosamax Lawsuits Filed As Of June 2010**

(Posted by Tom Lamb at [www.DrugInjuryWatch.com](http://www.DrugInjuryWatch.com) on November 2, 2010; see <http://bit.ly/dhmiFu>)

The trial for the federal court Fosamax MDL case *Judith Graves v. Merck & Co., Inc.* (No. 1:06-CV-05513-JFK) has started in New York, with Judge John F. Keenan presiding.

This *Graves* case is just one of the hundreds of Fosamax osteonecrosis (ONJ) lawsuits that are part of *In Re Fosamax Products Liability Litigation*, MDL 1789, U.S. District Court, Southern District of New York (Manhattan), and the third one to thus far to make it to trial. [Two more federal court Fosamax-ONJ lawsuits are currently scheduled by Judge Keenan to go to trial in the spring of 2011.](#)

On October 22, 2010 Judge Keenan issued his [Opinion & Order concerning various pre-trial motions by made by Merck's lawyers](#), which ended as follows:

#### **IV. Conclusion**

As discussed above, there are genuine and material Issues of fact in this case, and therefore Merck's motion for summary judgment is DENIED.

Additionally, for the reasons described above, Merck's motion to exclude unqualified expert testimony under Daubert GRANTED with respect to Drs. Adams, Akers, and Marx, and is DENIED with respect to Drs. Villaret and Cherry.

#### **SO ORDERED.**

On October 28, 2010, the day that this *Graves* trial started, Merck issued a press release, "[Statement on FOSAMAX® \(alendronate sodium\) Product Liability Trial in U.S. District Court](#)", in which the drug company shunned any responsibility for the osteonecrosis (ONJ) which Judith Graves developed while using Fosamax. This Merck press release starts with a discussion of the *Graves* case and goes on to provide an update (of sorts) about the total number of Fosamax lawsuits filed against Merck:

Merck will vigorously defend itself in a jury trial set to begin today in the U.S. District Court for the Southern District of New York. The company believes the evidence will show that FOSAMAX did not cause the plaintiff to develop dental and jaw-related problems as she claims and that Merck provided appropriate and timely information about FOSAMAX to the medical, scientific and regulatory communities.

In *Graves v. Merck*, the plaintiff alleges she used FOSAMAX from 2001 to 2004. The plaintiff further alleges she suffered various jaw problems and complications following a tooth extraction in March 2003, including several surgeries to treat her condition....

As of June 30, 2010, approximately 1,092 cases, which include approximately 1,470 plaintiff groups, had been filed and were pending against Merck in either federal or state court.

According to [the Pretrial Scheduling Order this Graves Fosamax MDL case](#), the trial should take about a two weeks, with the Plaintiff and the Defendant each having six trial days to present their respective case.

Be assured that we will report the jury verdict for this *Graves v. Merck* trial as soon as possible after it is announced in Judge Keenan's courtroom.

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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>