

[Fosamax MDL Litigation Update - May 2010: Maley Case Trial Verdict Goes In Favor Of Merck](#)

Boles Case Retrial Starts On June 2, 2010 And Third Bellwether Trial Is Set For September 2010

(Posted by Tom Lamb at www.DrugInjuryWatch.com on May 6, 2010; see <http://bit.ly/a7x6mn>)

The first Fosamax verdict was handed down on May 5, 2010 and, because the jury found that plaintiff Louise Maley had not developed bisphosphonate-related osteonecrosis of the jaw (also known as BRONJ or ONJ), Merck won this lawsuit.

The case is *Maley v. Merck & Co.*, 06-cv-4110, which is one of the hundreds of federal court lawsuits that are combined in *In Re Fosamax Products Liability Litigation*, MDL 1789, U.S. District Court, Southern District of New York (Manhattan).

We get these details about the *Maley* case result from this May 5, 2010 *Bloomberg* news report, "[Merck Wins Second Fosamax Trial on Jaw Death Claims](#)":

Louise Maley of Muncie, Indiana, said she developed osteonecrosis of the jaw, or ONJ, by taking Fosamax, in a complaint filed in May 2006. A federal jury in Manhattan ruled today that Maley didn't have ONJ....

The trial, overseen by U.S. District Judge John Keenan, began April 19. In September, Keenan declared a mistrial in the first Fosamax case to go to a jury over claims that the drug might hamper blood flow to the jaw, causing jawbone-tissue death. That jury couldn't reach a unanimous verdict. The case is to be retried in June....

Maley took Fosamax from at least January 1998 to March 2006 to prevent osteoporosis, according to court papers. She stopped taking it due to a throat irritation, according to Merck.

The drugmaker argued in court papers that Maley didn't offer any evidence Fosamax causes ONJ or that it caused her jaw condition. She was never diagnosed with ONJ, it said.

Instead, she was diagnosed in 2005 with a different condition, neuralgia-inducing cavitation osteonecrosis, or Nico, the company said. That condition doesn't necessarily imply dead bone, Merck said. It's characterized by diminished blood flow in the jaw's bone marrow, causing spaces of marrow to dry out and become hollow, it said.

Maley said in court papers that at least three experts put in reports or pretrial testimony stating that Fosamax causes ONJ. She also said she has ONJ, not Nico, and it was caused by Fosamax.

As alluded to above, the *Boles v. Merck* trial started in September 2009 and ended in a so-called "mistrial". The *Boles* case will be retried, starting on June 2, 2010.

The next case scheduled for trial in the federal court Fosamax MDL was *Fleming v. Merck*, which was set to begin on January 5, 2010. In late November 2009, however, Judge Keenan granted Merck's request for summary judgment and dismissed the *Fleming* case. In turn, a new bellwether, or test, case was selected; it is scheduled to start in September 2010.

For a current "snap-shot" of the Fosamax litigation, we get this information from Merck's May 5, 2010 press release about this *Maley* lawsuit verdict, "[Merck Wins Second Federal FOSAMAX® \(alendronate sodium\) Bellwether Trial Jury Rejects Plaintiff's Claims](#)":

This is the second FOSAMAX case to go to trial. The first case, *Boles v. Merck*, resulted in a mistrial after the eight person jury could not reach a unanimous verdict. The *Boles* case is set to be retried on June 2, 2010. As of December 31, 2009, approximately 978 cases, which include

approximately 1,356 plaintiff groups, had been filed and were pending against Merck in either federal or state court.

Of course, we will be following the *Boles* case retrial in June and will report the outcome of this next Fosamax MDL trial as soon as possible after the jury verdict for that lawsuit is announced.

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>