

[Fosamax MDL Judge Keenan Wants Two More Bellwether Case Trials: February 4, 2011 Order](#)

In Addition To The Federal Court Fosamax Jaw Injury Lawsuits Set For Trial In March 2011 And May 2011

(Posted by Tom Lamb at www.DrugInjuryWatch.com on February 8, 2011; see <http://bit.ly/eDJHXM>)

On February 4, 2011 Judge John F. Keenan, presiding over the federal court Fosamax multi-district litigation (MDL) pending in the Southern District of New York (Manhattan, NYC), issued an order calling for two additional "bellwether", or test, cases involving osteonecrosis of the jaw (ONJ) to go to trial.

From [Judge Keenan's February 4, 2011 Order issued in *IN RE: FOSAMAX PRODUCTS LIABILITY LITIGATION*](#):

The FDA first approved Fosamax for the treatment of osteoporosis on September 29, 1995. On July 15, 2005, Merck updated the Fosamax label to include a warning that cases of ONJ had been observed in bisphosphonate users. The bellwether cases selected for trial so far have involved use of Fosamax and alleged onset of ONJ prior to the July 2005 label change. As a result, issues that could arise in cases with post July 2005 claimed injury dates or commencement of Fosamax use have not been litigated in this MDL.

The Court believes it is necessary to conduct two additional bellwether trials involving issues not yet litigated, before considering remand of the MDL to the transferror courts. Therefore, the Court directs the Plaintiffs' Steering Committee and Merck to confer and to select, by April 15, 2011, two cases to be tried as additional bellwethers. One case must involve Fosamax use beginning before the July 2005 label change with a claimed onset of injury after the July 2005 label change. The other case must involve commencement of Fosamax use and a claimed injury date that both post-date the July 2005 label change.

Moreover, according to a February 7, 2011 *WSJ Law Blog* article, "[Judge Wants More 'Bellwether' Trials In Litigation Over Merck's Fosamax](#)":

[Judge Keenan] also has toyed with the idea of appointing a special master to help facilitate settlement of the litigation.

As we reported previously, [in mid-September 2010 Judge Keenan said that two more Fosamax lawsuits involving osteonecrosis of the jaw \(ONJ\) would go to trial](#) in March 2011 (*Secrest v. Merck*) and May 2011 (*Hester v. Merck*).

On January 18, 2011 [the first New Jersey state court Fosamax trial involving ONJ, *Rosenberg v. Merck*](#), started in the Superior Court for Atlantic County.

The result of this *Rosenburg* Fosamax trial in NJ is expected, soon.

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>