

[Graves v. Merck Fosamax MDL Trial Jury Verdict Is Expected By End Of November 2010](#)

Two More Fosamax Lawsuits Involving Jaw Injury Like Osteonecrosis Of The Jaw (ONJ) Will Go To Trial In Spring 2011

(Posted by Tom Lamb at www.DrugInjuryWatch.com on September 30, 2010; see <http://bit.ly/andmHR>)

The next scheduled trial in the federal court Fosamax MDL is *Judith Graves v. Merck & Co., Inc.* (No. 1:06-CV-05513-JFK), which is one of the hundreds of pending Fosamax lawsuits in *In Re Fosamax Products Liability Litigation*, MDL 1789, U.S. District Court, Southern District of New York (Manhattan).

As background, at a conference held on February 1, 2010 Judge John F. Keenan randomly selected the Graves case as the third Fosamax "bellwether", or early trial / test, case to replace [Bessie Flemings v. Merck & Co., Inc., which was dismissed on summary judgment](#).

At the February 2010 conference Judge Keenan tentatively scheduled the *Graves* trial to start on September 13, 2010. The trial date for this *Graves* Fosamax lawsuit was later moved to November 1, 2010 and, more recently, the judge said the *Graves* trial will start on October 28, 2010.

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

As you may recall, at the end of June 2010 there was an [\\$8 million verdict award in the re-trial of the Boles Fosamax lawsuit](#) to compensate Shirley Boles for the osteonecrosis of the jaw (ONJ) which she had developed after using Fosamax for about ten years.

Prior to that, in May 2010, the second Fosamax MDL bellwether case (after Judge Keenan declared a mistrial in the first *Boles* case trial back in September 2009), *Maley v. Merck*, ended in a defense verdict for Merck. Simply put, the jury determined that plaintiff Louise Maley did not have osteonecrosis of the jaw (ONJ) -- the serious jaw-bone condition which has been linked to Fosamax and other bisphosphonate drugs that are commonly prescribed for osteoporosis and osteopenia.

In a related development, in mid-September 2010 Judge Keenan said that there will be at least two more early trial bellwether / test cases in the federal court Fosamax MDL. From his [Order Directing Parties to Select Bellwether Trials # 4 and #5](#):

The Court believes at least two additional cases should be brought to trial before it suggests remand to the Judicial Panel of Multidistrict Litigation....

As such, the Court directs the Plaintiffs Steering Committee (the "PSC") and Merck each to select one case for trial.... The parties shall also each choose two cases to serve as replacements in the event that a selected case does not proceed to trial....

The trial of the case selected by the PSC will commence on March 14, 2011. The trial of the case selected by Merck will commence on May 9, 2011.

We want to point out that the federal court Fosamax MDL is limited to jaw-injury cases, such as ONJ and osteomyelitis of the jaw. Femur fracture cases involving Fosamax are excluded from the MDL.

As a result, most of the femur fracture Fosamax lawsuits are being filed in the New Jersey state court system, in Atlantic County, where Judge Carol E. Higbee is presiding over [the NJ Fosamax "mass-tort" litigation which was created back in October 2008](#). There has not been any trial of a femur fracture case in New Jersey nor in any other court, yet.

Be assured that we will report the *Graves v. Merck Fosamax* trial jury verdict as soon as we learn about it in November 2010.

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>