

[February 2010: Fosamax Federal Court MDL Litigation Update; Next Trial Starts In Mid-April](#)

Merck Lost Its Attempt To Have Louise Maley's Fosamax Lawsuit Dismissed Before Her April 19, 2010 Trial Date

(Posted by Tom Lamb at www.DrugInjuryWatch.com on February 2, 2010; see <http://bit.ly/aEoY6s>)

We have been [reporting about the three bellwether trial cases for the federal court Fosamax MDL](#) and, in this article, we continue to do so.

To start, *Louise H. Maley v. Merck & Co. Inc.* is the next Fosamax case set for trial in the federal court MDL, and this trial will start as scheduled on April 19, 2010.

Recent efforts by Defendant Merck to avoid this *Maley* Fosamax trial were summarized in a January 28, 2010 news article, "[Merck Loses Dismissal Bid in Third Fosamax Case](#)", by *Bloomberg* reporter Thom Weidlich:

Merck & Co. lost its bid to dismiss the third case scheduled for trial over claims its osteoporosis drug Fosamax caused so-called jaw death.

The claim of the plaintiff, Louise Maley, "does not fail as a matter of law from a lack of evidence of exposed necrotic bone," U.S. District Judge John Keenan in Manhattan wrote in a ruling entered into the case docket today. "Specific causation remains a material issue of fact for the jury."

A trial is scheduled for April 19. Maley, of Muncie, Indiana, said she developed osteonecrosis of the jaw, or ONJ, by taking Fosamax, according to her complaint filed in May 2006....

Keenan declined to grant Merck's request for a so-called summary judgment on Maley's claim that the drugmaker failed to warn about Fosamax's dangers. [Maley] didn't contest Merck's dismissal request on her strict-liability and warranty claims, and the judge tossed those.

This January 28 *Bloomberg* article also provides an overview of the Fosamax litigation in terms of the number of Fosamax lawsuits filed and the money Merck has reserved for the defense of those Fosamax cases:

Merck, based in Whitehouse Station, New Jersey, as of Sept. 30 faced about 953 Fosamax cases, including suits with multiple patients, the company said in a Nov. 2 regulatory filing. About 700 lawsuits have been consolidated before Keenan for evidence gathering....

As of Sept. 30, Merck set aside \$48 million for defending the litigation, according to the regulatory filing. It hasn't earmarked any money for damages.

In closing, the next scheduled Fosamax trial is *Maley v. Merck & Co.*, 06-cv-4110, 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).

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>