

## [Boles v. Merck Fosamax Trial Jury Verdict Is \\$8 Million For Plaintiff In June 2010](#)

### **This Was A Retrial Of The First Fosamax MDL Case, Which Ended When Judge Declared Mistrial Back In September 2009**

(Posted by Tom Lamb at [www.DrugInjuryWatch.com](http://www.DrugInjuryWatch.com) on June 26, 2010; see <http://bit.ly/bIPk4e>).

The case of *Boles v. Merck & Co.*, one of the hundreds of Fosamax jaw injury lawsuits that are combined in the federal court MDL titled *In Re Fosamax Products Liability Litigation* (MDL 1789, U.S. District Court, Southern District of New York, Manhattan), concluded yesterday with an \$8 million verdict in favor of the plaintiff, Shirley Boles -- but it remains to be seen whether that remarkable result will withstand the expected post-trial legal motions that will be filed by defendant Merck.

As some of you may recall, [the first trial of this Boles case ended in a mistrial back in September 2009](#) after U.S. District Judge John Keenan, who is presiding over the Fosamax MDL in New York, determined that the jury had become hopelessly deadlocked in their deliberations.

For some insight about why this first plaintiff verdict in the Fosamax MDL litigation may not stand "as is", we turn first to a June 25, 2010 *Wall Street Journal* article, ["Merck Loses Fosamax Case"](#):

Merck said Friday that it plans to challenge the jury's decision and believes the awarding of compensatory damages was unjustified and excessive.

"We disagree with the jury's verdict. We believe the jury verdict was a result of plaintiff's counsel's inflammatory and prejudicial remarks," said Paul Strain of Venable LLP, outside counsel for Merck. "The plaintiff was at increased risk for dental and jaw problems even if she was not taking Fosamax."

Merck has argued in part that Ms. Boles, a long-time cigarette smoker, has a history of dental problems and health problems.

U.S. District Judge John Keenan, who is overseeing the federal [Fosamax] cases, set a briefing schedule and is expected to hear post-trial motions to overturn the Boles verdict in September. Merck is likely to appeal if it doesn't succeed with its post-trial motions.

Additional details about why this *Boles* Fosamax lawsuit verdict may be in jeopardy come from a *Bloomberg* news report, ["Merck Loses \\$8 Million Verdict in Trial Over Fosamax"](#):

"We believe the jury verdict was a result of plaintiff's counsel's inflammatory and prejudicial remarks," Paul F. Strain, a lawyer for Merck, said in a statement.

Merck unsuccessfully moved for a mistrial, claiming another lawyer for Boles, Gary Douglas, improperly used his closing statement to encourage the seven-person jury to punish Merck with its verdict.

"I have never heard a more outrageous summation in my life than the one I heard yesterday," Keenan, 80, told lawyers today outside the jury's presence.

Strain said in a phone interview that the jury's findings and the amount awarded aren't consistent with the evidence introduced in the trial. Merck will ask Keenan to throw out the verdict and, if necessary, will appeal, he said.

More information about how Merck will be attempting to get this \$8 million verdict either reduced or thrown out altogether can be found in this June 25, 2010 company press release: ["Merck Challenges Verdict in Federal FOSAMAX\(R\) \(alendronate sodium\) Trial"](#).

Be assured that we will be monitoring the post-trial motions concerning this *Boles* Fosamax verdict and that we will report significant developments here on our [Drug Injury Watch](#) blog, such as whether this *Boles* plaintiff's verdict is reduced, reversed, or upheld.

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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>