NOTICE TO THE BAR

MASS TORTS – DESIGNATION AND ASSIGNMENT OF FOSAMAX LITIGATION

A previous notice advised of the application made to the Supreme Court pursuant to Rule 4:38A and the Mass Tort Guidelines (Directive #10-07) for designation of all New Jersey state court litigation involving the drug Fosamax as a mass tort and assignment of that litigation for centralized management to one of the three New Jersey mass tort vicinages. This notice is to advise that, after having reviewed that application and the comments received thereon, the Supreme Court determined to designate as a mass tort for centralized case management purposes all pending and future actions arising out of the use of Fosamax and seeking damages for existing dental or jaw-related injuries, including osteonecrosis of the jaw, but not solely seeking medical monitoring. The Court has assigned this mass tort to Atlantic County and Judge Carol E. Higbee, except for the case of *Pastorius v. Merck & Co., Inc*., Docket No. ESX-L-6696-07, which remains venued in Essex County. While the application also sought the coordination of the handling of the Fosamax mass tort with the previously designated Zometa/Aredia mass tort assigned to Middlesex County and Judge Jamie Happas, the Court did not so direct.

Published with this notice are the Supreme Court's October 6, 2008 Order as well as Judge Higbee's October 17, 2008 Case Management Order. Both Orders also are posted in the Mass Tort Information Center on the Judiciary's Internet web site (www.njcourtsonline.com).

Questions concerning this matter may be directed to Michelle V. Perone, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 984-5431; email address michelle.perone@judiciary.state.nj.us.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: October 22, 2008

SUPREME COURT OF NEW JERSEY

On application made pursuant to Rule 4:38A and the Mass Tort Guidelines promulgated by Directive #10-07 in accordance with that Rule, it is hereby ORDERED that all pending and future actions arising out of the use of the drug Fosamax and seeking damages for existing dental or jaw-related injuries, including osteonecrosis of the jaw, but not solely seeking medical monitoring, are designated as a mass tort for centralized case management purposes; and

It is FURTHER ORDERED that any and all such complaints that have been filed in the various counties and that are under or are awaiting case management and/or discovery shall be transferred from the county of venue to Superior Court, Law Division, Atlantic County and assigned to Judge Carol E. Higbee, and that, pursuant to N.J. Const. (1947), Art. VI, sec. 2, par. 3, the provisions of Rule 4:3-2 governing venue in the Superior Court are supplemented and relaxed so that all future such complaints, no matter where they might be venued, shall be filed in Atlantic County and assigned to Judge Higbee; and

It is FUTHER ORDERED that Judge Higbee shall oversee all management and trial issues for such cases and may, in her discretion, return such cases to the original county of venue for disposition; and

It is FURTHER ORDERED that no Mediator or Master may be appointed in this litigation without the express prior approval of the Chief Justice.

The provisions of this order do not apply to the case *Pastorius v. Merck & Co., Inc.*, Docket No. ESX-L-6696-07, which remains assigned to Essex County.

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: October 6, 2008

FILED

OCT 17 2008

Carol E. Higbee, P.J.Cv.

	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ATLANTIC COUNTY
IN RE: FOSAMAX LITIGATION	CASE NO. 282
	CIVIL ACTION
	CASE MANAGEMENT ORDER NO. 1

It appearing that all Fosamax cases are centralized for management in Atlantic County by Order of the Supreme Court of New Jersey, dated October 6, 2008.

And it further appearing that an equitable, economic and expedient resolution of these cases require an orderly management plan for this litigation; and therefore

IT IS ON THIS 17 day of October, 2008, ORDERED as follows:

I. GENERAL APPLICABILITY

1. This Order applies to all cases previously filed and all those hereinafter filed or transferred to Atlantic County pursuant to the Supreme Court Order of October 6, 2008. The cases are centralized to avoid duplication and to prevent conflicts. These actions are not consolidated. Each case will retain its own docket number.

2. The civil "Best Practices" system for Mass Tort track IV will govern this case.

3. All orders by transferor Courts imposing dates for pleading or discovery are vacated.

4. Orders and notices common to the entire litigation may be available on the Judiciary web page for Mass Tort Litigation, which may be accessed at www.Judiciary.State.NJ.US/Mass-Tort/Index.htm.

II. CAPTIONS, PLEADINGS & SERVICE

1. All parties are to file individual complaints at Atlantic County Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey 08401. The Case Information Statement accompanying the pleading shall identify the case code as 282.

2. Each complaint is limited to one plaintiff or a related household of plaintiffs. No plaintiff may use the caption "In re Fosamax Litigation" on an individual

complaint. If a complaint has been filed with multiple unrelated plaintiffs, an amended complaint must be field within thirty (30) days.

3. All pleadings, all motion papers, all correspondence shall add the letter MT after the docket number indicating Mass Tort and under the caption Civil Action shall add the title of this litigation, "Fosamax Litigation".

4. Atlantic County shall maintain a master docket and case file caption "In Re Fosamax Litigation". All Case Management Orders, Scheduling Orders, or other documents filed therein are deemed filed and docketed in each individual case.

III. PRELIMINARY MATTERS

1. Each party shall preserve all documents and other records containing information potentially relevant to this litigation. Each party shall also preserve any physical evidence or potential evidence and shall not conduct any tests on physical evidence without notifying opposing counsel. Unless opposing counsel stipulate to the test, no test shall be conducted without obtaining the Court's permission.

2. Computerized data shall not be erased under existing programs until:

a) Opposing counsel have been notified of all existing programs.

IV. ATTORNEYS

1. Counsel are expected to act in a courteous, professional manner during the conduct of this litigation. Each attorney should make a good faith effort to resolve disputes out of Court and in an expeditious manner. Counsel must attempt to resolve motions before any matter is submitted to the Court and must certify to that attempt.

2. Counsel for defendant(s) shall provide to the Court an official service list updated every 30 days. The list must contain the case names, docket numbers and the dates entered on the first page. For each party, counsel must be identified by name, firm name, address, telephone number, fax number and e-mail address. From these lists, the Court will maintain on the mass tort website an official counsel list for purposes of facilitating service.

3. Counsel lists are not to be appended to any Court submission. The counsel list shall be incorporated by reference on all certificates of service, all pleadings, all motions, all correspondence. The reference should be to all counsel on the list and identify by date the last official service list for the cases.

4. Multiple Counsel: Where a party is represented by more than one counsel of record, that party shall designate the name and address of the single counsel to be the recipient of all notices, communications and pleadings. The designated counsel will be responsible for notifying co-counsel of all such matters.

5. *Pro hac Vice* Admissions:

a) An attorney seeking to appear *pro hac vice* shall apply by formal notice of motion with supporting affidavit and proposed form of order, in compliance with R. 1:21-2 of the Rules Governing the Courts of New Jersey.

b) *Pro hac vice* counsel may try the case but is not to be designated trial counsel. No proceedings shall be adjourned because *pro hac vice* counsel is not available.

c) All pleadings, motions and correspondence to the Court must be submitted by New Jersey counsel unless the Court specially waives this provision to foster settlements.

d) Out-of-state attorneys representing plaintiffs must certify that all retainer agreements with clients in the subject litigation do not, and in the future will not, violate any of the contingency fee provisions found in the Rules Governing the Courts of New Jersey for the current year.

e) All out-of-state attorneys seeking admission to represent a corporate defendant must certify as to his or her prior involvement with that corporation or its related entities, including the capacity in which he or she was involved. Further, the attorney must include in the affidavit a statement of his or her good faith belief that he or she was not involved with policy of management decisions which would require him or her to be called as a witness in any matter before the Court.

f) Counsel admitted *pro hac vice* shall be required to make annual payment to the Ethics Financial Committee and to the New Jersey Lawyers Fund for Client Protection.

V. CONFERENCE PROCEDURES

1. The Court will conduct, and the parties may request, periodic status and scheduling conferences to assess the progress regarding the matters scheduled herein. Reasonable notice of all such conferences will be provided to all counsel of record.

2. Transcripts: All case management conferences or parts thereof may be transcribed by an official Court reporter and by a reporter provided by a party with permission of the Court if an official Court reporter if unavailable. Any party desiring a transcript may order one directly from the reporter. In any proceeding in which a transcript is ordered, counsel shall ensure that one copy of the transcript is also sent to the Court.

3. Appearances: Counsel appearing at each case management conference must sign an attendance sheet, be familiar with the issues to be discussed and not schedule other matters for the date of the conference.

4. Compliance: All counsel are required to comply with the provisions of each case management order whether or not he or she was in attendance at the conference giving rise to the Order.

VI. MOTIONS

1. Filing Requirement: All motions are to be filed with the Mass Tort Team, Superior Court of New Jersey, Atlantic County Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey 08401. All motion papers must include a return date, scheduled for a regular motion Friday. Courtesy copies for the Judge are not required.

2. Any motion that is applicable to more than one case shall be noted on the first page by listing each docket number or if all, the notation "applicable to all cases".

3. Any motion that is applicable to more than one party in a case shall be jointly filed by counsel.

4. Copies: Counsel shall file no more than one original copy of each Notice of Motion, supporting documents and proposed form of Order or Recommendation with the Mass Tort Team, along with a self-addressed stamped envelope for the return of the signed Order or Recommendation. One additional copy of these papers may be supplied if a request is made for a return of that copy marked "filed".

5. Specific of proper form of orders:

a) A proposed form of Order shall be submitted for all motions and a stamped self-addressed envelope must be included.

6. Captions: Captions on motions are the same as on pleadings and require the MT for Mass Tort after the docket number and the designation "FOSAMAX LITIGATION".

7. Motions: Conference with the Court is required before any motion related to discovery issues is filed. No summary judgment motions shall be filed before discovery is complete. All motions *in limine*, motions for Frye/Daubert, Perez or Lopez hearings shall be scheduled by the Court during pre-trial management conferences.

8. Oral Argument:

a) No oral argument shall be held for discovery motions unless granted by the Court in response to the request of a party.

CASE CONFERENCE

The Honorable Carol E. Higbee will hold an in-person case management conference on Friday, November 14, 2008 at 1:30 p.m., at Atlantic County Courthouse, Courtroom 3-B, 1201 Bacharach Boulevard, Atlantic City, New Jersey. At this conference, the court will discuss:

1. Liaison counsel;
2. Master Complaint form;
3. Filing of Answers.
4. Initial Discovery Issues.

CAROL E. HIGBEE, P. J.Cv.