

## NOTICE TO THE BAR

### **APPLICATION FOR MASS TORT DESIGNATION AND CENTRALIZED MANAGEMENT OF FOSAMAX® LITIGATION**

Pursuant to Rule 4:38A and Administrative Directive #10-07, “Mass Torts – Revised Guidelines and Criteria for Designation,” an application has been made to the Supreme Court, through the Acting Administrative Director of the Courts, for mass tort designation and centralized management of all Fosamax® litigation in one of the three mass tort sites, and possible coordination with the Zometa/Aredia cases previously designated as a mass tort and assigned to Judge Jamie D. Happas in Middlesex County.

Anyone wishing to comment on or object to this application should provide such comments or objections, with relevant supporting documentation, to Philip S. Carchman, P.J.A.D., Acting Administrative Director of the Courts, P.O. Box 037, Trenton, NJ 08625-0037, **by August 20, 2008**

/s/ Philip S. Carchman

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Philip S. Carchman, P.J.A.D.  
Acting Administrative Director of the Courts

Dated: July 16, 2008



**SUPERIOR COURT OF NEW JERSEY**

COUNTIES OF  
ATLANTIC AND CAPE MAY

JUL - 8 2008

**CAROLE E. HIGBEE**  
*Presiding Judge*  
*Civil*

1201 Bacharach Boulevard  
Atlantic City, NJ 08401  
609/343-2190

July 3, 2008

Honorable Philip S. Carchman, P.J.A.D.  
Acting Administrative Director of the Courts  
Administrative Offices of the Courts  
Richard J. Hughes Justice Complex  
Trenton, NJ 08625

**Re: Application for Mass Tort Designation for Cases involving Fosamax®**

Dear Judge Carchman:

Pursuant to Rule 4:38A I write to request the Supreme Court of New Jersey consider a mass tort designation for all Fosamax® litigation and centralized management of the litigation before one of the three designated mass tort Judges. The Fosamax® litigation should be reviewed for possible assignment to one Judge and coordination with the Zometa/Aredia cases.

The Zometa/Aredia cases have recently been designated as a mass tort litigation and a few months ago were assigned to Judge Happas in Middlesex. There are presently 84 cases. Fosamax® is a bisphosphonate as are Zometa and Aredia. Bisphosphonates are used in the treatment of bone metastases and for osteoporosis. Fosamax® is prescribed for osteoporosis while Zometa/Aredia are primarily used to treat bone cancer patients. All three drugs are alleged to cause osteonecrosis which results in breakdown of the jaw bone. Although there are certainly differences in the products, they are from the same class of drugs. The science and medical information will overlap and it would result in significant judicial economy if all the cases were coordinated before one Judge.

There are presently thirty-four (34) Fosamax® cases filed in Atlantic County. There are other cases filed in other counties including several in Hunterdon County. There is presently a Federal MDL for Fosamax® so it has been designated a mass tort in the Federal system.

I have discussed this with Judge Happas and she agrees the cases should be before one Judge. She has no objection to having the Zometa/Aredia cases being transferred to Atlantic County if Fosamax® is assigned here. There has only been very preliminary



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management of the Zometa/Aredia cases in Middlesex. The Fosamax® cases have not yet had any judicial management. Atlantic County is prepared to proceed with the Fosamax® cases and with transferred Zometa/Aredia cases if the Supreme Court wishes to assign them here.

Regardless of where they are managed, it appears that these cases and the judicial system would benefit from a mass tort designation and assignment to one Judge, and I therefore request the Supreme Court review this request.

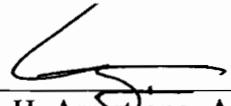
Very truly yours,



CAROL E. HIGBEE, P.J.Cv.

CEH:cm

As Assignment Judge of Vicinage One, I have designated Judge Carol E. Higbee to make this request for review of the Fosamax® cases for consideration of a mass tort designation pursuant to Rule 4:38.



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Valerie H. Armstrong, A.J.S.C.