

2014 WL 12748902

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United States District Court, S.D. New York.

IN RE: FOSAMAX PRODUCTS LIABILITY  
LITIGATION

Master File No. 06 MD 1789 (JFK)

|  
Signed 07/30/2014

**ORDER**

[JOHN F. KEENAN](#), United States District Judge

\*1 Before the Court is Merck's motion for the Court to enter a new Lone Pine order, this one targeted at plaintiffs who have not elected to participate in the pending master settlement. The Plaintiff's Steering Committee does not oppose the motion. By Order dated June 9, 2014, this Court ordered counsel for the individual affected plaintiffs to respond to the motion by June 18, 2014. The Court later extended the response deadline to June 27, 2014 for certain plaintiffs whose attorneys had not received notice of Merck's motion. Only one Plaintiff has opposed the entry of a Lone Pine order on the merits. See Alexander v. Merck Sharp & Dohme Corp., No. 06 Civ. 3130, ECF No. 189.

In view of the fact that over 95 percent of the claimants in this MDL are participating in the settlement, the Court agrees with Merck that efforts should be made to ensure that only viable cases be remanded to their home districts. As the Court has previously observed, "a Lone Pine order would impose a minimal burden on plaintiffs, as it merely asks them to produce information they should already have." [In re Fosamax Prods. Liab. Litig.](#), No. 06 MD 1789, 2012 WL 5877418, at \*2 (S.D.N.Y. Nov. 20, 2012) (citing [In re Vioxx Prods. Liab. Litig.](#), 557 F. Supp. 2d 741, 744 (E.D. La. 2008)). And as the PSC pointed out when it unsuccessfully opposed the entry of the

November 20, 2012 Lone Pine Order, such orders are frequently granted after the parties have agreed to a mass settlement program. See ECF No. 1226 at 6-8 (PSC arguing that Lone Pine is appropriately used as a "post-settlement mop-up procedure utilized to address those cases which either were not eligible for compensation through the MDL settlement program or which had opted out of participation in the MDL settlement program").

Accordingly, it is hereby ORDERED, pursuant to [Rules 16 and 26 of the Federal Rules of Civil Procedure](#), that the plaintiffs listed in Appendix I to this Order shall produce the following documents in accordance with schedule set forth below:

1. Completed Plaintiff Profile Forms, records requested therein, and executed Authorizations for Release of Medical Records for each Plaintiff in MDL 1789 pursuant to CMO #3.
2. A [Rule 26\(a\) \(2\)](#) Expert Report, signed and sworn to by a qualified physician or other medical expert ("the expert") that includes the following:
  - a. The name, professional address, and curriculum vitae of the expert, including a list of all publications authored by the expert within the preceding ten years;
  - b. A list of the Plaintiff's medical records reviewed by the expert prior to the preparation of the Expert Report, as well as copies of any such records not posted on the website of MRC, the vendor that has collected various medical records in this litigation and made those records available to plaintiffs pursuant to the terms of paragraph 5 of CMO 13;
  - c. The dates during which the Plaintiff used [Fosamax](#) and references to the evidence relied upon to determine such use (either the actual pages or the Bates stamped numbers);
- \*2 d. The name(s) of the physician(s) who prescribed [Fosamax](#) to the Plaintiff;
- e. Whether the expert believes to a reasonable degree of medical certainty that [Fosamax](#) caused Plaintiff's alleged injury, and if so, the factual and medical/scientific bases for that opinion; and

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f. The date, at least by month and year, when the expert believes to a reasonable degree of medical certainty the Plaintiff first developed the injury alleged to have been caused by **Fosamax**.

Plaintiffs shall produce these documents on or before October 1, 2014. Supervision of the above-described productions will be referred to Magistrate Judge Francis. The failure to comply with the terms of this Order within the time periods prescribed herein may result in the dismissal of the delinquent Plaintiffs' actions with prejudice, as set forth below:

1. For any Plaintiff who fails to comply with this Order in a timely and complete manner, Merck will notify the Plaintiff and the Court of the failure to comply.
2. The Plaintiff will then have 15 days to show cause why the Plaintiff's complaint should not be dismissed with prejudice.
3. If the Plaintiff fails to demonstrate sufficient cause for the failure to comply with this Order, the

Plaintiff's complaint will be dismissed with prejudice.

4. If the Plaintiff demonstrates sufficient cause for the failure to comply with this Order, the Court will have discretion to determine the relief necessary for Plaintiff to comply reasonably with this Order.

This Order should be entered on the docket of 06 MD 1789 as well as on the dockets of the individual cases set forth in Appendix I. Merck should also mail a copy of this Order to all affected pro se Plaintiffs.

**SO ORDERED.**

**APPENDIX I**

<b>Case Number</b>	<b>Plaintiff Name</b>
06-cv-15449	Betty Valiente
06-cv-3130	Constance Alexander, Personal Representative for Julie Lowell
07-cv-10951	Jennifer Alexander
07-cv-2789	Elaine Traylor
07-cv-3464	Brenda Carpenter
07-cv-3653	Brenda Ronsonet
07-cv-5938	Mary Ellen Potgieter

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07-cv-6787	Mary House
07-cv-6878	Chandra Jones
07-cv-6880	Gladys Sorbo
07-cv-6881	Donna Hayes
07-cv-6882	Ethel White
07-cv-6884	George Pfeiffer
07-cv-6885	Elizabeth Hinton
07-cv-7293	Marilyn Hill
07-cv-7298	Tamma Mahuron
07-cv-8111	Debbie Prestridge
08-cv-1240	Kathy McIntosh
08-cv-1865	Claire Perry
08-cv-4178	Betty Cyr
08-cv-4402	Sachiko Williams

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09-cv-1412

Elizabeth Brown

09-cv-2587

Shirley Korman

09-cv-5477

Juanita Sundermeyer

09-cv-5965

Bonnie Yorke

10-cv-2824

Rosalee Schwartz

10-cv-2827

Pat Warren

10-cv-643

Alice Cavazos

10-cv-7430

Margie Claxton

10-cv-9642

Peggy Mattingly

11-cv-2380

Faye Wallace

11-cv-2970

Sheree Mitchell

11-cv-3919

Christa and Joseph Hines

11-cv-8340

Mona DeLeonardis

12-cv-2832

Susan Reynolds

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13-cv-6696

Della Wood

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**All Citations**

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