

## Drug Injury Watch: Appeals Court Reverses Dismissal Of Fosamax - Femur Fracture Lawsuits

(Posted by Tom Lamb at [www.DrugInjuryWatch.com](http://www.DrugInjuryWatch.com) on March 24, 2017)

A recent ruling on the long-pending appeals in the so-called federal court Fosamax MDL -- *In re: Fosamax (Alendronate Sodium) Products Liability Litigation* -- is a positive development for the patients who suffered femur fractures after long-term Fosamax use and filed drug injury lawsuits against Merck.

On March 22, 2017 the Third Circuit Court of Appeals reversed an earlier ruling by U.S. District Court Joel Pisano which had dismissed all the federal court Fosamax - femur fracture cases on federal preemption grounds. By means of this appellate court decision, hundreds of those Fosamax lawsuits have now been reinstated at the trial court level.

From a March 22, 2017 *Reuters* news report, "Merck must face renewed Fosamax warning claims: U.S. appeals court", we get these basic facts about this recent appellate decision in the Fosamax - femur fracture MDL litigation:

In a 3-0 decision, the 3rd U.S. Circuit Court of Appeals in Philadelphia said the plaintiffs may proceed to trial on their failure-to-warn claims, and a lower court judge erred in finding the claims pre-empted by federal law....

[In dismissing the Fosamax lawsuits, U.S. District Judge Joel Pisano] cited a 2009 U.S. Supreme Court decision that state law-based failure-to-warn claims were pre-empted when there was "clear evidence" that the FDA would not have approved a warning that plaintiffs requested.

Writing for the appeals court, however, Circuit Judge Julio Fuentes found enough evidence for a reasonable jury to conclude that the FDA would have approved "a properly-worded warning" about Fosamax, "or at the very least, to conclude that the odds of FDA rejection were less than highly probable."

Fuentes said a jury could also find that some doctors would not have prescribed Fosamax had Merck discussed the risk of fractures on a warning label.

Essentially, the Third Circuit held that the ultimate question of whether the FDA would have rejected a Fosamax label change by Merck to warn about an increased risk of femur fractures is a question of fact for the jury (and not Judge Pisano) to decide.

However, this is just a first step in terms of the Fosamax - femur fracture litigation moving forward. Significantly, at the present time we do not know Merck's plans regarding any further appeal to the United States Supreme Court.

Once the further appeal issue is resolved, we will have a better idea about what comes next for the many femur fracture lawsuits which are part of this Fosamax MDL.

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- [Arguments Made To Appeals Court In Fosamax - Femur Fracture Litigation](#)
- [Merck Fosamax – Femur Fracture Lawsuits Wait For Appeals Court Rulings](#)

- [Fosamax - Femur Fracture Lawsuits Update: California Verdict For Merck In April 2015 With Two More California Trials Scheduled For July 2015 And October 2015](#)
- [First 2015 Update On Fosamax Femur Fracture Litigation: Not Much New Information To Report Out](#)
- [December 2014 Fosamax - Femur Fracture Litigation Update: In The Fosamax Federal Court MDL There Are Dismissals, Appeals, And Court-Ordered Mediations](#)

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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.  
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