

Norman Perlberger, Esquire
POMERANTZ, PERLBERGER & LEWIS, LLP
One Presidential Boulevard, Suite 315
Bala Cynwyd, PA 19004
(610) 664-3222

Attorney Pro Hac Vice for Plaintiffs Phyllis & William Molnar

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: :
Foxamax Products Liability Litigation :
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This Document Relates to: : 1:06-md-1789 (JFK)
Phyllis Molnar and William Molnar :
v. Merck & Co., Inc. :
: **Motion for Alternative Relief**
Case No. 1:08-cv-1802-JFK :
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Undersigned counsel files the within Motion and avers as follows:

1. Suit was originally instituted in the United States District Court for the District of New Jersey (Civil Action No. 08-cv-8).
2. The case was transferred to this Court pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, to be handled under the above caption.
3. Since said transfer, communications between undersigned counsel and lead counsel for the plaintiffs have been frustrated by a failure to make available to undersigned counsel, despite several requests,, documentation produced in discovery or for trial preparation that would be pertinent to prosecuting the claims brought by the Molnars.
4. It became apparent that the cases consolidated for multidistrict panel management may be limited to claims that Fosamax allegedly caused osteonecrosis of the jaw.

5. Phyllis Molnar's claim is that the use of Fosamax caused her hip/femur fractures. Assuming that the litigation before this court is limited to jaw injuries, the Molnar claim does not belong with the consolidated cases. Lead counsel for the plaintiffs has advised undersigned counsel that he does not consider the Molnar case to be factually compatible with the thrust of the litigation.

6. Undersigned counsel communicated with lead plaintiff counsel Timothy O'Brien, who indicated he would not oppose a motion to remand the Molnar case back to the United States District Court of New Jersey-Newark. However, when requested to execute a Stipulation to such a transfer, Christina L. Gaarder, attorney for Merck & Co., Inc., refused to do so, denying that the litigation in this court is limited to jaw injuries.

7. Not being permitted to review documentation that would satisfy undersigned counsel as to the full extent of the claims against Merck, undersigned counsel files this Motion seeking alternative relief. Should this court determine that Mrs. Molnar's alleged injuries fall within the scope of the present multidistrict litigation, undersigned counsel requests that this court order lead counsel for the plaintiffs to make available to undersigned counsel all documentation that has been accumulated either by the plaintiffs' attorneys in the case or through discovery, so that Mrs. Molnar's claims can be properly handled without duplication of efforts or expenses.

8. Alternatively, in the event that this court determines Mrs. Molnar's alleged injuries do not fall within the scope of the present multidistrict litigation, it is respectfully prayed that her case be remanded back to the United States District Court for the District of New Jersey-Newark.

WHEREFORE, it is respectfully prayed that the relief set forth in the accompanying proposed order be granted.

/s/

NORMAN PERLBERGER, ESQUIRE
Attorney for Phyllis & William Molnar

