

**FILED**

MAR 19 2009

Carol E. Higbee, P.J.Cv.

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IN RE: FOSAMAX LITIGATION	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	ATLANTIC COUNTY
	:	
	:	CASE NO. 282
	:	
	:	CIVIL ACTION
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	:	
	:	
	:	APPLICABLE TO ALL
	:	CASES
	:	
	:	ORDER REGARDING
	:	ELECTRONIC SERVICE
	:	

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**THIS MATTER** having been brought before the Court for adoption of procedures for electronic service in these coordinated cases, and good cause having been shown,

IT IS ON THIS 19 day of March, 2009, **ORDERED AS FOLLOWS:**

1. Plaintiffs' counsel and defense counsel shall utilize the File and Serve Service ("File & Serve") provided by LexisNexis CourtLink Inc. ("LNCL") to serve pleadings (except Complaints), documents and other information in this litigation electronically. If any counsel of record objects to the use of File & Serve, he or she shall file a written objection with the Court.

In this coordinated litigation (hereinafter "Fosamax Litigation"), the information and documents accessible through File & Serve are for the private use of counsel of record who have served defendants with summons and complaints in accordance with the applicable New Jersey Rules of Court, and employees of their respective law firms. Public access to the pleadings, documents and information in File & Serve relating to the Fosamax Litigation is strictly prohibited. Non-parties may access publicly available court documents by contacting the Superior Court of New Jersey, Atlantic County.

2. On or before the day that any document (all references to a "document" include exhibits thereto, if any) is filed with the Court, the filing party shall serve a copy of that document on counsel of record using File & Serve by (1) uploading the document electronically to the Fosamax Litigation at the following web address: [www.lexisnexis.com/fileandserve](http://www.lexisnexis.com/fileandserve); or (2) fax transmission to LNCL.

3. LNCL shall make all served documents available to Registered Fosamax Litigation Firms in PDF file format, using a secure Internet website that shall be maintained by LNCL and that the parties are privately funding. LNCL shall provide users with the capability to identify documents with the following information, at a minimum: (a) the name of the filing law firm; (b) the precise title of the document; (c) the case specific docket number(s) to which the pleading applies, and (d) the date of service. File & Serve shall maintain an index of all documents served through LNCL in the Fosamax Litigation, which will be searchable and sortable to enable useful access to the documents. The File & Serve system is designed to provide timely notice to service recipients by posting documents online to a website as follows: a) electronic documents-posted within one (1) hour of LNCL receipt; and b) faxed documents-posted within six (6) business hours of LNCL receipt. In order to comply with the time

requirements for service of court documents under the New Jersey Rules of Court, the parties are required to transmit court documents to LNCL by no later than 11:00 PM for electronic documents or 6:00 PM for faxed documents.

4. Documents served via File & Serve shall contain visual representation of filing attorney's signature or should have typed in the place where a signature would normally appear, "Original Signature on File with Court."

5. LNCL personnel will perform all administrative functions to the LNCL system. Eileen Oakes Muskett of Cooper Levenson shall be the liaison to LNCL for all Registered Fosamax Litigation Firms service list changes. The Registered Fosamax Litigation Firms on LNCL service list in the Fosamax Litigation will not be changed (added or deleted) unless approved by Cooper Levenson staff. The Registered Fosamax Litigation Firm service list will identify counsel of record, along with the parties they represent, who are to receive notification of new documents served in the File & Serve Fosamax Litigation case. Once a Registered Fosamax Litigation Firm is approved, File & Serve shall provide functionality allowing each Registered Fosamax Litigation Firm to designate an Organization Administrator to control the addition and deletion of registered Users for their firm. The Organization Administrator shall not add any person who is not an attorney or bona fide employee of his or her firm.

6. Only Registered Fosamax Litigation Firms are permitted and able to access the Fosamax Litigation using File & Serve. Registered Fosamax Litigation Firms will be limited to authorized court personnel, counsel of record for any party named in a Fosamax Litigation lawsuit pending before the Honorable Carol E. Higbee, P.J.Civ. in Atlantic County, in which a defendant has been served with a summons and complaint in accordance with the New Jersey Rules of Court or other applicable law, and their employees. File & Serve will provide each

Registered User designated by a Registered Fosamax Litigation Firm with username and password to access the Fosamax Litigation case. It is the responsibility of each Registered Fosamax Litigation firm to inform LNCL of changes to the Registered Users for that firm. Disclosure of username or password to third parties by the Registered Users to whom they are assigned is strictly prohibited. Authorized court personnel will have access to all Fosamax Litigation documents where the Court is listed as a designated recipient.

7. For serving documents applicable to all cases, File & Serve provides a file entitled "All Cases" which includes a composite service list consisting of all parties and law firms from each of the individual Fosamax Litigation cases. Counsel shall ensure that documents intended to apply to specific cases are served in the individual case file for that case. Only documents intended to apply to all Fosamax Litigation cases shall be served in the All Cases docket.

8. Pursuant to paragraph 2, official service shall be made by transmitting documents to the File & Serve website and making them available to served counsel. File & Serve provides notice to served firms when served with documents by posting a notice of same to the File & Serve website. The File & Serve system is designed to send email notification within one (1) hour of the document being posted to the File & Serve website. No email notice will be provided unless each user has configured File & Serve under their login and password to receive such email notification of online service. In any event, Registered Users are responsible for checking the File & Serve website for documents served to their firm.

9. Counsel for each party is responsible for providing LNCL with an accurate email address. File & Serve provides functionality allowing Users to change, delete, or add their email address.

10. Complaints must be served in accordance with New Jersey Rules of Court or other applicable law. Complaints shall nevertheless be submitted on File & Serve, although such submittal shall not constitute service under the New Jersey Rules of Court or other applicable law. Any other document submitted to File & Serve pursuant to this Order shall be deemed to be served by mail under New Jersey Court Rule 1:5-4(b). The posting of motion papers to File & Serve shall, within the meaning of New Jersey Court Rule 1:6-3(c), constitute receipt at the office of adverse counsel or at address of pro se party. Certificates of service shall state the date that a document was submitted or, in the case of motion papers, posted to File & Serve and the means of transmission (electronic or fax).

11. Nothing in this Order shall relieve any party from their filing obligations imposed by the New Jersey Rules of Court; use of File & Serve is not a substitute for filing original documents with the Court. All pleadings must be filed in the Clerk's Office in the usual course, except as set forth in paragraph 12 herein. However, the date that documents (except Complaints) are posted to the File & Serve ('authorized date') will be considered the date of filing with the Court. When filing original documents (except Complaints), counsel shall indicate to the Clerk in the cover letter the File & Serve authorized date and indicate that the document should be stamped "filed" and docketed as of that date. The filing of a Complaint is only effective at the time the original Complaint is filed with the Clerk's Office in accordance with the New Jersey Rules of Court and any other applicable New Jersey law.

12. When submitting to Judge Higbee "Confidential Information" covered by this Court's Stipulation and Order Regarding Confidential Information dated January 21, 2009 (hereinafter "Confidentiality Order") or any other protective order, the parties shall not submit the document to Judge Higbee using File & Serve. Submission of "Confidential Information" to

the Court shall be done only in accordance with paragraph 28 of the Confidentiality Order entered in this matter.

13. Until further notice, documents filed under seal ("sealed documents") shall not be submitted to File & Serve. Service of documents filed under seal shall be made pursuant to the applicable New Jersey Rules of Civil Procedure and the Confidentiality Order entered in this matter. No documents designated as containing "Confidential Information" pursuant to the provisions of the Confidentiality Order entered in this matter shall be submitted to File & Serve.

14. For the purpose of this Order, File & Serve to the extent that it provides document-handling services in the Fosamax Litigation, will be subject to this Court's jurisdiction. Document handling services are defined as the optional US Mail service feature for the attorneys who have not subscribed to LNCL. It shall not be mandatory to serve pleadings, documents or information upon non-subscribing attorneys through this optional LNCL service. Any attorney who has not subscribed to LNCL may be served with pleadings, documents and other information by other counsel through regular mail.

15. LNCL and any of its employees, agent or contractors ("Support Staff") may access Fosamax Litigation documents in the ordinary course of fulfilling their project support responsibilities. Support Staff who provide document handling services in this coordinated proceeding shall submit to and comply with any protective orders that govern this litigation, to the extent applicable to their activities for LNCL and will use reasonable efforts to maintain the confidentiality of documents furnished to LNCL by parties in the Fosamax Litigation, which fulfill their obligation under said protective orders. Neither LNCL nor Support Staff shall be responsible for marking the contents of documents as confidential or otherwise restricted;

counsel shall be responsible for all such designations within the documents related to the Fosamax Litigation.

16. Each party shall bear its own cost in the use of the File & Serve service according to the fee schedule attached hereto. However, on behalf of all parties, plaintiff and defense liaison counsel shall each bear half the cost of Judge Higbee's use of the File & Serve service according to the fee schedule attached hereto.

17. LNCL was chosen by counsels, who have agreed to employ this service and entered into their own agreements with LNCL.

18. If electronic service does not occur because of (1) an error in the transmission of the documents to LNCL or served party which was unknown to the sending party, (2) a failure to process the electronic document when received by LNCL, (3) a party erroneously excluded from the service list, or (4) other technical problems experienced by the filer or LNCL, the party or parties affected shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within any right, duty or other act must be performed.

19. Usage of File & Serve by Registered Fosamax Litigation Firms and their Users shall be subject to the LNCL File & Serve terms and conditions, which are available at [www.lexisnexis.com/fileandserve](http://www.lexisnexis.com/fileandserve).

  
The Hon. Carole E. Higbee, P.J. CV.