

MEMO ENDORSE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE: FOSAMAX PRODUCTS)
LIABILITY LITIGATION)**

**This Document Relates to:)
Betty M. Cyr)
v. Merck & Co., Inc. and McKesson Corp.,)
Case No: 1:08-cv-04178-JFK)**

**MDL NO. 1789
1:06-md-1789 (JFK)**

**USDC SDNY
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**MOTION TO WITHDRAW
AS COUNSEL FOR PLAINTIFF BETTY M. CYR**

Pursuant to Southern District of New York Local Rule 1.4, all counsel from Fleming, Nolen & Jez, L.L.P. who have appeared as counsel in this matter hereby move this Court before the Honorable Judge John F. Keenan, in the United States Courthouse for the Southern District of New York, for an Order allowing Fleming, Nolen & Jez, L.L.P. to withdraw as counsel for Plaintiff Betty Cyr. For the reasons that follow, counsel respectfully requests this Court grant the motion.

I. Introduction

Plaintiff Betty Cyr passed away on June 27, 2010.¹ Plaintiff Betty Cyr is survived by a son, Phillip Prims (Prims). Since the time of his mother's passing, Fleming, Nolen & Jez (FNJ) has sought to have Prims appointed as the personal representative of his mother's estate. Unfortunately, Prims has made no effort to probate his mother's estate or otherwise become appointed as the personal representative of her estate. At first Prims would communicate with FNJ; however, FNJ is no longer able to effectively communicate with Prims regarding his mother's case. Prims has not returned phone calls left by FNJ and has failed to respond to letters sent to his last known address. Prims' failure to communicate with FNJ and seek appointment as

¹ Defendant filed a Suggestion of Death with this Court on June 13, 2014, Docket No. 134.

the personal representation of his mother's estate has made it impossible for FNJ to effectively represent the interests of Betty Cyr's estate or respond to this Court's Lone Pine Order. As such, this case will most likely be dismissed for failure to comply with the Court's Lone Pine Order, and granting FNJ's motion to withdraw will not unduly delay the disposition of the case. For these reasons FNJ seeks permission to withdraw as counsel from Betty Cyr's case.

II. Argument

After Betty Cyr's death on June 27, 2010, Prims was first notified on July 1, 2010 that he would need to be appointed personal representative of his mother's estate to continue her suit. FNJ reminded Prims he needed to be appointed a minimum of 13 times by phone or mail of his need to be appointed as personal representative. By April 28, 2014, Prims was no longer answering FNJ's phone calls, returning voice messages or responding to written requests to contact FNJ. Prims never became his mother's personal representative and could not participate in the settlement offer.

On July 30, 2014, this Court entered a Lone Pine Order instructing FNJ to submit Expert Reports for clients who had not opted into the settlement. FNJ has continued to send information to Prims and sought his cooperation in continuing his mother's case. Unfortunately, Prims still has not contacted FNJ. FNJ cannot provide effective legal representation to the estate of its client when the only surviving heir will not assist in the prosecution of the case.

Without assistance from Prims, FNJ could not timely submit an Expert Report. Betty Cyr's case will most likely be dismissed for not complying with the Lone Pine Order. FNJ's withdrawal as counsel will not unduly delay, or even influence, the expected outcome.

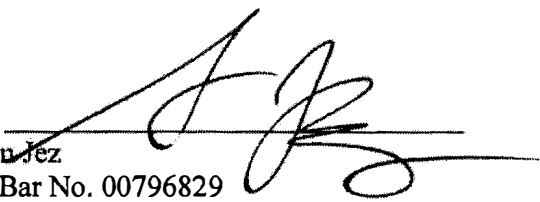
III. Conclusion

For the reasons stated herein, counsel respectfully requests this Court grant the Motion to Withdraw as Counsel. Counsel is not asserting a retaining or charging lien related to this case.

Dated this 5th day of November 2014.

Respectfully submitted,

FLEMING, NOLEN & JEZ, L.L.P.


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COUNSEL FOR PLAINTIFF

The application is granted.
SO ORDERED.

Dated: New York, N.Y.
November 6, 2014



U.S.D.J.