

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, FRIDAY, FEBRUARY 24, 2017

An **ALM** Publication

## Janssen Wants More Medical Info From New Risperdal Plaintiffs

**BY Max Mitchell,**  
*Of the Legal staff*

A dispute has arisen in the Risperdal litigation in Philadelphia over whether new plaintiffs in the mass tort should have to include prescription records and documentation of a Risperdal-related injury in their plaintiff fact sheets.

The defendant in the case, Janssen Pharmaceuticals, raised the issue, arguing it will help the courts weed out nonmeritorious claims, but plaintiffs have countered the requirement would create a "pseudo-summary judgment procedure" that would bypass the usual process.

Janssen, which first raised the issue late last month, cited a recent growth spurt in the Risperdal mass tort, which grew by 550 cases, or 39 percent, over 2016.

"Indeed, the court should consider the fact that the landscape and scope of this litigation is changing dramatically," Janssen said in a memo filed Feb. 22 by Drinker Biddle & Reath attorney David Abernethy. "It is appropriate, indeed essential, that the court limit the exploding inventory in this program to cases that have the

minimal good-faith basis required for a claim."

In an emailed statement a spokeswoman for Janssen said, "We believe the court should only devote its time and resources to claims in which the plaintiffs are able to provide at least the minimal essential proof to sustain a claim." Plaintiffs in the case are suing Janssen over claims that the anti-psychotic drug caused a condition called gynecomastia, where young men and boys grow excessive and permanent breast tissue.

According to recent court statistics, 1,945 Risperdal cases were pending at the beginning of the year, but Janssen's latest filing said more than 2,000 plaintiffs have cases pending. The number of Risperdal lawsuits has grown recently in large part due to a tolling agreement that Janssen rescinded. The decision to end the agreement came after a Philadelphia jury awarded a man \$70 million over his Risperdal-related claims in July.

In its memo filed Jan. 30, Janssen said that in the Xarelto and Paxil mass torts, case management orders were entered that also required plaintiffs to include similar information. The pharmaceutical giant added that, at the very least, including the prescription infor-

mation would help to more quickly determine which plaintiffs only took the generic form of the drug, which Janssen said it would not liable for.

Janssen also said that preparing the defendant fact sheet in response to the plaintiffs generally costs between \$7,000 and \$10,000 per case in attorney fees and vendor costs so weeding out these cases would significantly reduce the cost of litigating.

The plaintiffs, however, characterized the request as a "Lone Pine" order—a term that originated in New Jersey state court in 1986. Lone Pine orders, the plaintiffs said, are rarely used, especially in state court, and are usually reserved for instances where there have been discovery abuses.

"The potential for misuse is acute here given that this litigation involves nothing like the unique circumstances needed to justify imposition of an extraordinary Lone Pine order that would usurp tested, familiar case-management procedures," Jason Itkin of Arnold & Itkin, one of the lead attorneys in the mass tort, said in a memo from Feb. 6.

**Kline & Specter attorney Thomas R. Kline, who is also a lead attorney in the mass tort, said Janssen's request is an "at-**

**tempt to rewrite the rules of the litigation," and comes more than five years too late.**

**"It's just an attempt to stack the deck in favor of themselves in providing an onerous burden on the plaintiffs that has been resisted, except for the most extraordinary of circumstances, by other courts," Kline said. "I would suggest respectfully that the cases need trial dates, not Lone Pine orders."**

The plaintiffs in their brief noted that the fact sheets already provide details on the dates that the plaintiff used Risperdal or its equivalent, the dose, the name of the prescribing doctor, a description of the plaintiff's injury and the dates of the injury, among other things. The plaintiffs further said the case management order governing the plaintiffs fact sheets have been in place for more than six years, and the defendants have not been able to point to any signs of discovery abuses.