

J&J Loses Pa. High Court Appeal Bid In \$70M Risperdal Case

By **Matt Fair**

Law360 (September 1, 2020, 3:50 PM EDT) -- The Pennsylvania Supreme Court said Tuesday it would not hear an appeal from a Johnson & Johnson unit aimed at striking down a \$70 million verdict won four years ago by a man who grew breasts after taking the antipsychotic drug Risperdal as a child.

J&J subsidiary Janssen Pharmaceuticals Inc. had asked the justices to review the case following a Pennsylvania Superior Court ruling **rejecting arguments** that the seven-figure verdict, which was aimed at compensating 20-year-old Andrew Yount for psychological and emotional damage he claims he suffered as a result of his condition, was excessive.

But in a one-page order Tuesday, the Supreme Court rejected Janssen's call.

Yount and his family filed suit against Janssen in Philadelphia County in April 2013, alleging that the company failed to provide adequate warnings about the risk of gynecomastia, or the abnormal growth of breasts by men, that Risperdal carried for adolescent boys.

According to court records, Yount started taking Risperdal when he was 4 years old to combat psychiatric problems that included violent and erratic behavior.

When Yount first started taking the drug in 2003, it was only approved for use in treating schizophrenia in adults, and warning labels indicated that gynecomastia was a "rare" side effect that occurred in fewer than one in 1,000 patients.

The drug later won approval from the U.S. Food and Drug Administration for use in treating symptoms of autism in adolescent patients, and the label was updated to show that gynecomastia occurred in 2.3% of children who used it.

The case was the fifth case over alleged Risperdal-related side effects in children to go to trial in Philadelphia as part of a mass tort program that has grown to include claims from over 7,000 people.

A jury ultimately awarded Yount and his family \$70 million in noneconomic damages following a trial in the summer of 2016.

Janssen argued on appeal to the Superior Court that the FDA was solely responsible for requiring warnings related to off-label use of medications, and that, as a result, claims Yount and his family brought over the label under applicable law in their home state of Tennessee were preempted.

But the Superior Court rejected this argument as it noted that pharmaceutical companies always had the authority to provide additional warnings when additional risks about their drugs were discovered.

The panel also rejected claims that a \$70 million award solely for psychological and emotional damage was excessive.

"[Yount] was just 4½ years old when first prescribed Risperdal, and he has never since known life without gynecomastia," the opinion said. "At sixteen years of age when the jury considered its

award, [Yount] was living with severe and permanent disfigurement. The undisputed record confirms he has been routinely bullied and teased by peers and is too humiliated to ever remove his shirt in recreational or social situations where it would be customary for boys to do so when enjoying ordinary pleasures of youth."

The case is now set to return to a Philadelphia County courtroom for a second trial on a potential punitive damages award.

In a joint statement Tuesday afternoon, the Yount family's attorneys — Thomas Kline of Kline & Specter PC and Jason Itkin of Arnold & Itkin LLP — praised the Supreme Court's decision.

"We are pleased that allocatur has been denied and we look forward to trying the punitive damages phase of the case when jury trials resume early next year," they said.

A spokesperson for Janssen did not immediately return a message seeking comment.

Janssen is represented by Christopher Boisvert, Robert Heim, Judy Leone, Friedrich Wilhelm Sachse and Katherine Unger of Dechert LLP, and David Abernathy and Melissa Merk of Faegre Drinker Biddle & Reath LLP.

The Younts are represented by Charles "Chip" Becker, Christopher Gomez, Thomas Kline and Ruxandra Laidacker of Kline & Specter PC, Jason Itkin and Cory Itkin of Arnold & Itkin LLP and Stephen Sheller of Sheller PC.

The case is A.Y. et al. v. Janssen Pharmaceuticals Inc. et al., case number 95 EAL 2020, before the Pennsylvania Supreme Court.

--Additional reporting by Matthew Santoni. Editing by Abbie Sarfo.