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Judge Rejects J&J's Bid to Re-Depose Risperdal Expert

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Of the Legal staff

As the next wave of Risperdal-related cases come up for trial, a Philadelphia judge has ruled that Janssen Pharmaceuticals will not be able to re-depose a key witness in the mass tort regarding a hotly contested reanalysis of data purportedly linking the drug to the development of excess breast tissue in males.

Late last month, Janssen, the defendant in *Moffat v. Janssen Pharmaceuticals*, filed a motion seeking to supplement prior depositions of former U.S. Food and Drug Administration Commissioner David Kessler—a central witness in the Risperdal mass tort litigation.

The motion sought permission to question Kessler about the reanalysis of a 2003 medical report Janssen has pointed to as confirmation that there is no significant relationship between Risperdal and gynecomastia—a condition causing excess breast tissue growth in young males.

The plaintiffs in the mass tort litigation have argued that results linking the condition to Risperdal were omitted from the 2003 study

to conceal the risks and manipulate the market.

Judge Arnold New, who is supervising the mass tort litigation, issued a one-page order Tuesday denying Janssen's motion seeking Kessler's additional deposition.

Plaintiff Robert Moffat had contended that Janssen's request came too late, and the reanalysis is irrelevant to Kessler's testimony.

A spokeswoman for Janssen said, "While we are disappointed that the court did not allow a new deposition of this witness, we are prepared to continue to vigorously defend ourselves against these claims."

Thomas R. Kline of Kline & Specter, who has headed the Risperdal mass tort litigation, said he saw no reason for Kessler to be deposed again.

"The Stange case is proof positive that the deposition wasn't requested and wasn't needed, and the evidence was sufficient on both sides for a jury to reach a decision," Kline said, referring to *Stange v. Janssen*, which was tried to a \$500,000 verdict last year. "The deposition was not warranted, and it demonstrated their continued fighting about items which are not going to solve their litigation woes."

Although the reanalysis was published in February in the *Journal of Clinical Psychiatry*, the reanalysis first became a central issue in the Stange case.

Prior to the publication of the reanalysis, plaintiffs in the mass tort argued that the 2003 analysis failed to include a table containing data that suggested a link between Risperdal and gynecomastia.

According to the reanalysis, the omitted table did not contain any statistically significant data. However, after documents about the reanalysis were introduced in the Stange case, the plaintiff argued that Janssen was involved in the reanalysis.

According to court filings, between 2013 and May 2015, Kessler was deposed by both sides, testified live in a case, and recorded a videotaped *de bene esse* deposition for use in additional Risperdal-related cases.

In its filing, Janssen noted that Kessler's testimony has been used by plaintiffs in the four Risperdal cases that have gone to trial in Philadelphia, and plaintiffs have planned to use the videotaped testimony in upcoming trials.

The filing also argued that, although Kessler testified that Risperdal's label failed to properly

warn about the drug, the new information undercut his opinion.

"Since his first deposition in 2014, -critical new information relevant to his opinions has become available, about which he has not been questioned," Janssen said in the motion, which was filed March 28 by David Abernethy of Drinker Biddle & Reath.

Janssen also said it plans to file a motion in limine seeking to bar Kessler's videotaped testimony and require him to testify live in future trials.

In his April 4 response, Moffat argued that the reanalysis had no bearing on Kessler's testimony, as his testimony focused on the alleged failure to warn that occurred in 2003.

"If Janssen chooses to introduce testimony from its own experts about how the reanalysis undermines the credibility of Dr. Kessler, cross-examination of Dr. Kessler on his own credibility is certainly not required," said the response, which Kline & Specter attorney Christopher Gomez filed.

Trial in the Moffat case has been set for May 9. Trials in five other cases have been set to take place in 2016. According to Kline, 12 cases are in the discovery phase.