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Risperdal Case Settles, but No Global Accord Is Seen

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Of the Legal staff

The Risperdal case that was next in line for trial has settled, but that doesn't mean a global settlement is soon to follow in the mass tort, according to an attorney handling the litigation.

The case *Moffat v. Janssen Pharmaceuticals*, which involved claims that the company failed to warn about the risks of the antipsychotic drug Risperdal, settled May 13 for an undisclosed amount. The case had been set to begin trial May 9.

According to Thomas R. Kline, who has been heading the Risperdal mass tort, the settlement was a "one-off," and there are no talks under way for a settlement of the larger litigation.

"There is no indication of [Johnson & Johnson's] current interest in settlement, which leads us to continue the litigation in trial mode," Kline said. "There's no global settlement talks. The *Moffat* case involved the *Moffat* case."

A statement from Janssen also indicated that global settlement talks are not under way.

"Going forward, we will continue to defend this litigation and will try cases as appropriate," Janssen spokeswoman Robyn Frenze said in an emailed statement.

Kline noted that the *Moffat* case was not the first Risperdal suit to end in settlement. The case *Walker v. Janssen Pharmaceuticals* settled in May 2015, on the day opening arguments had been scheduled to take place.

"Cases have been settled in this litigation as one-offs and *Moffat* was one of them," Kline said.

He added that the accord "provides everyone some breathing room" before the next wave of trials are set to begin later this year.

Court records show that 12 cases are listed for trial in the Philadelphia Court of Common Pleas. The last case is set to begin in November. According to Kline, this means that more than 100 Risperdal-related depositions have been either scheduled or recently conducted.

The next case in line for trial is *A.Y. v. Janssen Pharmaceuticals*, which is set to begin June 20. Kline said he does not expect *A.Y.* to settle, but rather for the case to serve as another bell-

wether trial that could shape a possible future global settlement.

Plaintiffs in the Risperdal mass tort, including plaintiff Robert Moffat, have alleged that Janssen knew those who took Risperdal were at a high risk for gynecomastia, which is excessive growth of breast tissue in men and boys, but failed to provide adequate warnings.

In the lead-up to trial in *Moffat*, Janssen had been dealt a setback when the judge supervising the litigation ruled that the company could not re-depose a key witness over a hotly contested reanalysis of data purportedly linking the drug to gynecomastia.

In March, Janssen 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.

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.

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

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.

So far, four Risperdal-related cases have gone to trial. According to court records, 1,730 cases are pending in the mass tort.

The first Risperdal trial began in January 2015 and ended in a \$2.5 million award for the plaintiffs the following month. That case, *Pledger v. Janssen Pharmaceuticals*, involved plaintiff Austin Pledger, who took Risperdal to assist with behavioral symptoms related to autism.

In the second trial, the case of plaintiff William Cirba, the jury found that Risperdal was not the cause of the plaintiff's breast growth. However, the jury did find that Janssen was negligent in failing to warn about the potential risk of Risperdal to cause growth of excess breast tissue in males.

The third Risperdal case to go to trial, *Murray v. Janssen Pharmaceuticals*, resulted in a \$1.75 million award. That trial was the first to come after the settlement in *Walker*.

The last Risperdal case to hit trial resulted in a \$500,000 award to plaintiff Timothy Stange.

In the wake of the trials, the appellate dockets in the cases have been active.

In March, appeals were filed to the state Superior Court in *Stange*, making it the first in line to receive appellate review. The following month appeals were filed to the Superior Court in *Murray*.

Earlier this month, Philadelphia Court of Common Pleas Judge Ramy Djerassi also denied post-trial motions from both sides in *Pledger*.

While Janssen has argued the evidence in that case did not support the jury's findings, the plaintiffs have challenged an order from Supervising Judge Arnold New that barred them from seeking punitive damages. The ruling could affect all cases in the mass tort, including those that have already gone to a jury.