

# The Legal Intelligencer

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## Risperdal Trials Expected to Continue

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The recent verdict in a Risperdal-related case may have tipped the ongoing mass-tort litigation in the plaintiffs' favor, but attorneys are not expecting a global settlement any time soon.

A Philadelphia jury Monday awarded plaintiff Nicholas Murray \$1.75 million on claims that the antipsychotic drug Risperdal caused gynecomastia,

a condition in which boys grow excessive breast tissue. Murray, who has Asperger's syndrome, had been prescribed the drug for his attention deficit hyperactivity disorder.

The verdict came several months after a jury awarded \$2.5 million to plaintiff Austin Pledger in the first Risperdal-related case to hit trial in Philadelphia. But the following month, another jury determined Risperdal had not caused

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plaintiff William Cirba's breast growth, and rendered a defense verdict.

At this point, attorneys agreed the ball is in Risperdal maker Janssen Pharmaceuticals' court when it comes to settling the mass tort.

According to Kline & Specter attorney Thomas R. Kline, who is handling numerous Risperdal cases along with Sheller P.C. and Houston firm Arnold & Itkin, there are currently no settlement talks with Janssen. But, Kline said the recent plaintiffs verdict is encouraging for the plaintiffs' cases.

"While the cases are not formally designed to be bellwether cases, the fact of the matter is everyone has viewed the initial cases as bellwether and instructive for the future," Kline said. "It doesn't take a degree in meteorology to see where the wind is blowing."

Kline is currently trying a Risperdal case for plaintiff Tim Stange. That case is expected to end next week. Many more are scheduled to hit trial early next year.

Jason Itkin, who tried the Murray case, said that, while Janssen "can afford to be involved in this litigation as long as they want," trying cases can be expensive both in terms of verdicts and attorney fees.

"The ball is in Janssen's court," Itkin said. "As of now, we're just preparing for trials."

A spokeswoman for Janssen said it will continue trying cases.

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

Duane Morris attorney Alan Klein, who often represents generic drug companies, said it is impossible to know how long a company may want to extend litigation, but "the more plaintiffs verdicts you're able to secure in a mass tort, the more likely you can settle more globally."

"It's always an interesting question of how many verdicts will a company sustain," Klein said, noting there were dozens of verdicts in the Vioxx-related cases before there was a global settlement. "It's up to the company to decide."

Klein said mass tort litigation often requires a "critical mass" of verdicts before the parties begin any serious settlement talks.

"I don't know if this is the point, or if it's a couple of cases from now," Klein said.

While some compared the Risperdal litigation to similar litigation involving Vioxx and Accutane, attorneys agreed that each mass tort has its own unique set of determinative factors that must be decided before the parties can begin to have a grasp of what a global settlement could look like.

In the Risperdal litigation, causation, which was the key factor in the Cirba defense verdict, has become a key issue in the litigation, along with arguments

about whether the treating doctors had been given enough information when prescribing the drug.

So far, juries have consistently sided with the plaintiffs on the failure-to-warn claims. In the defense verdict, while the jury did not find causation, it determined Janssen failed to warn.

Itkin and Kline also both noted that, although the Risperdal label—which is central to the failure-to-warn arguments—was amended to provide more information about gynecomastia in 2006, the plaintiff wins have involved claims related to both pre- and post-2006 use of the drug.

Klein said the consistency of the jury findings on the failure-to-warn claims "should be a cause of concern for a defendant," and will likely be significant in terms of trying to broker a global settlement.

Another issue affecting a global settlement is that numerous appeals are ongoing in the

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mass tort. Possibly the most important dispute is whether plaintiffs will be able to seek punitive damages.

So far, plaintiffs in the mass tort have not. But, on appeal, plaintiffs are pointing to conflicting case law from the U.S. District Court for the Eastern District of

Pennsylvania that they argue supports their claims.

Klein said the pending appeals might not factor as much into the timing of the settlement as it would the terms of the settlement itself.

“I don’t think it would prevent the talks from occurring,” Klein said. “That may be packaged in as part of the settlement.”

Another factor weighing into the future of the litigation is the fact that one case is on trial and a wave of 10 cases is set to hit the

Philadelphia courts early next year. Kline also noted that together—his firm, Sheller P.C. and Arnold & Itkin—are representing about 8,000 clients with Risperdal-related claims.

Some of the cases are expected to be tried simultaneously, like the Stange and Murray cases, which were tried only a few rooms away from each other in Philadelphia City Hall.

“When you have a litigation this large, it’s customary for strong law firms to

bind together. And the combined resources are important in the ability to discover multiple cases at one time and to try cases at one time,” Kline said. “The plan is for me, Jason Itkin and other trial lawyers to continue to try these cases, and we’re convinced that we’ll continue to be successful.”

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