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Tom Kline: Sending a Message One Verdict at a Time

Tom Kline broke civil trial records with \$8B verdict against drugmaker Johnson & Johnson over antipsychotic drug Risperdal

By Max Mitchell

Of the Legal staff

Tom Kline of Kline & Specter.

In early October 2019, Kline & Specter attorney Thomas R. Kline stood before a jury in a crowded courtroom on the second floor of Philadelphia's City Hall and told the 12-member panel before him that their decision that afternoon would have ramifications across the world.

"What happens today will have long-reaching consequences, in Philadelphia, in the nation, and, literally, from this little room in 275 [of Philadelphia City Hall], around the world," Kline told the jury. "We've tried for years, collectively, to change their behavior, but you 12 individuals, as a jury speaking as one, have that power."

He asked the jury to send a message to the drug maker Johnson & Johnson about what they thought regarding the company's push to market the powerful antipsychotic drug Risperdal for off-label uses in children—a move, which Kline argued, put profits over the interests of patients.

It was an argument Kline, who is a finalist for the Attorney of the

Year, had been fighting to bring before a jury for more than five years.

Back in mid-2014, Kline and the team of attorneys working with him to sue Johnson & Johnson over their marketing of Risperdal received a blow to the litigation when a Philadelphia judge ruled that New Jersey law, which does not allow punitive damages in products liability cases, would apply to the thousands of Risperdal cases pending in the city's court system, effectively barring the plaintiffs from seeking anything but compensatory damages.

However, after a decision by the Pennsylvania Superior Court in 2018 reversed that ruling and determined that the law of each plaintiff's home state could apply to the punitive damages issue, the case that had initially come to a \$1.75 million compensatory damages verdict had now, by October 2019, come before a second jury, who's only job was to determine how much punitive damages should be awarded in the case.

Kline told the jury that everything about the lawsuit, *Murray v. Janssen Pharmaceuticals*, could be measured in billions.

"Everything about Risperdal was measured in billions—billions in

pills, billions in sales and billions in profits," Kline told The Legal during a recent interview. "You have to have a jury understand the full extent of the controversy. This was a controversy ... involving billions. There is no escaping it."

The jury took that notion to heart, and came back less than five hours after Kline's closing argument with an \$8 billion award for the plaintiff.

Although the award was later reduced by the trial judge, it stands as the largest verdict in Pennsylvania history, according to a review of The Legal's archives, and one that significantly raised the stakes of a litigation that currently has more than 7,000 lawsuits on its docket.

The verdict also marked the third verdict Kline won in 2019 that was eight figures or above—in January he was lead attorney in a case that came to a \$41 million verdict for a woman injured as a result of pelvic mesh, and May, he netted an \$80 million verdict in another pelvic mesh case.

According to Kline, he spent more than 21 weeks out of the year on trial in 2019.

"It was a year in the courtroom—a great year in the courtroom—in what is now my 40th year as a

plaintiffs lawyer. It was good,” Kline said.

Kline pushed the Risperdal litigation forward in other ways in 2019. Along with Kline & Specter’s appellate counsel Charles “Chip” Becker, Kline helped convince the Superior Court to overturn a ruling on the statute of limitations for the litigation, reviving thousands of cases. And along with the Risperdal and pelvic mesh lawsuits, Kline materially advanced high-profile litigations against Amtrak stemming from a fatal derailment in Hoboken, NJ, and Penn State over the hazing death of Tim Piazza.

Kline noted that, although he joined the bar in 1978, he became a plaintiffs lawyer in 1980, and his first multi-million award three years later, which, as Kline said, means “I have seven and eight fig jury verdicts, in every one of the last four decades.” His greatest satisfaction, he said, comes from wins in the courtroom.

“I think the jury is the great equalizer in America. It is a fundamental right and a bedrock of our Democracy,” he said. “There is good reason why the founders of our Constitution, plural, both the Pennsylvania and American constitutions, have the right to trial by jury as being sacrosanct, it’s such an important aspect of our democracy.”

Still, Kline said, after 40 years trying cases, he is always hesitant when the jurors come back into the courtroom after announcing their verdict.

He said he felt the same way when the jury in Murray returned with its verdict.

“I am never more than anything other than cautiously optimistic—with an emphasis on cautious,” he said. “I was hopeful that the jury

would be responsive to the evidence and what was laid out.

Murray still stands as the only Risperdal case that has gone to a jury on the punitive damages issue. However, earlier this month, the Pennsylvania Supreme Court, rejecting an appeal from J&J subsidiary Janssen Pharmaceuticals, sent the case back down to the trial court for a determination about whether punitive damages can apply to the case.

Kline said he is hopeful the case will be at the top of the list when civil jury trials, which have been suspended in Philadelphia in light of the COVID-19 pandemic, resume.

“I love to try cases,” he said. “I have always been happiest in the court room.”