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## Pa. Supreme Court Ruling Tees Up Possible Punitive Damages Phase of \$70M Risperdal Verdict

**By Max Mitchell**  
*Of the Legal staff*

The Pennsylvania Supreme Court has denied efforts by drugmaker Janssen Pharmaceuticals to overturn a \$70 million verdict out of the Risperdal mass tort in Philadelphia. The decision paves the way for the trial court to reconsider whether the facts of the case merit a punitive damages trial.

On Tuesday, the justices issued a per curiam order denying Janssen's appeal in *A.Y. v. Janssen Pharmaceuticals*, which involved a male plaintiff who claimed that the anti-psychotic medication caused him to grow excessive breast tissue.

The ruling affirms a decision by a three-judge Superior Court panel that last year determined the \$70 million award was not excessive, and remanded the case so the Philadelphia Court of Common Pleas could take a fresh look at whether there should be a punitive damages trial in light of recent precedent on the issue.

The first—and, so far, only—Risperdal case to go to a punitive damages trial resulted in an \$8 billion verdict last year, which has since been reduced to \$6.8 million.

An emailed statement from plaintiffs counsel **Thomas Kline of Kline & Specter** and Jason Itkin of Arnold & Itkin in Houston said, "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."

Itkin was the lead trial attorney in the case. Kline, Itkin and Stephen Sheller of Sheller P.C. are heading the Philadelphia-based Risperdal litigation.

Faegre Drinker Biddle & Reath attorney David Abernethy, who is representing Janssen, also did not return a call seeking comment.

A spokeswoman for Janssen said in an emailed statement that the company was considering its legal options.

In November, a three-judge Superior Court panel, led by Judge Corrales Stevens, said the jury's decision in the case with regard to compensatory damages was consistent with the evidence presented at trial.

"A.Y. was just 4 1/2 years old when first prescribed Risperdal, and he has never since known life without gynecomastia. At 16 years of age when the jury considered its award, A.Y. was living with severe and permanent disfigurement," Stevens said. "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."

However, the panel, which also included Judges Deborah Kunselman and Jack Panella, reversed the portion of the lower court's ruling that had said New Jersey law applied to the case and therefore foreclosed the possibility of punitive damages. The panel pointed to rulings in *Stange v. Janssen* and *Murray v. Janssen Pharmaceuticals*, which held, respectively, that New Jersey law does not apply to the Risperdal litigation globally and that each case needed to be assessed individually to determine whether New Jersey law or the law of the plaintiff's home state applied.

"Here, appellees present the same arguments made by the plaintiffs in the aforementioned cases, and both parties agree the decisions by our court remain binding precedent," Stevens said, remanding *A.Y.* for a conflict-of-law analysis between New Jersey law and that of the plaintiff's home state of Tennessee.

According to the state court docket, there are more than 7,000 Risperdal cases pending in Philadelphia.