



Pa. Court Won't Junk Risperdal Verdict Against J&J Unit

By Matt Fair

Law360 (February 20, 2018, 8:55 PM EST) -- A Pennsylvania appeals court on Tuesday rejected efforts by a Johnson & Johnson unit to challenge expert testimony relied on by jurors in finding that the antipsychotic drug Risperdal had caused a Maryland boy to grow female breast tissue.

A three-judge Superior Court panel shot down arguments from Janssen Pharmaceuticals Inc. that Dr. Francesco DeLuca had improperly relied on an 8-year-old photograph to conclude that Nicholas Murray had been suffering from gynecomastia, or the abnormal growth of female breast tissue in males, at the time the picture was taken.

The appeals court said instead that DeLuca's opinion, which came after an October 2015 physical examination, was based on other information as well.

"The testimony makes clear that Dr. DeLuca did not simply rely on this single photograph, but instead considered other factors — such as Mr. Murray's mammogram, his pharmacy and school records, and the results of his physical examination — to conclude that Mr. Murray developed gynecomastia while using Risperdal," the opinion said.

Murray won a \$1.75 million verdict against Janssen in November 2015 after convincing a jury that he developed breasts after he began taking Risperdal as a 9-year-old to treat sleeping problems his mother told a doctor he was having.

The verdict was later reduced after a trial judge agreed that Murray was bound by Maryland law limiting noneconomic damages to a maximum of \$680,000.

Warning labels for Risperdal prior to October 2006 indicated that gynecomastia was a rare side effect in adults, occurring in fewer than one in 1,000 patients, but plaintiffs have claimed that J&J had data showing that incidence of the side effect was much more common in adolescent males.

The label was subsequently updated, alongside an approval from the U.S. Food and Drug Administration for use treating children with autism, showing there was a 2.3 percent rate of gynecomastia in adolescents taking the drug.

Murray's is one of more than 6,000 cases over alleged Risperdal-related breast growth pending as part of a mass tort program in the Philadelphia County Court of Common Pleas.

Juries have levied some \$75 million worth of damages against Janssen in five Risperdal cases in Philadelphia, and a defense verdict in a sixth case was junked by the Superior Court on appeal in November.

Two other cases to go before juries have been dismissed mid-trial for lack of evidence.

While the Superior Court on Tuesday upheld the liability finding against Janssen, it rejected arguments from Murray that Pennsylvania law, and not Maryland, should have been brought to bear on whether or not to cap the \$1.75 million verdict.

"We ... conclude that Maryland has a more significant relationship to the noneconomic damages issue than Pennsylvania," the opinion said. "Accordingly, we determine that the trial court properly reduced the jury's verdict to align with Maryland's cap on noneconomic damages."

In keeping with another recent decision throwing out a global order across all of Philadelphia's Risperdal cases that had allowed Janssen to take advantage of a provision of New Jersey law largely barring punitive damages against pharmaceutical companies, the Superior Court's ruling on Tuesday remanded the case to the trial court for further proceedings on whether Murray should be allowed a shot at punitive damages under Maryland law.

Thomas Kline and Chip Becker, attorneys with Kline & Specter PC representing Murray, hailed the decision in a statement to Law360.

"The Murray decision ratifies the sufficiency of the evidence concerning Janssen's negligence and liability in Risperdal litigation," they said. "It also confirms the need for punitive damages to be assessed on a case-by-case basis. The decision represents a significant step forward in the effort to achieve justice for thousands of Risperdal claimants."

Janssen spokeswoman Kelsey Buckholtz said the company was weighing how to move forward in the litigation.

"We are pleased the Superior Court agreed that the trial judge properly reduced the jury's verdict to align with Maryland's cap on noneconomic damages," she said. "At the same time, we are disappointed that the court allowed the verdict to stand and will consider our options going forward."

Judges John T. Bender, Alice Beck Dubow and John L. Musmanno sat on the panel.

Murray is represented by Stephen Sheller of Sheller PC, Thomas Kline, Charles Becker, Ruxandra Laidacker and Christopher Gomez of Kline & Specter PC and Jason Itkin of Arnold & Itkin LLP.

Janssen is represented by Kenneth Murphy, Melissa Merk and Tonia Patterson of Drinker Biddle & Reath LLP and Judy Leone, Robert Heim, Katherine Unger and Friedrich Wilhelm Sachse of Dechert LLP.

The case is Nicholas Murray v. Janssen Pharmaceuticals Inc. et al., case numbers 1172 EDA 2016 and 1302 EDA 2016, before the Pennsylvania Superior Court.

--Editing by Orlando Lorenzo.