

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, WEDNESDAY, AUGUST 19, 2015

An **ALM** Publication

More Risperdal Cases Headed to Trial

MAX MITCHELL

Of the Legal staff

A second wave of trials in the Risperdal mass tort has been scheduled for October, and several more cases are gearing up for trials in the spring.

Two trials against Janssen Pharmaceuticals, the maker of the anti-psychotic Risperdal, have been set to begin in October, and according to attorneys involved in the mass tort, pretrial discovery has begun in about 10 more cases. Trials in those cases have been tentatively set to begin in the spring.

Earlier this year, two cases involving Risperdal went to trial, and a third resolved in an undisclosed settlement.

"There is a lot of activity on both the trial and appellate dockets coming up in the fall, and into the foreseeable future, certainly for the first half of 2016," said Thomas R. Kline of Kline & Specter.

Kline is set to try the cases listed for trial along with co-counsel Christopher A. Gomez and Stephen A. Sheller of Sheller P.C.

According to Kline, Janssen Pharmaceuticals will be the defendant in the cases.

Along with the upcoming trials, parties are also hashing out court rulings that could significantly impact how the mass tort proceeds.

In a post-trial motion, the plaintiffs are challenging Supervising Judge Arnold New's order barring them from seeking punitive damages, and in another case the plaintiffs are challenging the statute of limitations cutoff date that New established.

The first Risperdal case in Philadelphia concluded with a \$2.5 million verdict for the plaintiff, Austin Pledger.

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 enlarged breast growth in males, known as gynecomastia.

The third case, Walker v. Janssen Pharmaceuticals, settled in late May on the day opening arguments were scheduled to take place.

According to Complex Litigation Center Director Stanley Thompson, more than 1,400 Risperdal-related cases are pending. That makes up about 25 percent of the Complex Litigation Center's inventory.

Along with the blood thinner Xarelto, Risperdal is one of the fastest expanding mass-tort programs in the Complex Litigation Center, and about 200 new cases had been filed by mid-2015. Since the start of August, 24 additional cases were filed, Thompson said.

According to Kline, the statute of limitations ruling could affect up to 40 percent of the cases, and a final decision on punitive damages will affect all the cases in the Risperdal mass tort.

Sheller said settlement talks are always ongoing, but there are no serious talks at the moment.

"I hope they do [settle], but we'll just see where they go," Sheller said.

Sheller said he could not predict what the upcoming wave of trials might mean in terms of facilitating a global settlement for the mass tort, but said that the previous litigation has helped the parties to focus their cases.

"It's pretty clear the warnings were inadequate," Sheller said. "Now the main issues will be specific causation in that particular case. My experience is that usually both sides try to get those issues resolved by settlement, but I can't predict what'll happen."

According to Kline, the October trials will mark the first time the parties will use videotaped depositions.

tions instead of live testimony from the key experts on both sides. For the plaintiffs, that expert is former U.S. Food and Drug Administration Commissioner Dr. David Kessler, and for Janssen that witness is Ivo Caers, who is the vice president of the compound development team at Johnson & Johnson.

"The cases, in terms of presentation, are substantially simplified in the sense that now we have a case that can literally be presented to multiple juries as we move forward," Kline said.

Testimony from both experts was a point of contention in the month-long Pledger trial, with the defense attorney grilling Kessler over his fees and testimony in other drug cases. Kessler had previously testified that J&J knew about Risperdal's ability to raise levels of the hormone that causes gynecomastia.

Melissa A. Graff of Drinker Biddle & Reath, who is representing Janssen in the cases scheduled for trial, did not return a call for comment.