Products Liability Law Daily Wrap Up, EVIDENTIARY ISSUES—DRUGS—Pa. Ct. Com. Pl.: Court snubs drug makers' objections to $70M Risperdal® verdict, (Jul. 27, 2016)

Products Liability Law Daily Wrap Up

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By Susan Lasser, J.D.

The manufacturer of the bipolar disorder drug Risperdal was unable to convince a Pennsylvania trial court to set aside a $70 million verdict for a young man who developed breasts beginning at age 5, allegedly as a result of his using Risperdal. The court was not persuaded by the drug maker's assertion that the court had erred in allowing "extensive irrelevant, inadmissible, and prejudicial evidence that tainted the entire trial." Therefore, the court declined to grant the manufacturer's motion for judgment notwithstanding the verdict or, in the alternative, for the entry of an order granting a new trial on the claims tried (*A.Y. v. Janssen Pharmaceuticals, Inc.*, July 25, 2016, Patrick, P.).

The drug was developed by a subsidiary of Johnson & Johnson to treat behavioral problems such as bipolar disorders and schizophrenia. The plaintiff's products liability action was based on allegations that the drug's manufacturer, Janssen Pharmaceuticals, failed to inform doctors accurately of a known link between gynecomastia (the abnormal growth of breasts in a male) and Risperdal use. In the young man's case, a Philadelphia jury voted unanimously to award him $70 million to cover his medical expenses, physical injuries, and emotional distress (see *Products Liability Law Daily*'s July 1, 2016 analysis of this case as well as prior Risperdal verdicts).

Manufacturer's objections. In its motion for post-trial relief, Janssen (or the manufacturers) argued that the manufacturers were entitled to judgment notwithstanding the verdict because the patient failed to establish that the drug's warnings were inadequate. In addition, it was asserted that the patient failed to prove that Risperdal caused the young man's injuries, and that his only causation evidence was improperly admitted. The manufacturers also contended that the patient failed to establish that any allegedly inadequate warning was the proximate cause of his injury. Not only did he fail to satisfy Tennessee's learned intermediary doctrine, Janssen maintained, but also it was undisputed that an additional or different warning would not have changed the young man's mother's decision to let him take Risperdal to treat his illness.

Further, the manufacturers asserted a number of other arguments, including that: the patient's failure-to-warn theory was preempted by federal law; the young man did not satisfy the Tennessee Product Liability Act's requirement that his claim be based on evidence that was available at the time Risperdal was placed on the market; the court improperly allowed the patient to present his regulatory expert's testimony via a videotaped deposition taken in another case; the court improperly limited or precluded testimony by the manufacturers' experts; and the jury instructions were improper in several respects, including the erroneous refusal to instruct the jury as to the learned intermediary doctrine and as to the defendants' statutory presumption. According to the manufacturers, they were entitled to a new trial because the jury's verdict was against the weight of the evidence, the amount of damages awarded by the jury was excessive, and they were deprived of constitutional due process.

The court, in a one-page order, denied the motion.

The case is No. 130402094.

Attorneys: Brian McCormick, Jr. (Ross Feller Casey LLP) for A.Y. Kenneth A. Murphy (Drinker Biddle & Reath LLP) for Janssen Pharmaceuticals, Inc., Johnson & Johnson, and Janssen Research & Development, LLC.

Companies: Janssen Pharmaceuticals, Inc.; Johnson & Johnson Co.; Janssen Research & Development, LLC

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