

[Products Liability Law Daily Wrap Up, STATUTES OF LIMITATIONS AND REPOSE—DRUGS—Pa. Super.: Product liability claims against Risperdal® manufacturers barred by limitations period, \(Nov. 14, 2017\)](#)

Products Liability Law Daily Wrap Up

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By Kathleen Bianco, J.D.

Claims by two patients alleging that they had developed gynecomastia after ingesting the drug, Risperdal®, were barred by Pennsylvania's two-year statute of limitations, the Superior Court of Pennsylvania held in an opinion affirming rulings by the state Court of Common Pleas. The unexplained weight gain and breast development experienced by the patients in 1998 and 2002, in conjunction with a 2006 Risperdal label change, expressly linking usage of the drug to gynecomastia, was sufficient to establish that the statute of limitation, even if tolled by the discovery rule, began to run no later than October 2006. Thus, the patients' separate actions filed against the drug manufacturers in 2014 exceeded the two-year limitations period (*In Re: Risperdal Litigation (Saksek v. Janssen Pharmaceuticals, Inc.)*, November 13, 2017, Panella, J.).

In 1997, patient two, a seventeen-year-old boy, was prescribed Risperdal for the treatment of anger issues. By the end of 1998, he began to suffer from unexplained weight gain and gynecomastia, at which time his physician discontinued his use of the medication. In 1998, patient one, an eleven-year-old boy, was prescribed Risperdal to treat attention deficit, hyperactivity, and bipolar disorder. By December 2002, he also experienced unexplained weight gain and an increase in his breast size. He stopped taking Risperdal in 2004.

In 2013, both patients claimed that they learned, through a television commercial, that other Risperdal users with gynecomastia had filed lawsuits against manufacturers of risperidone. Based upon this information, patient one filed a claim on February 4, 2014, and patient two followed suit on March 10, 2014. The drug manufacturers, Janssen Pharmaceuticals, Inc., Johnson & Johnson, and Janssen Research & Development, LLC, challenged the claims by both patients, arguing that they were barred under Pennsylvania's two-year statute of limitations. In two separate decisions, the trial court granted the manufacturers' motions for summary judgment, finding that the applicable statute of limitations had expired before the actions had commenced. The cases were consolidated on appeal.

Limitations period. Under Pennsylvania law, the applicable statute of limitations for a tort claim is two years. The limitations period begins when damages are first discovered by the patient or should have been discovered based on the facts upon which the cause of action is based. The patients argued that the running of the limitations period in both of their cases did not begin until 2013 when they were diagnosed with gynecomastia. The court disagreed, finding that the patients knew that they had been harmed back in 1998 and 2002, when the breast development had begun. Furthermore, no later than 2006, when the Risperdal label was changed to reflect the link between the drug and gynecomastia, the patients, with reasonable diligence, would have been able to ascertain the connection between the Risperdal and the gynecomastia. As such, the patients' claims had accrued no later than October 2006, even if the discovery rule or fraudulent concealment had applied to toll the limitation period. Consequently, the superior court affirmed the lower court's grant of summary judgment to the manufacturers.

The case is No. [J-A27023-16](#).

Attorneys: Charles Lyman Becker (Kline & Specter, PC) for Jonathan Saksek, Joshua Winter. Kenneth Alonzo Murphy (Drinker Biddle & Reath, LLP) and Robert C. Heim (Dechert, LLP) for Janssen Pharmaceuticals, Inc. and Janssen Research and Development, LLC.

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

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