



Exclusive: Copy of Judge's "Penalty Order" in SC Risperdal Action

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Well, maybe not "exclusive," but I did manage to obtain a copy of the Penalty Order in the South Carolina Attorney General's action against Johnson and Johnson and the award of \$327 million in damages against the pharmaceutical company. I have also obtained a copy of Judge Roger Couch's "Penalty Order" in which he sets damages and explains the rationale for them.

I have not had a chance to digest the Order yet, and I wanted to get it posted as I can tell from my site statistics that there is considerable interest about this case and the award of damages. However, from my quick review, the high spots are as follows:

- The judge focuses on the "Credo of Johnson and Johnson" as published on its website and referred to in annual reports to tee up how he is approaching the case (p. 3).
- He recognizes the benefits of drug companies, medicine in general, and even Risperdal. He also points out that they are a for-profit company... but he goes back to the Credo as the company's "first obligation" (pp. 3-4).
- He assesses the good/bad faith of the defendant and stresses that he is focused on what was known about the drug at the time statements were made (pp. 4-5).
- He reviews the labeling of the drug, what the company knew and when, and finds that the "Defendants exhibited a callous disregard to a patient's right to have all possible information available, and in the hands of their physician, before deciding to use or continue to use the drug" (p. 8).
- He reviews the "Dear Doctor" letter from November of 2003 and describes it as an effort to "manipulate the message about Risperdal" (p. 9). He also relies on some testimony from a Janssen executive about the "Dear Doctor" letter that is unfavorable (p. 10) and concludes that the actions of the company exhibited "extreme bad faith" (id.).
- He talks about "Injury to the Public" as a component of a South Carolina Unfair Trade Practices action, including reference to his charge on this component (pp. 10-12). He notes that the jury found that the actions injured the public and were capable of repetition (p. 12).
- He assesses the "Desire to eliminate the benefits derived from a violation" and admits that this is "virtually impossible to accurately determine" (p. 13). However, he points out the profit from the drug were "enormous," but also notes the

relative small percentage of business conducted in South Carolina (id.).

- He assesses “The necessity of vindicating the authority of the agency involved” and notes that the South Carolina Attorney General is the one with the burden and duty to vindicate the public’s interest in the case (pp. 13-14).
- He then goes into “The Defendant’s ability to pay” at length (pp. 14-16), including the number of violations. This includes a statement of Annual Sales of Risperdal worldwide (p. 15) and J&J’s earnings.
- Finally, he assesses the number of times the label was published -- 509,499 sample boxes distributed -- and assesses \$300 per violation, for a total of \$152,849,700 (p.16-17). He does similar analysis for the number of “Dear Doctor” letters mailed (7,184) and sales calls where the letter was published (36,372), for a total publication of 43,556, and assesses \$4,000 per violation, for a total of \$174,224,000 (id).

Therefore, the total damages are \$327,073,700 (p. 17).

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