

## South Carolina Prevails in Risperdal Overcharge Trial

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**South Carolina v. Janssen Pharmaceutica** (Spartanburg, South Carolina).

South Carolina prevailed today on its Risperdal overcharge claim when a jury found that Johnson & Johnson's Janssen Pharmaceutica misled consumers in its marketing for the antipsychotic Risperdal (risperidone). Louisiana last October prevailed on a similar claim and was awarded \$257M; however, Johnson & Johnson won a Risperdal challenge in Pennsylvania. Texas' Risperdal overcharge claim will be tried in June 2011.

With hundreds of millions in civil penalties potentially at stake, South Carolina sent attorney John Simmons of the Simmons Law Firm to make the closing argument. Mr. Simmons told the jury, *"As far back as 1994 the FDA told these guys you can't make comparative claims [against first-generation atypical antipsychotics] outside of the label...They knew...You can't bury studies. You can't hide information...Yet you've got their own executives saying [in emails shown to the jury], 'That's what happened here.' ...The label is only as fair and truthful as the company and the people writing it."*

*"We're talking about a powerful drug going into the bodies of children in South Carolina, not even four years of age," Mr. Simmons told the jury. "Is it important for drug companies to tell the truth? Absolutely...If this had happened twenty years ago, a lot of this we wouldn't have had a record of. Because these are people communicating [by] talking; there's nothing there. You now are able to see with your own eyes what actually happened, and what was said, largely because of the preservation of the electronic mail here. Digital footprints."*

For the defense, Richardson & Plowden's Steven Pugh characterized the state's case as a "smoke screen," and pointed out that millions of people had been helped by Risperdal. According to Mr. Pugh, Risperdal had been prescribed millions of times, *"not because of some spin, not because of some way to make a bunch of money, not because*

*of hidden data — they were prescribed Risperdal because, as the FDA has told us six times, it's safe and effective. It works! Doctors saw that. They exercise their clinical judgment and decide what drug they are going to prescribe for their patient...The State doesn't claim that Risperdal isn't good medicine, and the State doesn't claim that Risperdal has harmed anyone in South Carolina."*

*"I submit to you ladies and gentlemen that unproven allegations of potential harm to the elderly and children has nothing to do with this case...The case is about two things: A letter, November 10, 2003, and the FDA-approved insert for Risperdal. The State has failed to prove that either is a violation of the South Carolina Unfair Trade Practices Act."*

In his closing rebuttal on behalf of the State, John B. White, Jr., of Harrison, White, Smith & Coggins told the jury, *"We started out this case with 'Thou shalt not lie.' Maybe we should have said, 'Don't sell your soul for the almighty dollar...Corporate ethics is an issue that's current. It's affected our nation and South Carolina for the last 3-4 years. That's what we're talking about in this case. It's not science — it's corporate ethics...It's about what Janssen knew, and didn't tell."*

The jury found that Janssen Pharmaceutica made willful misstatements on both the Dear Doctor Letter and the label/package insert.

The amount of civil penalties to be imposed will be determined by the Court.

**CVN** [webcast the South Carolina Risperdal overcharge trial live.](#)