



LAW.COM

Select '**Print**' in your browser menu to print this document.

Copyright 2006 ALM Properties, Inc. All rights reserved.

Page printed from: <http://www.law.com>

[Back to Article](#)

Mass-Tort Designation Sought for Anti-Psychotic Drug Suits

By [Martin C. Daks](#)
New Jersey Law Journal
07-13-2006

Blockbuster drugs manufactured by three multinational pharmaceutical companies are generating headaches in a Middlesex County, N.J., courtroom.

Facing a caseload of 235 claims against anti-psychotic drugs Risperdal, Seroquel and Zyprexa that could run into millions of dollars, Superior Court Judge Bryan Garruto has asked the state Supreme Court to roll up the litigation into a single mass tort.

"Judicial resources would be efficiently utilized by having one Judge in the state coordinating management and disposition of the cases with the assistance of a Special Master," said Garruto, one of the four New Jersey trial judges assigned by the chief justice to manage mass torts.

"Centralized management would be fair and reasonable to the parties, witnesses and counsel since New Brunswick is in central New Jersey and is easily accessible. Furthermore, some of the parties have their principal place of business in Middlesex County and accommodations are readily available for the out of state participants."

Mass tort cases usually involve large numbers of claims that are associated with a single product, a commonality of factual and legal issues and a value interdependence between the different claims.

Once litigation is designated a mass tort, the judge holds an initial conference to set up preliminary matters. Then monthly conferences are held to establish time lines for discovery and eventual trial. Often, bellwether cases are selected for trial first, from which counsel can reasonably decide on settlement value.

Garruto noted in his June 16 request, still pending last week, that additional Risperdal-Seroquel-Zyprexa cases continue to stream in. His request also noted that the local litigation has "common, recurrent issues of law and fact relating to both damages and liability."

The prescription medications belong to a group of drugs known as atypical anti-psychotics, commonly used for the treatment of schizophrenia and bipolar, or manic-depressive, conditions.

Their use "has been linked to the occurrence of conditions like diabetes, a debilitating disease that can lead to amputation, blindness and other conditions," says Larry Gornick, of San Francisco's Levin Simes Kaiser & Gornick, which has filed about 200 suits in state Superior Court in Middlesex County. Local counsel is Sheller, Ludwig & Badey, a Philadelphia firm with offices in Marlton.

Risperdal is manufactured by Titusville, N.J.-based Janssen Pharmaceutica, a division of New Brunswick, N.J.'s Johnson & Johnson; Seroquel by AstraZeneca, of Wilmington, Del.; and Zyprexa by Indianapolis-based Eli Lilly.

In 2005, Zyprexa generated about \$4.2 billion of Eli Lilly's \$14.6 billion worldwide sales; Seroquel accounted for \$2.8 billion of AstraZeneca's \$23.9 billion of sales in that year; and Risperdal brought in about \$3.6 billion of Johnson & Johnson's \$50.5 billion in 2005 revenue.

Risperdal, Seroquel and Zyprexa may have helped boost the companies' sales, but mounting litigation is taking its toll. Federal court claims have prompted Eli Lilly to take more than \$1 billion in write-offs against its 2005 earnings.

In April 2004, the federal Judicial Panel on Multi-District Litigation ordered the transfer of about 8,000 Zyprexa suits to the Eastern District of New York. Now before Judge Jack Weinstein, the litigation is still being heard, and last year Eli Lilly took \$1 billion in charges against earnings -- including the establishment of a \$690 million fund for litigants who agree to settle their claims -- that the company believes will account for a significant portion of the anticipated Zyprexa settlement costs.

In its 2005 annual report, AstraZeneca noted that it had been served with about 60 suits alleging that individuals had developed diabetes or other allegedly related injuries "as a result of taking Seroquel and/or atypical antipsychotics made by other pharmaceutical companies."

Johnson & Johnson noted that in November 2005 the U.S. Attorney's Office for the Eastern District of Pennsylvania subpoenaed the company regarding marketing of Risperdal and adverse reactions to the drug.

Levin Simes partner Gornick says his clients will press for monetary damages, but the exact amount will depend on individual circumstances. "I'm comfortable saying that some individual claims alone will be in the millions of dollars," he says. "We will seek damages related to the individuals' injuries."

Russell Rein, whose Pensacola, Fla.-based firm Aylstock, Witkin & Sasser is representing three plaintiffs in the state litigation, says mass tort classification may benefit the defendant drug companies, since each of their witnesses could make a single deposition, instead of giving separate testimony in each case.

Doug Arbesfeld, a spokesman for Janssen, says the company does not generally comment on litigation at this stage. Calls seeking comment from AstraZeneca and Eli Lilly were not returned by press time on Friday.