#0083

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

FILED
DEC 16 2011
JUDGE JESSICA R. MAYER

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) ~~[PROPOSED]~~ **ORDER**

OPPOSED

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel~~, and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* that Dr. Hammer Is Only Qualified to Testify as to Psychiatric Matters is hereby granted;*

IT IS FURTHER ORDERED that a copy of this Order shall be ~~served upon~~ mailed online Defendants' ~~counsel~~ within seven (7) days of the date of this Order.

* The parties having consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

JESSICA R. MAYER, J.S.C.

Skala v. Johnson & Johnson, et al.
Docket No. L-6820-06 (MT)

Memorandum of Decision on Plaintiff's motion *in limine* to limit the testimony of Defendants' experts, Drs. Hammer and Shelmet:

1. Plaintiff's motion *in limine* to limit Dr. Hammer's testimony to psychiatric matters.

The court understands that Defendants intend to call Dr. Shelmet, an endocrinologist, as an expert witness at trial. As an endocrinologist with experience in the field of diabetes, and based upon the court's review of Dr. Shelmet's written report and deposition testimony, the court believes that Dr. Shelmet will offer testimony as to the lack of an association between Rispderal® and the development of diabetes. The court also believes that Dr. Shelmet will offer testimony that Plaintiff had multiple risk factors, prior to treatment with Risperdal,® such as family history of diabetes and alcohol consumption, leading to Plaintiff's development of diabetes.

Dr. Hammer is a psychiatrist. As Dr. Hammer admitted during his deposition, he is not a specialist in the field of diabetes and is not an endocrinologist. See Deposition of Dr. Hammer dated August 1, 2011 ("Hammer Dep.") 48:6-12. Further, based upon the expert report of Dr. Hammer for this Plaintiff, dated June 15, 2011, the focus of Dr. Hammer's testimony is addressed to the appropriateness of Risperdal® in the treatment of Mr. Skala. Indeed, based upon his experience and training in the field of addictology, Dr. Hammer stated "it would appear that Alcohol, not Risperdal, should remain the main subject of concern relative to the development of Diabetes." See Dr. Hammer's expert report for Plaintiff Skala dated June 15, 2011 ("Hammer Report") at p. 3. Clearly, based upon this statement, Dr. Hammer leaves it to another expert to offer causation opinions as to why Plaintiff developed diabetes in this case.

Also, the court reviewed the entirety of Dr. Hammer's deposition in this case. During his deposition, Dr. Hammer conceded that he was not asked to determine what caused Plaintiff's diabetes. See Hammer Dep. at 20:8-17. Based upon the court's review of the expert report submitted in Plaintiff's case, Defendants asked Dr. Hammer to examine the role of Risperdal® in the treatment of Plaintiff's mental disorder. If Defendants intend to use the testimony of Dr. Hammer to address the lack of an association between Risperdal® and the development of diabetes, such testimony would be cumulative of the testimony proffered by Dr. Shelmet who possesses medical expertise in the field of diabetes. Therefore, this motion is **GRANTED**.

#044

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) **[~~PROPOSED~~] ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel,~~ and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* that Dr. Hammer Should Be Precluded from Testifying That Risperdal Was Not a Significant Contributing Factor to Plaintiff's Diabetes is hereby granted;*

IT IS FURTHER ORDERED that a copy of this Order shall be ~~served upon~~ provided to

Defendants' counsel within seven (7) days of the date of this Order.

OPPOSED

JESSICA R. MAYER, J.S.C.

This motion was:

/ Opposed

_____ Unopposed

* The parties having consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

2. Plaintiff's motion *in limine* to preclude Dr. Hammer from testifying that Risperdal® was not a significant contributing factor to Plaintiff's diabetes.

The court understands that Defendants intend to call Dr. Shelmet, an endocrinologist, as an expert witness at trial. As an endocrinologist with experience in the field of diabetes, and based upon the court's review of Dr. Shelmet's written report and deposition testimony, the court believes that Dr. Shelmet will offer testimony as to the lack of an association between Rispderal® and the development of diabetes. The court also believes that Dr. Shelmet will offer testimony that Rispderal® was not a significant contributing factor to Plaintiff's development of diabetes.

Dr. Hammer is a psychiatrist. As Dr. Hammer admitted during his deposition, he is not a specialist in the field of diabetes and is not an endocrinologist. Further, based upon the expert report dated June 15, 2011 submitted by Dr. Hammer in support of his conclusions regarding Plaintiff Skala, the focus of his testimony involves the appropriateness of Risperdal® in the treatment of Mr. Skala. Indeed, based upon his experience and training in the field of addictology, Dr. Hammer stated "it would appear that Alcohol, not Risperdal, should remain the main subject of concern relative to the development of Diabetes." See Hammer Report at 3.

During his deposition, Dr. Hammer conceded that he was not asked to determine the cause of Plaintiff's diabetes. Based upon the court's review of the expert report submitted in Plaintiff's case, Defendants asked Dr. Hammer to examine the role of Risperdal® in the treatment of Plaintiff's mental disorder. If Defendants intend to use the testimony of Dr. Hammer to opine that Risperdal® was not a significant contributing factor leading to Plaintiff's diabetes, such testimony would be cumulative of the testimony proffered by Dr. Shelmet, who possesses medical expertise in the field of diabetes. Therefore, this motion is **GRANTED.**

0742

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

FILED
DEC 16 2011
JUDGE JESSICA R. MAYER

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) **~~[PROPOSED]~~ ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel,~~ and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* that Dr. Hammer Should Be Precluded from Testifying That Alcohol Consumption or Any Other Alleged Risk Factor Was a Significant Contributing Factor to Plaintiff's Diabetes is hereby granted in part, ~~*~~

IT IS FURTHER ORDERED that a copy of this Order shall be ~~served upon~~ posted on line

Defendants' counsel within seven (7) days of the date of this Order.

OPPOSED

12/6/17
JESSICA R. MAYER, J.S.C.

This motion was:

✓ Opposed

____ Unopposed

*The parties having consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

3. Plaintiff's motion *in limine* to preclude Dr. Hammer from testifying that alcohol consumption or any other alleged risk factor was a significant contributing factor to Plaintiff's diabetes.

Based upon his clinical experience and training, Dr. Hammer treats patients who suffer from alcohol dependence and alcohol abuse. Dr. Hammer reviewed Plaintiff's medical records and opined that Plaintiff suffered from alcohol dependence/abuse. During his deposition, Dr. Hammer testified that, in addition to his expertise and experience in the field of psychiatry, he is an "addictionologist in the field of addiction psychiatry." Hammer Dep. at 35:25-36:2. Therefore, Dr. Hammer is qualified to offer testimony about the impact alcohol can have on the treatment of mental disorders. In reviewing the deposition testimony of Dr. Hammer, it was Plaintiff's counsel who questioned the doctor regarding alcohol consumption and the role that alcohol may have played in contributing to Plaintiff's diabetes.

Based upon the court's review of Dr. Shelmet's written report and deposition testimony, the court believes that Dr. Shelmet will offer testimony that Plaintiff had multiple risk factors that may have contributed to Plaintiff's development of diabetes, including Plaintiff's excess consumption of alcohol.

Based on the foregoing, this motion is **GRANTED IN PART.** Dr. Hammer's experience and training in addictology qualifies him to offer testimony as to Plaintiff's alcohol addiction and alcohol dependence and the impact alcohol may have had on Plaintiff's mental condition. However, as Dr. Hammer repeated throughout his deposition testimony, he is not an expert in the field of diabetes and is not an endocrinologist trained in assessing the causes of diabetes in a particular patient.

#0344

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) **~~[PROPOSED]~~ ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel~~, and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* that Dr. Hammer Should Be Precluded from Testifying That Major Psychiatric Disorders Are Direct Causes of Diabetes is hereby denied ~~granted~~;

IT IS FURTHER ORDERED that a copy of this Order shall be posted in lieu ~~served upon~~

Defendants' counsel within seven (7) days of the date of this Order.

OPPOSED

12/16/19
JESSICA R. MAYER, J.S.C.

This motion was:

✓ Opposed

____ Unopposed

* The parties having consented to the disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

4. Plaintiff's motion *in limine* to preclude Dr. Hammer's testimony that major psychiatric disorders are direct causes of diabetes.

Dr. Hammer was not asked to determine what caused Plaintiff to develop diabetes. However, as a practicing psychiatrist with significant training and experience, Dr. Hammer has treated many patients with major psychiatric disorders. To the extent that Dr. Hammer has treated patients with major psychiatric disorders who also suffer from diabetes, the court will allow such testimony based upon Dr. Hammer's experience but will consider an appropriate limiting instruction to be given to the jury. Therefore, this motion is **DENIED**.

#0747

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

FILED
DEC 16 2011
JUDGE JESSICA R. MAYER

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) **~~[PROPOSED]~~ ORDER**

OPPOSED

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel,~~ and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* that Dr. Hammer Should Be Precluded from Testifying That Weight Gain Was a Risk Factor for Plaintiff's Diabetes is hereby granted; *

IT IS FURTHER ORDERED that a copy of this Order shall be ~~served upon~~ mailed or faxed ~~Defendants'~~ counsel within seven (7) days of the date of this Order.

* The parties having consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

/s/ JESSICA R. MAYER, J.S.C.

5. Plaintiff's motion *in limine* to preclude Dr. Hammer's testimony that weight gain was a risk factor for Plaintiff's diabetes.

Dr. Hammer was not asked to determine what caused Plaintiff to develop diabetes. Defendants may proffer the testimony of Dr. Shelmet as to the cause(s) of Plaintiff's diabetes, including weight gain, alcohol, and family history, if supported by the evidence in this case. Therefore, this motion is **GRANTED**.

#0744

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) [~~PROPOSED~~]**ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel~~, and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* that Dr. Hammer Should Be Precluded From Opinion that Risperdal May Have Prevented a Tragedy in the Skala Household is hereby granted in part; ✱

IT IS FURTHER ORDERED that a copy of this Order shall be ~~served upon~~ posted online

Defendants' counsel within seven (7) days of the date of this Order.

OPPOSED

JESSICA R. MAYER, J.S.C.

This motion was:

✓ Opposed

____ Unopposed

* The parties having consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

6. Plaintiff's motion *in limine* to preclude Dr. Hammer's testimony that Risperdal® may have prevented a tragedy in Plaintiff's household.

Having reviewed all of the medical evidence regarding Plaintiff's condition, Dr. Hammer opined in his written expert report dated June 15, 2011 that prescribing Risperdal® to Plaintiff was appropriate and that Plaintiff benefitted from Risperdal®. As a board certified psychiatrist, Dr. Hammer is permitted to offer his expert opinion regarding the benefits of Risperdal® based upon Plaintiff's specific mental condition. However, as Dr. Hammer was never Plaintiff's treating doctor, the court shall not permit Dr. Hammer to speculate that Plaintiff's ingestion of Risperdal® may have prevented a household tragedy. Therefore, this motion is **GRANTED IN PART**.

#0752

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) ~~[PROPOSED]~~ **ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~and any reply papers, and the arguments of counsel~~, and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* that Dr. Shelmet Should Be Precluded from Testifying as to Any Relative Risk Assessment of Risperdal Consumption Versus Other Diabetic Risks is hereby ~~granted~~ denied; and

IT IS FURTHER ORDERED that a copy of this Order shall be ~~served upon~~ posted in lit

Defendants' counsel within seven (7) days of the date of this Order.

OPPOSED

12/16/14
JESSICA R. MAYER, J.S.C.

This motion was:

✓ Opposed

_____ Unopposed

* The parties having consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

7. Plaintiff's motion *in limine* to preclude Dr. Shelmet's testimony as to any relative risk assessment of Risperdal® consumption versus other diabetic risks.

Plaintiff's motion is overly broad and vague. The court must await the trial testimony to determine the foundation upon which Dr. Shelmet bases his belief that he cannot assign a specific degree of relative risk for each risk factor that may have led to Plaintiff's development of diabetes. Therefore, this motion is **DENIED**.

#1085

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

FILED
DEC 16 2011
JUDGE JESSICA R. MAYER

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) ~~[PROPOSED]~~ **ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel,~~ and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* to Exclude any reference to Mr. Skala's wife's history of smoking tobacco from Evidence at Trial is hereby granted;

IT IS FURTHER ORDERED that a copy of this Order shall be ~~served upon~~ posted on line ~~Defendants'~~ counsel within seven (7) days of the date of this Order.

OPPOSED

* The parties having consented to disposition of the motion on the papers and for the reasons set forth in the attached

JESSICA R. MAYER, J.S.C.

Skala v. Johnson & Johnson, et al.
Docket No. L-6820-06 (MT)

Memorandum of Decision on Plaintiff's motions *in limine* to exclude certain case specific subjects from evidence at trial

1. Plaintiff's motion *in limine* to exclude any reference to Plaintiff's wife's history of smoking tobacco.

Defendants agree not to introduce such evidence at trial unless Plaintiff "opens the door." Neither party shall argue or comment on this issue unless the court determines that the other party has "opened the door." Therefore, this motion is **GRANTED.**

#0753

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

FILED
DEC 16 2011
JUDGE JESSICA R. MAYER

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) **[~~PROPOSED~~] ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel~~, and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* to Exclude any reference to Mr. Skala's history of bankruptcy from Evidence at Trial is hereby granted;*

IT IS FURTHER ORDERED that a copy of this Order shall be ~~served upon~~ posted on line Defendants' counsel within seven (7) days of the date of this Order.

OPPOSED

* The parties have consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum. 1

JESSICA R. MAYER, J.S.C.

2. **Plaintiff's motion *in limine* to exclude any reference to Plaintiff's history of bankruptcy.**

Defendants agree not to introduce such evidence at trial unless Plaintiff asserts a claim for lost wages. Neither party shall argue or comment on this issue unless the court determines that the other party has "opened the door." Therefore, this motion is **GRANTED**.

0754

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

FILED
DEC 16 2011
JUDGE JESSICA R. MAYER

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) ~~[PROPOSED]~~ **ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel~~, and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* to Exclude any reference to Mr. Skala's disability or social security benefits applications or receipt of benefits from Evidence at Trial is hereby ~~granted;~~ denied, *

IT IS FURTHER ORDERED that a copy of this Order shall be served upon posted online

Defendants' counsel within seven (7) days of the date of this Order.

OPPOSED

JESSICA R. MAYER, J.S.C.

This motion was:

_/_ Opposed

____ Unopposed

* The parties have consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

3. Plaintiff's motion *in limine* to exclude any reference to Plaintiff's disability or social security benefits applications or receipt of benefits.

If Plaintiff seeks to introduce testimony in support of a claim for lost wages as a result of his diabetes, then Defendants may be able to use Plaintiff's applications for disability and/or social security to rebut any claim for wage losses due to diabetes. Further, Plaintiff's applications for disability and/or social security may contain information related to Plaintiff's mental and physical conditions at issue in this case which may or may not be admissible at trial. Thus, the court must await the trial testimony to further rule on this issue. Therefore, this motion is **DENIED.**

Notwithstanding this ruling, Defendants shall not refer to Plaintiff's receipt of disability and/or social security benefits to the extent that such statements are made for the sole purpose of implying to the jury that Plaintiff has been remedied through receipt of such benefits.

#0755

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

FILED
DEC 16 2011
JUDGE JESSICA R. MAYER

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) ~~[PROPOSED]~~ **ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard~~ and considered the moving papers, ~~any~~ opposition papers, ~~any reply papers, and the arguments of counsel,~~ and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* to Exclude any reference to Mr. Skala's family history of mental illness from Evidence at Trial is hereby granted;*

IT IS FURTHER ORDERED that a copy of this Order shall be served upon Defendants' counsel within seven (7) days of the date of this Order.

OPPOSED

* The parties have consented to disposition of the motion on the papers and for the reasons set forth in the

1

JESSICA R. MAYER, J.S.C.

4. Plaintiff's motion *in limine* to exclude any reference to Plaintiff's family history of mental illness.

The court is unaware of any testimony indicating that Plaintiff's treating doctors relied on a family history of mental illness in prescribing Risperdal® to Plaintiff. Therefore, this motion is **GRANTED**.

The court may revisit this ruling if there is evidence or testimony that a family history of mental illness was considered by Plaintiff's physician in prescribing Risperdal® to Plaintiff.

#0756

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

FILED
DEC 16 2011
JUDGE JESSICA R. MAYER

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) **[PROPOSED] ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having heard and considered the moving papers, any opposition papers, any reply papers, and the arguments of counsel, and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* to Exclude any reference to whether or not Mr. Skala spoke to his doctor about the metabolic risks of Risperdal after seeing a lawyer's advertisement from Evidence at Trial is hereby granted in part; *

IT IS FURTHER ORDERED that a copy of this Order shall be posted on line served upon

Defendants' counsel within seven (7) days of the date of this Order.

12/16/14
JESSICA R. MAYER, J.S.C.

OPPOSED

This motion was:

/ Opposed

____ Unopposed

* The parties have consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

5. Plaintiff's motion *in limine* to exclude any reference to whether or not Plaintiff spoke to his doctor about the metabolic risks of Risperdal® after seeing a lawyer's advertisement.

The timing of discussions (before/after seeing a legal advertisement) that Plaintff may have had with his doctor about the metabolic risks of Risperdal® is irrelevant. However, discussions between Plaintiff and his prescribing physician at the time the drug was prescribed are relevant to the "learned intermediary" doctrine and whether Plaintiff's prescribing physician was aware of an alleged association between the use of Risperdal® and the development of diabetes. Therefore, this motion is **GRANTED IN PART**.

#0757

EPSTEIN ARLEN, LLC
A New Jersey Limited Liability Corporation
220 Davidson Avenue, Suite 102
Somerset, New Jersey 08873
Tel. (732) 828-8600

BAILEY PERRIN BAILEY
440 Louisiana Street, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
Attorneys for Plaintiff

GARY SKALA, Plaintiff, vs. JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION CASE CODE 274 (Risperdal/Seroquel/Zyprexa Litigation) DOCKET NO. MID-L-6820-06(MT) **[~~PROPOSED~~] ORDER**

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Epstein Arlen, attorneys for Plaintiff Gary Skala; the Court having ~~heard and~~ considered the moving papers, ~~and~~ opposition papers, ~~any reply papers, and the arguments of counsel~~, and good cause having been shown;

IT IS on this 16th day of December, 2011,

ORDERED that Plaintiff's Motion *in Limine* to Exclude any reference to Mr. Skala's alleged family history of diabetes from Evidence at Trial is hereby ~~granted;~~ denied, *

IT IS FURTHER ORDERED that a copy of this Order shall be served upon Defendants' counsel within seven (7) days of the date of this Order.

OPPOSED

* The parties have consented to disposition of the motion on the papers and for the reasons set forth in the attached memorandum.

JESSICA R. MAYER, J.S.C.

6. Plaintiff's motion *in limine* to exclude any reference to Plaintiff's alleged family history of diabetes.

Family history of diabetes is a risk factor for the development of diabetes and is relevant to the issues in this case. There is conflicting testimony between what Plaintiff's wife told Plaintiff's treating physician about Plaintiff's family history and Plaintiff's recollection of his family history. Further, Plaintiff's case specific expert relied on Plaintiff's recollection of a family history of diabetes in rendering his expert opinions in this case. The conflicting testimony as to Plaintiff's family history of diabetes is relevant and may be presented to the jury so that the jury may evaluate and assess the credibility of the party offering the testimony. Therefore, this motion is **DENIED**.