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***IN RE RISPERDAL LITIGATION***

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NICHOLAS MURRAY,

Plaintiff,

v.

JANSSEN PHARMACEUTICALS, INC.,  
JOHNSON & JOHNSON, and JANSSEN  
RESEARCH AND DEVELOPMENT, LLC,

Defendants.

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COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
TRIAL DIVISION - CIVIL

April Term 2013

No. 1990

**ORDER**

**AND NOW**, this \_\_\_ day of \_\_\_\_\_, 2019, upon consideration of Defendants Motion  
for Recusal and the response thereto, it is hereby ORDERED that the motion is DENIED.

BY THE COURT:

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The Honorable Kenneth J. Powell, Jr.

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**PLAINTIFF'S RESPONSE TO DEFENDANTS'  
MOTION FOR RECUSAL**

Plaintiff, Nicholas Murray, by and through his attorneys, respectfully files this response in opposition to the Motion for Recusal of defendants Janssen Pharmaceuticals, Inc., Johnson & Johnson, and Janssen Research & Development LLC:

The motion, which is not set forth in numbered paragraphs, should be denied for the reasons set forth in the attached memorandum of law. All factual assertions are denied. All characterizations of the record are denied. All legal conclusions are denied.

Respectfully submitted,

/s/ Charles L. Becker

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**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' MOTION FOR RECUSAL**

Plaintiff, Nicholas Murray, by and through his attorneys, respectfully files this memorandum of law in further opposition to the Motion for Recusal of defendants Janssen Pharmaceuticals, Inc., Johnson & Johnson, and Janssen Research & Development LLC:

## **I. Issue Presented**

The issue presented is whether the Court should recuse itself from further involvement in this matter—in particular, deciding Defendants’ motion for post-trial relief—based on events that purportedly occurred after the verdict.<sup>1</sup>

## **II. Factual Background**

The Court is familiar with the underlying facts and events in this litigation, which therefore will not be repeated in full. By way of brief summary, this action involves the prescription drug Risperdal, which was developed and manufactured by defendants Johnson & Johnson; Janssen Research & Development, LLC; and Janssen Pharmaceuticals, Inc. (collectively, “Janssen”). Plaintiff Nicholas Murray alleged that Janssen failed to warn about the risks associated with ingesting Risperdal—notably, the risk to young boys that ingesting Risperdal would cause gynecomastia, a disorder of the endocrine system characterized by the development of female breast tissue. Plaintiff also sought punitive damages for Janssen’s misconduct.

The original trial in 2015 only determined the issues of negligence and compensatory damages because Plaintiff’s punitive damages claim had been dismissed by the granting of a summary judgment motion. Presided over by Judge DiNubile, that original trial resulted in a verdict of \$1.75 million in Mr. Murray’s favor that was reduced to \$680,000 by application of Maryland’s cap on noneconomic damages. The resulting judgment in Mr. Murray’s favor was affirmed on appeal by the Superior Court. At the same time, the Superior Court reversed the

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<sup>1</sup> This is the third Risperdal trial over which this Court has provided. No recusal motion was filed in the first two trials. In the second trial (*Hibbs*), the Court granted a compulsory nonsuit in Defendants’ favor.

dismissal of punitive damages and remanded for a trial on punitive damages only. *See Murray v. Janssen Pharmaceuticals, Inc.*, 180, A.3d 1285 (Pa. Super. 2018) (reargument denied April 18, 2018).

On September 12, 2019, a jury trial commenced before this Court on the remaining issue of punitive damages. The jury include ten citizens with college education including several with masters' degrees. The jury heard staggering evidence about Defendants' misconduct and knowing disregard for patient safety. After hearing such evidence, against the backdrop of stipulated evidence that Johnson & Johnson had a net worth of \$61 billion and that Janssen had a net worth of \$12 billion, the jury returned a punishment verdict against these Defendants of \$8 billion on October 8, 2019.

On October 17, 2019, Janssen filed a motion for post-trial relief encompassing 129 pages and asserting 285 paragraphs of purported error. The motion seeks all forms of post-trial relief from the Court—jnov, a new trial, and remittitur of the verdict amount. That same day, Janssen filed a motion seeking the Court's recusal. Janssen argued that the Court had exhibited bias and prejudice against Janssen through its post-verdict exchange with the jurors when the Court (a) provided the jurors with certificates of appreciation for their jury service; (b) agreed to a juror request that the Court take a photograph with the jurors; and (c) purportedly gave "high-gives" to jurors in the jury box. Janssen further argues that the Court violated Rule of Judicial Conduct 2.8 by purportedly commending the verdict after jury rendered it. In connection with motion, Janssen submitted affidavits by two members of Janssen's trial team—John D. Winter and Ethyl J. Johnson. This response ensues.

### III. Argument

#### A. This outrageous motion violates the Pennsylvania Rules of Professional Conduct.

Janssen’s recusal motion, signed by Drinker Biddle attorney David Abernethy, is an extraordinary document, the likes of which have been never been seen by the undersigned counsel and perhaps never seen by this Court either. Never before has a multinational company being sued concurrently by over 100,000 people nationwide for serious injuries and death caused by numerous products (pharmaceutical, medical device, and consumer products as well) undertaken such a blatant, shameless, and truth-free hit job on a respected member of the Pennsylvania judiciary. These baseless and unhinged attacks on a respected judge must not go unanswered.

The motion suggests that the judge:

- delivered “unbalanced ruling after unbalanced ruling” during the trial;<sup>2</sup>
- delivered a “pro-plaintiff message” to the jury during trial;<sup>3</sup>
- acted in a fashion that “does not command respect from anyone;”<sup>4</sup>
- acted “the opposite” of what the Pennsylvania Supreme Court has said the judiciary guards—fairness and probity in the judicial process, and the dignity, integrity, and the authority of the judicial system;<sup>5</sup>
- acted “in deliberate disregard of” the United States Constitution;<sup>6</sup>
- demonstrated “unwillingness” to submit to precedent;<sup>7</sup>
- delivered “unconstitutional messages” to the jurors, tainting the jurors because those messages are now “indelibly associated with jury service;”<sup>8</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

- engaged a display of “partisan glee” following the verdict;<sup>9</sup>
- was “excited” by the verdict, leading to purported high-fives and a photo with the jury; and<sup>10</sup>
- “celebrated the fruits of” his disregard of precedent with the jurors.”<sup>11</sup>

These statements are not mere hyperbole. They represent a calculated and deliberate strategy by Janssen to smear the Court, damage the Court’s personal and professional reputation, and disqualify the Court from further matters involving these defendants. Seeking to bully this Court, they seek to bully the judiciary as a whole, including other individual judges before whom these Defendants will appear as other plaintiffs injured by Johnson & Johnson products are afforded their day in court.

Janssen’s individual slanders merit unpacking.

By saying that the Court delivered multiple unbalanced rulings and pro-plaintiff messages throughout the trial, the Defendants say that the Court was fundamentally biased and acted on that bias to engineer an outcome in the case. In other words, the Court fixed the case. Such an astonishing accusation has merited sharp rebuke from the Pennsylvania courts. *See Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441 (Pa. 2000) (affirming a five-year suspension from the practice of law where counsel accused the trial court of fixing a case).

By saying that the Court acted in deliberate disregard of the U.S. Constitution and was “unwilling” to submit to precedent, Janssen says that the Court was unqualified and unfit to be a judge.

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<sup>9</sup> Motion at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 6.



By saying the Court acted the “opposite” of the values of fairness and probity, Janssen says that the Court was unfair and lacked a sense of moral principal, honesty, or decency. In other words, the Court was dishonest and indecent.

By saying that the Court acted “opposite” of the values of dignity, integrity, and the authority of the judicial system, Janssen says that the Court was not dignified and lacked integrity. Janssen says that the Court undermined the authority of the judicial system, rather than honor what the robe represents.

By saying that Court exhibited “partisan glee” and “celebrated” the verdict with the jurors, Janssen says that the Court was an active partisan rather than a neutral arbiter. Janssen attacks the Court in a vicious and personal way that is astonishing not only for its recklessness but also for its wild disregard for what actually happened in the courtroom following the verdict. What actually happened was an example of personal decency and generosity toward citizens who had served on a month-long trial and justifiably received the full appreciation of the Court for their service. What happened was the epitome of judicial craft, not the opposite.

Of course, by saying that the Court “did not command respect from anyone,” Janssen says that Janssen itself (and its counsel—including David Abernethy, John Winter, and Ethyl Johnson—do not respect the Court. Their animus toward the Court is plain. Yet they never sought the Court’s recusal before the trial, or at any point during the trial. They only file this motion after the verdict was rendered.<sup>12</sup> In any event, the Court was professional and courteous throughout the trial—as the Court is always professional and courteous to those who appear before it.

Central to Janssen’s recusal motion are the affidavits filed by two unlicensed-in-Pennsylvania attorneys who appeared in this Court by virtue of *pro hac vice* admissions: John

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<sup>12</sup> Johnson & Johnson unsuccessfully has sought this Court’s recusal in other matters.

Winter from New York, and Ethyl Johnson from Texas. They assert that the Court participated in “high-fives” with jurors. This is false. They insinuate that the Court left the bench to celebrate with the jurors. That is also false.

The affidavits are barren of context. They do not tell what actually happened in the courtroom after the verdict. The trial transcript accurately shows much of the Court’s interaction with the jury after the verdict was rendered. The Court has personal knowledge of everything not on the face of the transcript. As the Court knows, what happened is as follows:

- After the verdict, the jurors were individually polled and it was established that the jury voted in favor of the plaintiff 10-2.
- In the presence of all counsel, the Court thanked the jury for its service (as the Court previously had done with the alternate jurors).
- The Court then stepped down from the bench to the edge of the jury box and handed each of the jurors certificates evidencing their service.
- The Court shook hands with individual jurors as he handed out individual certificates.
- One of the jurors asked the Court to be included in a photograph with the jurors. After the Court agreed, the jurors motions him to come further into the jury box so he could be in the middle of the photo. Mr. Kline was standing near the jury box and offered to take the photo. All of the jurors participated in the photo, including the two who voted against the verdict.
- Mr. Winter and Ms. Johnson were present the entire time. They raised no objection to the taking of a photo, no objection to the people included in the photo, and no objection to the person who took the photo.
- There was no “high five” between the Court and any juror. The Court simply shook hands with jurors and thanked them for their service and obliged them with a photo, which was forwarded by Mr. Kline to the court officer.

N.T., 10/8/19 at 217-25, attached as Exhibit “A”; Affidavit of Thomas R. Kline, attached as Exhibit “B”; Affidavit of Jason Itkin, attached as Exhibit “C”; Affidavit of Christopher A. Gomez, attached as Exhibit “D”.

In fact, the entire episode was an example of personal decency and appreciation expressed by a trial judge to citizens for a long month of jury service. The Court's generosity was commendable and thoughtful—something to be praised, not savaged in a spiteful motion based on affidavits that lack context and are factually wrong.

Through these statements, Janssen and its counsel has embraced a corrosive trope that judges are partisans rather than arbiters. This dangerous notion threatens public respect for the judiciary. It threatens judicial independence itself. Truly, it would be fine for Janssen to assert that the Court committed error and a new trial should result. (Janssen has done that.) It would be fine for Janssen to assert that the Court *really* committed error and a new trial should result. (Janssen has done that.) But when a major corporation and its counsel glibly toss around disparaging and false statements about a sitting judge, they embolden others to do the same. They lend credence to notions that would undermine a core institution in this country.

The statements filed by Janssen's counsel are false. They are menacing and threatening. They are intended to intimidate and bully. They violate Pa.R.P.C. 8.2(a), which provides:

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

Pa.R.P.C. 8.2(a). Janssen's reckless statements ought not drive this Court to recuse. Rather, these statements by Janssen's counsel instead should be given the scrutiny they appropriately deserve. In particular, the Court should evaluate the conduct of Mr. Abernethy, who signed this document. The Court should evaluate the conduct of Mr. Winter and Ms. Johnson, who are admitted *pro hac vice* only.<sup>13</sup> This Court and other judicial bodies should evaluate everyone who is responsible for

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<sup>13</sup> Ms. Johnson was directed multiple times by the Court during the closing to cease improper argument including personal attacks on Mr. Murray's counsel.

the scurrilous and unfounded accusations contained in this filing that implicates serious disciplinary issues.<sup>14</sup> Anything less invites these defendants and their counsel to replicate similar baseless and corrosive attacks on the judiciary. It invites others to do the same.

**B. The motion is meritless and should be denied.**

Pennsylvania's law concerning recusal is well settled. Initially, a party requesting recusal bears the burden of producing evidence establishing bias or prejudice. *Commonwealth v. White*, 910 A.2d 648, 657 (Pa. 2006); *see generally In re Bridgeport Fire Litig.*, 5 A.3d 1250, 1254 (Pa. Super. 2010) (discussing the standards for recusal). Based on such evidence, a trial judge should recuse himself "whenever he has any doubt as to his ability to preside impartially . . . or whenever he believes his impartiality can be reasonably questioned." *Commonwealth v. Goodman*, 311 A.2d 652, 654 (Pa. 1973). Reviewing courts presume that a trial judge has the ability to determine whether he or she can rule impartially. *Commonwealth v. Druce*, 848 A.2d 104, 108 (Pa. 2004). Because of that presumption, a judge's decision to remain on a case is accorded significant deference by reviewing courts. The trial court's decision may be reversed only for abuse of discretion, which occurs only when the law is overridden or misapplied, the judgment exercised is manifestly unreasonable, or the result demonstrates partiality, prejudice, bias or ill will, as shown by the evidence or the record. *Commonwealth v. Abu-Jamal*, 720 A.2d 79, 89 (Pa. 1998); *Lomas v. Kravitz*, 170 A.3d 380, 389 (Pa. 2017).

Against this legal backdrop, the Court should deny Janssen's recusal motion for multiple reasons. *First*, Janssen has not identified facts that justify recusal. Mr. Winter's affidavit states

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<sup>14</sup> No affidavit was provided by the Drinker Biddle attorney who was present in the courtroom when the jury rendered its verdict, Christian E. Piccolo. Ms. Piccolo's name was not included on the recusal motion despite her active involvement with this case.

that the Court approached the jury box and complied with a juror request that the jury take a picture with Judge Powell. It states that the photo was taken by Mr. Kline and forwarded to the Court staff. It states that Mr. Winter followed up with the Court staff concerning the photo and has not received a response. Mr. Winters's affidavit and also Ms. Johnson's affidavit additionally assert that as the Court walked to the center of the jury box for the picture to be taken, the Court gave "high-fives" to certain jurors.

Even if a "high-five" took place between jurors and the Court (which did not happen), the event would not mean anything for purposes of recusal. As discussed above, the Court was interacting with the jurors in the context of distributing certificates of juror appreciation and thanking the jurors for their jury service and performance of civic duty. Any "high-five" would have occurred within that framework of appreciation. It would not indicate the Court's commendation of the verdict or bias against Janssen. In any event, there were no "high-fives" between jurors and the Court.

*Second*, Janssen wrongly attempts to reframe a post-trial motion argument as grounds for recusal. The motion quotes from Plaintiff's counsel's closing argument at length. It argues that the Court made improperly overruled objections made by defense counsel during Plaintiffs' closing argument and rebuttal argument. The apparent argument is that the Court's rulings against Janssen evidence its bias against Janssen and therefore renders the Court ineligible to make further rulings in this case. *See* Recusal Mot. at 4-6. Obviously Janssen is entitled to seek a new trial on grounds of improper rulings by the Court. Indeed, Janssen has filed a 129-page, 298-paragraph post-trial motion that identifies numerous purported errors by the Court and seeks all forms of

post-trial relief.<sup>15</sup> But as a starting point, a trial court not obliged to recuse simply because (a) it ruled against a party on issues during trial; and (b) the party is unhappy with the trial result. If that were the standard, every trial would end with recusal. As for Janssen's underlying argument that the Court's trial rulings prove its bias—i.e., that the Court sought to engineer the result through its rulings—the argument not only wrong but tantamount to accusing the Court of something very close to fixing the case. This statement implicates serious disciplinary issues and should be evaluated accordingly. *See Surrick, supra* (affirming a five-year suspension from the practice of law where counsel accused the trial court of fixing a case). The accusation otherwise is baseless and provides no justification for recusal.

*Third*, Janssen misplaces its reliance on *Rohm & Haas Co. v. Cont'l Cas. Co.*, 732 A.2d 1236 (Pa. Super. 1999). This was an insurance coverage case related to environmental clean-up costs that resulted in a verdict on several counts against the plaintiff Rohm & Haas. The jury found that no coverage existed because Rohm & Haas was aware of the serious pollution problem at issue yet failed to report the existence of the problem to its insurers. After the jury returned its verdict, the individual jurors returned to the jury room. The trial judge joined them in the jury room and, as alleged in affidavits of two of the jurors present, the judge told the jury that (a) he had seen evidence the jury had not seen and would have returned a different verdicts; (b) the jury made the wrong decision; (c) the insurers had recently lost another case; (d) Rohm & Haas was a

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<sup>15</sup> This is the latest in a long line of lengthy post-trial motions filed by Johnson & Johnson following plaintiffs' verdicts in Philadelphia mesh and Risperdal trials. Jurors previously returned plaintiffs' verdicts in the mesh trials *Hammons, Carlino, Beltz, Engleman, Ebaugh, Emmet, McFarland, Mesigian, and Dunfee*. Jurors have returned plaintiffs' verdicts in the Risperdal trials *Pledger, Murray I, Stange, and Yount*. Including *Murray II*, plaintiffs have returned 14 verdicts in plaintiffs' favor against Johnson & Johnson in recent years. In response to these verdicts (excluding this one), Johnson & Johnson filed 1,097 pages including 2,605 paragraphs of post-trial motions, collectively raising hundreds of issues, none of which have been found meritorious. Including *Murray II*, that number rises to 1,226 pages and 2,903 paragraphs.

good company; (e) company records showed that Rohm & Haas had nothing to hide; and (f) Rohm & Haas had similar sites all over the country and would have to pay billions to settle those liabilities. When one juror expressed surprise that the judge seemed impartial yet in fact was biased, the judge responded that he was only human. *Id.* at 1245-46. The insurers filed a motion for recusal and for post-trial relief. The trial judge denied the recusal motion and entered jnov in Rohm & Haas's favor. In a subsequent damages trial, the trial judge also ruled in Rohm & Haas's favor. *Id.* On appeal, the Superior Court reasoned that there should have been a hearing on the recusal motion in view of the juror affidavits. However, the Court deferred to the trial court's protestations of non-bias and his capacity to objectively determine the post-trial motions. At the same time, the Court found that jnov had been improperly entered and reinstated the verdict in the insurers' favor. *Id.* at 1262. In contrast to *Rohm & Haas*, the Court did not enter a jury room, did not inform the jury that they should have reached a different decision (or the same verdict), did not profess opinions whatsoever on the verdict, and did nothing other than appreciate the jury for their month-long public service. *Rohm & Haas* may provide an example of how judges should not conduct themselves relative to jurors. But it has no application to what occurred here.

Janssen likewise misplaces its reliance on *In re Bruno*, 101 A.3d 635 (Pa. 2014). As the Court knows, *Bruno* related to a ticket-fixing scheme in the Philadelphia traffic court that led to federal charges of criminal conspiracy, mail fraud, and wire fraud. The Supreme Court suspending Judge Bruno without pay and relieved him of all judicial and administrative responsibilities. Judge Bruno challenged whether the Supreme Court had the constitutional authority to impose discipline on a sitting judge given the disciplinary process available through the Judicial Conduct Board and the Court of Judicial Discipline. In a landmark decision on the scope of the Court's King's Bench jurisdiction, the Supreme Court concluded that it had the authority to order the interim suspension

of a sitting judge regardless of pending disciplinary proceedings. It concluded that to the extent that rulings of the Supreme Court and the Court of Judicial Discipline conflicted, the Supreme Court's orders were supreme and controlling. *Id.* at 641-42. *Bruno* involved a frank betrayal of the most basic principles on which the judiciary rests. Any comparison between *Bruno* and this case is absurd, except to illustrate that recusal is not appropriate.

*Fourth*, Janssen suggests that the Court violated Rule of Judicial Conduct 2.8(B) and 2.8(C). Rule 2.8(B) provides: "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control." PA. R. J. C. 2.8(B). Rule 2.8(C) provides: "A judge shall not commend or criticize the verdict of the jury other than in a court order or opinion in a proceeding. This Rule does not prohibit a judge from expressing appreciation to the jurors for their service to the judicial system and to the community. Judges are expected to maintain their supervisory role over a deliberating jury." PA. R. J. C. 2.8(C).

Here, the Court did not violate Rule 2.8(B) or 2.8(C). At all times, the Court was patient, dignified, and courteous to everyone associated with the case. At no time did the Court commend or criticize the verdict. After the verdict, the Court expressed appreciation to the jurors for their service to the judicial system and to the community—exactly what Rule 2.8(C) encourages. To show a Rule 2.8 violation, Janssen focuses on the Court's reference to the fact that the case had "a lot of science." Janssen motion at 2, citing N.T., 10/8/19 at 222. This was a statement of the obvious. There were days of testimony about scientific studies and statistical analysis. This was not an intersectional collision case. The broader context makes clear that the Court's communication to the jury was entirely appropriate:



Ladies and gentlemen of the jury, this was a long case, a case with a lot of science, and a case that took your attention for lo these many days and I want to congratulate because you paid wrapped attention throughout the trial. You're as good a jury as I've ever seen and you were able to grasp the case and reach a verdict. It's very unusual that we don't have jurors who fall asleep or don't pay attention or whatever. You didn't do that. So thank you. Thank you for all you've done.

The other thing is thank you for understanding that this is really part of community service. This is giving back. You would want as many jurors as possible here today or here two weeks ago when we were selecting jurors if you were on trial or your relatives were on trial so you can get fair and impartial jurors.

The other piece of it is that I always tell this story. In 1980 if you filed a case of this stripe in the court system, it would take as many as 40 years to go to trial. Now we do it within two to three. So things have changed and that's because of people like you and I congratulate you and I thank you for that.

Now, you can talk about the case, as I just told you. That's your choice, that's your decision. There's one last thing that I'd like to do, and that's I usually give everybody a jury service certificate for serving on the jury and that's signed by me and by the president judge.

Now, as you know, you can take this and put it right in this trash can. That's your decision. It can go right there.

You can also put it in the front window of your house so that your neighbors see that you've served on the jury and they can knock on your door and say how was it, and you'll say fabulous, you have to do it.

The last thing is these are suitable for framing. You can put them right next to your high school graduation, your college graduation or whatever, but whatever you do, this is a token of our appreciation. I have an envelope here so that you can put it in and people on public transportation shouldn't view it or not ask you questions like let me see that. But it really is important that you've done what you've done.

So let me give these to you individually...

N.T., 10/8/19 at 222-24 (Exhibit A). What follow in the transcript is the Court's handing out each certificate to each jury and thanking them individually. The Court's appreciation of the jury did not violate Rule 2.8. The Court honored the principles on which Rule 2.8 is based.

*Fifth*, to the degree that Janssen's counsel believes that the Court was obliged to recuse based on its evidentiary decisions or rulings concerning closing argument, it was incumbent on counsel to seek recusal at the first opportunity. The Supreme Court made this clear in *Lomas v. Kravitz*, 170 A.3d 380 (Pa. 2017), explaining that "the law is clear. In this Commonwealth, a party must seek recusal of a jurist at the earliest possible moment, *i.e.*, when the party knows of the facts that form the basis for a motion to recuse. If the party fails to present a motion to recuse at that time, then the party's recusal issue is time-barred and waived." *Id.* at 390. Janssen may not hold its recusal motion in its pocket, waiting to see about a favorable verdict and then planning to recuse should the verdict go against it. The law does not permit a free shot at the verdict. It requires a recusal motion at the earliest possible opportunity. *Id.* The recusal motion should be denied on waiver grounds as well.

#### **IV. Conclusion**

This recusal motion involves a grave matter. Janssen has decided to hide behind the privilege associated with legal filings to make outrageous and malicious statements about a Philadelphia judge and the Philadelphia courts. It has done so through hand-picked counsel, who made false assertions about a sitting judge while having done nothing when the underlying events unfolded. Such conduct should not be rewarded or allowed. The motion should be denied.

Respectfully submitted,

/s/ Thomas R. Kline

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/s/ Charles L. Becker

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Dated: October 29, 2019

## CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a copy of the foregoing was served via the Court's electronic filing system and electronic mail to the following counsel:

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215.772.1000

Dated: October 29, 2019

# **EXHIBIT “A”**

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IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

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NICHOLAS MURRAY : APRIL TERM, 2013  
:   
vs. :   
:   
JANSSEN PHARMACEUTICAL, :   
INC., et al. : NO. 01990

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JURY TRIAL  
October 8, 2019  
(Morning and Afternoon Session)

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Courtroom 275, City Hall  
Philadelphia, PA

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BEFORE: HONORABLE KENNETH J. POWELL , JUDGE,  
And a Jury

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1 COURT CRIER: All rise as the jurors  
2 enter the courtroom.

3 (Jury enters courtroom at 4:50 p.m. to  
4 render verdict)

5 THE COURT: Okay. You may be seated.

6 Would the foreperson please rise.

7 State your name for the record.

8 THE FOREPERSON: Faith Witherspoon.

9 THE COURT: And you are juror number?

10 THE FOREPERSON: Five.

11 THE COURT: I have a signed, timed, and  
12 dated sheet here saying, "Your Honor, we,  
13 the jury, has reached a verdict. October  
14 8th, 2019, 4:48 p.m."

15 THE FOREPERSON: That's correct.

16 THE COURT: Okay. All right. Mr.  
17 Hendrie.

18 I'll mark that as Court Exhibit 13.

19 COURT CRIER: Have all the jurors or at  
20 least ten of the 12 jurors reached a  
21 verdict? Foreperson.

22 THE FOREPERSON: Oh, yes.

23 COURT CRIER: Your Honor, all counsel  
24 and parties are present. May I take the  
25 verdict?

1 THE COURT: Yes.

2 COURT CRIER: Okay. In the matter of  
3 Nicholas Murray versus Janssen  
4 Pharmaceutical, Inc., et al., question  
5 number one, did plaintiff prove by clear  
6 and convincing evidence that the defendants  
7 are liable for punitive damages?

8 THE FOREPERSON: Yes.

9 COURT CRIER: Question number two,  
10 please state what sum, if any, you award in  
11 punitive damages.

12 THE FOREPERSON: \$8 billion.

13 COURT CRIER: Your Honor, may the  
14 verdict be recorded?

15 THE COURT: Would anyone care to have  
16 the jury polled at this time?

17 MR. WINTER: Yes, Your Honor.

18 THE COURT: We'll poll the jury.

19 COURT CRIER: Ladies and gentlemen of  
20 the jury, counsel for the defendant has  
21 asked that the jury be polled. As I call  
22 out your number, please rise and in a loud,  
23 clear voice, state whether or not you agree  
24 with the verdict as read by your  
25 foreperson.



1 Juror number one.  
2 JUROR NUMBER ONE: I agree.  
3 COURT CRIER: Juror number two.  
4 JUROR NUMBER TWO: I agree.  
5 COURT CRIER: Juror number three.  
6 JUROR NUMBER THREE: I agree.  
7 COURT CRIER: Juror number four.  
8 JUROR NUMBER FOUR: I did not agree.  
9 COURT CRIER: Juror number five.  
10 THE FOREPERSON: I agree.  
11 COURT CRIER: Juror number six.  
12 JUROR NUMBER SIX: I did not agree.  
13 COURT CRIER: Juror number seven.  
14 JUROR NUMBER SEVEN: I agree.  
15 COURT CRIER: Juror number eight.  
16 JUROR NUMBER EIGHT: I agree.  
17 COURT CRIER: Juror number nine.  
18 JUROR NUMBER NINE: I agree.  
19 COURT CRIER: Juror number ten.  
20 JUROR NUMBER TEN: I agree.  
21 COURT CRIER: Juror number 11.  
22 JUROR NUMBER 11: I agree.  
23 COURT CRIER: Juror number 12.  
24 JUROR NUMBER 12: I agree.  
25 COURT CRIER: Your Honor, may the

1 verdict be recorded?

2 THE COURT: Yes.

3 COURT CRIER: Ladies and gentlemen of  
4 the jury, harken unto your verdict as the  
5 Court has recorded it. In the matter of  
6 Nicholas Murray Nicholas Murray, Plaintiff,  
7 versus Janssen Pharmaceutical, Inc. et al.,  
8 question number one, did plaintiffs prove  
9 by clear and convincing evidence that the  
10 defendants are liable for punitive damages?  
11 Yes; question number two, please state what  
12 sum, if any, you award for punitive  
13 damages, \$8 billion; and so say ten of the  
14 12 of you?

15 THE JURY: Yes.

16 COURT CRIER: Your Honor, the verdict  
17 is now recorded.

18 THE COURT: The verdict is recorded.

19 Okay. Ladies and gentlemen, you've now  
20 completed your service as jurors. A couple  
21 things I want to tell you before I let you  
22 be. Is there anyone who has to leave at  
23 this point for any reasons?

24 Okay. After you leave today, the  
25 lawyers, the media, or others may contact

1           you to discuss this case. The lawyers may  
2           want to talk to you to understand why you  
3           reached the verdict, get suggestions on how  
4           they could do better in the next trial or  
5           for various other reasons. Your friends  
6           might communicate with you personally on  
7           your own social media sites.

8           As private citizens you were called on  
9           by this Court to perform one of the great  
10          duties of citizenship, and that's to serve  
11          as a juror. It is not part of your  
12          responsibilities to be a spokesperson for  
13          the justice system or to explain to anyone  
14          why you or your fellow jurors reached your  
15          verdict.

16          You have performed your duty as jurors  
17          in this case. You have no obligation to  
18          answer anyone's questions, whether from the  
19          lawyers, the media, or anyone else, but you  
20          certainly may communicate with them.

21          If you do discuss the case, please  
22          remember how important it is not to say  
23          anything that would be hurtful to another  
24          person and be considerate of your fellow  
25          jurors and respect their right to privacy.

1           Ladies and gentlemen of the jury, this  
2           was a long case, a case with a lot of  
3           science, and a case that took your  
4           attention for lo these many days and I want  
5           to congratulate because you paid wrapped  
6           attention throughout the trial. You're as  
7           good a jury as I've ever seen and you were  
8           able to grasp the case and reach a verdict.  
9           It's very unusual that we don't have jurors  
10          who fall asleep or don't pay attention or  
11          whatever. You didn't do that. So thank  
12          you. Thank you for all you've done.

13           The other thing is thank you for  
14          understanding that this is really part of  
15          community service. This is giving back.  
16          You would want as many jurors as possible  
17          here today or here two weeks ago when we  
18          were selecting jurors if you were on trial  
19          or your relatives were on trial so you can  
20          get fair and impartial jurors.

21           The other piece of it is that I always  
22          tell this story. In 1980 if you filed a  
23          case of this stripe in the court system, it  
24          would take as many as 40 years to go to  
25          trial. Now we do it within two to three.

1           So things have changed and that's because  
2           of people like you and I congratulate you  
3           and I thank you for that.

4           Now, you can talk about the case, as I  
5           just told you. That's your choice, that's  
6           your decision.

7           There's one last thing that I'd like to  
8           do, and that's I usually give everybody a  
9           jury service certificate for serving on the  
10          jury and that's signed by me and by the  
11          president judge.

12          Now, as you know, you can take this and  
13          put it right in this trash can. That's  
14          your decision. It can go right there.

15          You can also put it in the front window  
16          of your house so that your neighbors see  
17          that you've served on the jury and they can  
18          knock on your door and say how was it, and  
19          you'll say fabulous, you have to do it.

20          The last thing is these are suitable  
21          for framing. You can put them right next  
22          to your high school graduation, your  
23          college graduation or whatever, but  
24          whatever you do, this is a token of our  
25          appreciation. I have an envelope here so

1           that you can put it in and people on public  
2           transportation shouldn't view it or not ask  
3           you questions like let me see that. But it  
4           really is important that you've done what  
5           you've done.

6           So let me give these to you  
7           individually. So we have Jo L. Warfield.  
8           Thank you for your service.

9           JUROR NUMBER ONE: Thank you.

10          THE COURT: Margarita Ruiz, thank you  
11          for your service.

12          Janaya Perry, thank you for your  
13          service.

14          JUROR NUMBER THREE: Thank you.

15          THE COURT: Julia Kernan, thank you for  
16          your service.

17          Faith Witherspoon, thank you for your  
18          service. Thank you for acting as  
19          foreperson.

20          THE FOREPERSON: You're welcome.

21          THE COURT: Rebecca Miller. Thank you  
22          for your service.

23          Back over here. Nancy Carman?

24          JUROR NUMBER SEVEN: Yes.

25          THE COURT: Thank you for your service.

1 JUROR NUMBER SEVEN: Thank you, sir.

2 THE COURT: See you in the  
3 neighborhood.

4 JUROR NUMBER SEVEN: Walking the dog.  
5 Thank you.

6 THE COURT: Stephen Pownall. Thank you  
7 for your service.

8 Ormond Fernandez, thank you for your  
9 service.

10 JUROR NUMBER NINE: I was going to say  
11 any time, Your Honor.

12 THE COURT: Patricia Micucci, thank you  
13 for your service.

14 Deasha Dempsey, thank you for your  
15 service.

16 Gail Gatling, thank you for your  
17 service.

18 JUROR NUMBER 12: Thank you.

19 THE COURT: Okay. So, ladies and  
20 gentlemen, you are paroled. Thank you very  
21 much.

22 COURT CRIER: So as they say, the check  
23 is in the mail. There will be a letter  
24 accompanying that.

25 (Jury excused)

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(Whereupon the trial was concluded)

(Court adjourned)

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**EXHIBIT “B”**

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*In re Risperdal Litigation*

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Nicholas Murray,

Plaintiff,

v.

Janssen Pharmaceuticals, Inc., Johnson & Johnson  
Co., Janssen Research and Development LLC,  
Eucerpta Medica Inc., and Elsevier, Inc.

Defendants.

---

: PHILADELPHIA COUNTY  
: COURT OF COMMON PLEAS  
: TRIAL DIVISION

: April Term 2013  
: No. 1990

**AFFIDAVIT OF THOMAS R. KLINE, ESQUIRE**

I, Thomas R. Kline, hereby affirm the following to be true under the penalties of perjury:

1. I was trial counsel for the Plaintiffs in the above-referenced case and present in the courtroom when the jury rendered its verdict.

2. After the verdict was read by the foreperson, the jurors were individually polled and it was established that the jury voted in favor of the plaintiff 10-2.

3. In the presence of all counsel, Judge Powell thanked the jury for its service from the bench (as Judge Powell previously had done with the alternate jurors).

4. Judge Powell then stepped down from the bench to the edge of the jury box and handed each juror a certificate evidencing his or her service. He shook hands with individual jurors as he handed out the certificates, thanking each individually.

5. One of the jurors asked Judge Powell to participate in a photograph and Judge Powell agreed. The jurors motioned the judge to come further into the jury box so


they could take a photo with him in the middle of the group. I was standing at the counsel table closest to the jury box and offered to take the photo. All of the jurors participated in the photo, including the two who voted against the verdict.

6. Mr. Winter and Ms. Johnson were present the entire time. They raised no objection to the taking of a photo, no objection to the people included in the photo, and no objection my taking the photo.

7. There was no "high five" between Judge Powell and any juror that I observed. Judge Powell shook hands with jurors and thanked them for their service and obliged them with a photo, which I later forwarded to the court officer.

8. I certify pursuant to Pa.C.S. § 4904 that the foregoing is true and correct.

Dated: October 28, 2019



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Thomas R. Kline

# **EXHIBIT “C”**

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*In re Risperdal Litigation*

---

Nicholas Murray,

Plaintiff,

v.

Janssen Pharmaceuticals, Inc., Johnson & Johnson  
Co., Janssen Research and Development LLC,  
Excerpta Medica Inc., and Elsevier, Inc.

Defendants.

---

: PHILADELPHIA COUNTY  
: COURT OF COMMON PLEAS  
: TRIAL DIVISION

: April Term 2013  
: No. 1990

**AFFIDAVIT OF JASON ITKIN, ESQUIRE**

I, Jason Itkin, hereby affirm the following to be true under the penalties of perjury:

1. I was trial counsel for the Plaintiffs in the above-referenced case and present in the courtroom when the jury rendered its verdict.

2. I have read the affidavit of Thomas R. Kline, dated October 28, 2019, and adopt and concur with its contents.

3. I certify pursuant to Pa.C.S. § 4904 that the foregoing is true and correct.

Dated: October 28, 2019

  
\_\_\_\_\_  
Jason Itkin

**EXHIBIT “D”**

---

*In re Risperdal Litigation*

---

Nicholas Murray,

Plaintiff,

v.

Janssen Pharmaceuticals, Inc., Johnson & Johnson  
Co., Janssen Research and Development LLC,  
Excerpta Medica Inc., and Elsevier, Inc.

Defendants.

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:  
: PHILADELPHIA COUNTY  
: COURT OF COMMON PLEAS  
: TRIAL DIVISION  
:

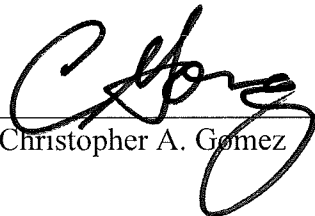
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: April Term 2013  
: No. 1990  
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**AFFIDAVIT OF CHRISTOPHER A. GOMEZ, ESQUIRE**

I, Christopher A. Gomez, hereby affirm the following to be true under the penalties of perjury:

1. I was trial counsel for the Plaintiffs in the above-referenced case and present in the courtroom when the jury rendered its verdict.
2. I have read the affidavit of Thomas R. Kline, dated October 28, 2019, and adopt and concur with its contents.
3. I certify pursuant to Pa.C.S. § 4904 that the foregoing is true and correct.

Dated: October 28, 2019

  
\_\_\_\_\_  
Christopher A. Gomez