

THE LEGAL OUTLOOK

April 2016 | Volume 8 | Issue 4

FOLLOW AND INTERACT WITH US ONLINE



INSIDE THIS ISSUE

- ⇒ **Distracted Driving Awareness**
- ⇒ **Your Worker's Comp Doctor is Not your Doctor**
- ⇒ **Messa & Sweeney Lead CLE Courses**
- ⇒ **Around the Office**

“A strong man stands up for himself, but a stronger man stands up for others.”

STEVE OEDEKERK

NEW JERSEY BASED MATTRESS MANUFACTURER, DREAM WELL, REACHES \$1M SETTLEMENT WITH CATASTROPHICALLY INJURED VICTIM OF NEGLIGENCE



Last Tuesday, Dream Well, a mattress manufacturer based in New Brunswick, New Jersey, agreed to pay Juan Rosado, a former delivery truck driver, \$1 Million to compensate Rosado for injuries and damages he suffered after he was run down by a forklift operator employed by Dream Well in 2012. The settlement agreement was reached just as jury selection for trial was to begin.

On January 4, 2012, Rosado was supervising the unloading process of his truck on Dream Well's loading dock when forklift operator, Marco Antonio, slammed into Mr. Rosado at a high speed, knocking him down and running him over. Antonio stopped the forklift truck with a wheel on Mr. Rosado's right leg, crushing tissue and fracturing multiple bones. Antonio then reversed the forklift, "de-gloving" the skin and tissue from Rosado's leg, ankle, and foot. These injuries required multiple hospitalizations and surgeries to repair the fractures and to graft skin onto the foot and ankle, therapeutic treatments, and the ultimate amputation of multiple portions of Rosado's right foot.

In the lawsuit, Mr. Rosado claimed that Dream Well was negligent in failing to provide safety training and instructions to Antonio or any other forklift operator employed by the company, and in failing to establish policies and procedures for the safe loading and unloading of trucks at its facility. Mr. Rosado also maintained that Dream Well is vicariously liable for the negligent operation of the forklift truck by its employee Marco Antonio, who operated the forklift at a high rate of speed while using a cellphone, and failed to keep lookout for other persons in the loading area.

Continued on inside cover



Every year, the **National Safety Council** (NSC) promotes *Distracted Driving Awareness* during the month of April. This year, the council's distracted driving campaign, *Take back your drive*, focuses on the dangerous and often deadly habit of using cell-phones while operating a vehicle for anything from answering calls or dictating text messages to taking pictures or updating social media. The aim of the council's 2016 initiative is to *empower* drivers to put safety first.

The NSC aims to use their 2016 campaign to help educate drivers of the risks associated with cell-phone use while driving. The council also wants drivers to realize that hands-free devices are not safer than hand held devices, as phone conversations while driving still provide a significant cognitive distraction. According to the NSC website, the brain remains distracted for up to 27 seconds after dialing, changing music, or sending a text message using vocal commands.

Additional statistics state that cell phone use while driving leads to 1.6 million crashes and 330,000 injuries a year. Eleven teens die EVERY DAY as a result of texting while driving.

As part of the campaign, the NSC urges drivers to take the Focused Driver Challenge and pledge to not;

1. Have a phone conversation – handheld, hands-free, or via Blue-tooth;
2. Text or send Snapchats;
3. Use voice-to-text features;
4. Update social media;
5. Check or send emails;
6. Take selfies or film videos;
7. Input destinations into GPS (while the vehicle is in motion); and
8. Call or message someone else when I know they are driving.

SETTLEMENTS & VERDICTS

Irene M. McLafferty earned a **six-figure confidential settlement** on behalf of the daughter and son of a deceased man who endured pain and suffering due to medical negligence. Negligent treatment led to the development of multiple Stage I-IV bedsores which led to infection and illness and, ultimately, contributed to the patient's demise.



Joseph L. Messa Leads Discovery Presentation in Atlantic City, Thomas N. Sweeney Presents *What It's Worth* CLE Course in Philadelphia



In addition to trying cases on behalf of injured clients, the attorneys of Messa & Associates are often busy giving back to the tri-state area community and, this month in particular, its legal community. From April 6th—8th, attorneys admitted to the New Jersey Bar attended the New Jersey Association for Justice's *Boardwalk Seminar*, an annual event aimed at providing up to a year's worth of continuing

legal education credits for attorneys who practice law in New Jersey. The three day event, which took place in Atlantic City, provides seminars, lecture series', talk-backs, and classes on varied aspects of practicing law that new attorneys and seasoned attorneys alike find useful and beneficial.

Joseph L. Messa, Jr., Messa & Associates founder and current President of the Philadelphia Trial Lawyers' Association, presented at this year's event on *The Dos and Don'ts of Discovery* for personal injury and medical malpractice cases. His extensive and educational presentation tackled many subjects, including document requests, written discovery, and the benefit of videotaped depositions.

On April 8th, Thomas N. Sweeney presented for the third consecutive year for the Pennsylvania Association for Justice's *WHAT'S IT WORTH?* continuing education course for attorneys, focused on evaluating and settling personal injury cases. This course included solid, experience based education on settlement conferences, hypothetical case valuations, ethical considerations, the Fair Share Act, and alternative dispute resolution.

cover, continued

The case was filed in the Superior Court of New Jersey - Middlesex County by co-counsel Richard J. Heleniak and Jenimae Almquist of Messa & Associates, P.C. Mr. Heleniak has more than 30 years of experience in handling complex personal injury matters, including medical malpractice and products liability cases. He is a member of the Million Dollar Advocates Forum, Pennsylvania Bar Association, the Pennsylvania Association for Justice, the American Association for Justice, the Philadelphia Trial Lawyers Association and the Association of Trial Lawyers of America – New Jersey. Jenimae Almquist concentrates her practice in complex personal injury litigation, representing victims of catastrophic accidents, explosions, medical malpractice and pharmaceutical products liability, as well as burn victims and individuals who have been harmed by defective products. Additionally, she is fluent in Spanish and handles cases on behalf of Spanish-speaking clients.

BREAKING IT DOWN:

YOUR WORKER'S COMPENSATION DOCTOR IS NOT YOUR DOCTOR

■ By Thomas N. Sweeney

We are all conditioned to believe that when we see a doctor, that doctor is there to help us, heal us, and has our best interests at heart. Doctors are supposed to follow the Hippocratic Oath which is, "first do no harm." Yet, there are many doctors who do not follow the Hippocratic Oath. To the contrary, some doctors make considerable amounts of money and live very comfortable lives by harming the patients they treat. They do this by overlooking or minimizing clear clinical evidence of their patients' injuries. This happens regularly in the *worker's compensation* context.

If you are injured at work, you are normally entitled to Worker's Compensation benefits. These include medical (healthcare) and indemnity (wages) benefits. Throughout the United States, employers enjoy a unique type of immunity from lawsuits when their employees get injured. Employers have worker's compensation insurance that covers the costs of healthcare and the lost wages. Employers are immune from having to pay for the pain and suffering which you experience for your workplace injuries. Because your employer has a worker's compensation insurance, it or the insurance company gets to pick the doctor you see for treatment.

Be forewarned. This doctor does not work for you. This doctor will likely

claim that they are "independent." Don't believe them. They work for the insurance company and their goal is to *limit* the amount of medical care you receive. It is important that you are honest with this doctor, but keep in mind that this doctor is looking for ways to make sure you receive less medical care or indemnity benefits. This doctor is not there to help you.

There is a natural interest on the part of the insurance company to stop paying for your benefits and your worker's compensation doctor is working on behalf of that insurance company. The consequence of this medical treatment will have an impact if you are receiving lost wages or ongoing medical care.

And there is more.

Your worker's comp doctor's opinions can have a considerable negative impact if you have a third party claim against someone other than your employer. You need to be aware that the defendant in your third party case will use these insurance-driven medical diagnoses against you.

If you say something to your worker's compensation doctor, you have to assume the defense lawyer will find out. Defense lawyers in your third party case will attempt to argue that the "independent" medical exam in the worker's compensation case establishes that you are not really injured, can go back to work

or did not suffer long-term effects from the injury. These insurance-driven opinions can seriously undermine your ability to recover in a third-party case in which you can recover "pain and suffering" damages.

What are you to do?

If you see a worker's compensation doctor who claims that you are not that injured or that you can go back to work (and you know differently), you have to immediately contact the lawyer who is handling your case. If you hear from the worker's compensation insurance doctor that you can "return to work," again, immediately contact your lawyer handling the third party case to set up an appointment to see a doctor whose first allegiance is not to an insurance company, but to your well being.

Your lawyer handling the third party case will ensure you see a doctor who upholds the Hippocratic Oath. Your worker's compensation doctor is not that person. Do not believe it.



Thomas N. Sweeney
(tsweeney@messalaw.com)
is a medical malpractice and personal injury attorney representing catastrophically injured clients in Pennsylvania, New Jersey, and throughout the United States.

AROUND THE OFFICE



This April, we have three birthdays to celebrate at Messa & Associates. Happiest of birthdays to attorney Justin L. Groen (28th), secretary Caroline James (20th), and office assistant Marialaina Fichera (25th). Happy Birthday!

The Attorneys of Messa & Associates attended the New Jersey Association for Justice's annual Boardwalk Seminar this month, held in Atlantic City, NJ. Attorneys had the opportunity to obtain necessary continuing education credits and to attend lectures and presentations by renowned local, regional, and national legal speakers.

Many congratulations to Jenimae Almquist and her husband, Bruce, on the purchase of their new home in Camden County, New Jersey. Jenimae and Bruce have been searching for a long time for their dream, Spanish-style home outside of the city and we are ecstatic that they've found it! Congrats and good luck!

MAIN LOCATIONS

PHILADELPHIA
123 S 22nd St
Philadelphia, PA 19103
P: 215-568-3500

CHERRY HILL
2091 Springdale Rd.
Suite 2
Cherry Hill, NJ 08003
P: 856-810-9918

SATELLITE LOCATIONS

COLLINGSWOOD
475 White Horse Pike
Collingswood, NJ 08107
P: 856-833-0600

GERMANTOWN
6000-6002 Germantown Ave
Philadelphia, PA 19144
P: 215-844-1614

CONSHOHOCKEN
923 Fayette St.
Conshohocken, PA 19246
P: 215-940-7700

LINWOOD
605 New Road
Linwood, NJ 08221
P: 609-601-1644

ROSELLE
520 West First Ave
Roselle, NJ 07203
P: 908-300-3900

Messa & Associates

TRIAL ATTORNEYS WITH A REPUTATION FOR RESULTS