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Consumer News:

RECALL REPORT



Wal-Mart My Sweet Love/My Sweet Baby Cuddle Care Doll

The My Sweet Love / My Sweet Baby electronic baby doll is packaged with a toy medical check-up kit including a stethoscope, feeding spoon, thermometer and syringe. The doll's electronics cause her to babble when she gets "sick," her cheeks turn red and she starts coughing. Using the medical kit pieces cause the symptoms to stop. The circuit board in the chest of the doll can overheat, causing the surface of the doll to get hot, posing a burn hazard to the consumer

Incidents Reported: 12 (2 burns)

Contact Wal-Mart Stores at (800) 925-6278 or online at www.walmart.com and click on **Product Recalls** for more info.

Messa & Associates Settle Nursing Home Injury Cases

Nursing home injuries happen everyday. Injuries such as falls, fractures, bedsores, and infections can indicate a lack of attention and care that the patient is receiving and a cause for concern. In most cases, injuries worsen the condition of the patient making it more difficult for them to recover. The attorneys at Messa & Associates has represented families of nursing home injury victims. These are two of the firm's most recent settlements.

\$393,750 settlement in a Camden County, New Jersey nursing home case where a woman suffered multiple falls because the facility failed to perform proper assessments and implement basic fall precautions. One of the falls resulted in a fractured knee that went undiagnosed for several days due to negligent treatment and care.

Due to facility's failure to evaluate the injury and subsequent delay in diagnosis and treatment, the woman's physical condition declined and she was hospitalized due to poor intake, dehydration and hypotension. When the injury was finally diagnosed at the hospital, she underwent surgery but was too weak to return to baseline and died shortly thereafter. She was only 79 years old at the time of her death.

\$350,000 settlement for the family of a 90-year-old woman who fractured her leg after being improperly transferred for a bath by staff at a long term care facility. Despite specific instructions listed in the woman's care plan requiring her to be transferred with a Hoyer lift, she was transferred manually by an aide and an untrained janitor from the housekeeping department at the facility. The woman ultimately suffered a femur fracture during the transfer which was not promptly diagnosed or treated. The woman's broken leg caused her tremendous pain and increasing immobility. She died four months later from unrelated causes.

Although it can be a difficult decision to make, there are times when nursing home care for your loved one is necessary. Having as much detail as possible about the facility can help ease your concerns about potential injuries or abuse. Here are some tips to help prevent nursing home abuse injuries to your loved one:

- * *Do not be afraid to ask questions about your loved one and their care.*
- * *Ask to be present for all care plan meetings with the Administrator.*
- * *Inspect your loved one's skin for blemishes, bruising, broken skin, puss, and oozing.*
- * *Ask the staff to remove bandages so you can see what they are "covering up".*
- * *Make visits to the nursing home at the varying times on different days each week.*
- * *Quickly go up the chain of command to nursing supervisors, the Director of Nursing, and the Nursing Home Administrator if your concerns are not being addressed.*
- * *Put your concerns in writing to the Administrator.*
- * *Take photographs of anything that looks suspicious, especially problems with your loved one's skin.*

JUSTICE CANNOT BE FOR ONE SIDE ALONE, BUT MUST BE FOR BOTH.

ELEANOR ROOSEVELT

MEET THE ATTORNEYS

Lee D. Rosenfeld



Q: Lee – when did you decide to be a lawyer and why?

A: When my hand modeling career didn't take off in the early mid 1990's. Seriously.

Q: What is your favorite movie of all time?

A: Oh please, The Empire Strikes Back like everyone else.

Q: What do you miss most about life without cellphones?

A: Being off the grid, even just for a minute. I miss the quiet sometimes.

Q: What is the biggest challenge you face as an attorney?

A: Making sure that all of my clients receive the highest level of representation at all times.

Q: What was your funniest rookie mistake?

A: I once appeared in Court wearing a different color belt than my shoes, but I don't want to talk about it.

Q: What do you consider your proudest moment as an attorney?

A: Any hug that I get from a client after hearing a verdict in their favor.

Q: What is the most exciting item on your bucket list?

A: To travel through China.

Q: If you weren't an attorney – what do you think you'd be doing

A: I would love to work in the technology field.

PHILADELPHIA MAN SUES TABLE SAW MANUFACTURER AFTER GRUESOME INJURY

Alex Mai of Philadelphia has retained attorneys Thomas N. Sweeney and Joseph L. Messa, Jr. of Messa & Associates, P.C. to represent him in a products liability case against Ryobi Technologies, Inc. ("Ryobi") and One World Technologies, Inc. ("OWT"). Ryobi and OWT design, manufacture, and sell a defective table saw that severed Alex Mai's right middle finger.

On March 25, 2012, Mai was working on a construction site when a Ryobi/OWT table saw amputated his right middle finger and caused severe lacerations to his thumb, right fingers, and hand. Mai was 19 at the time of the injuries and has lost full use of his dominant hand.

"Ryobi and One World Technologies were incredibly negligent in their failure to incorporate available technologies that prevent injuries like the one my client endured," said attorney and Messa & Associates founder Joseph L. Messa, Jr. "Table saws cause over 35,000 injuries a year and Ryobi and OWT are actually lobbying to prevent these safety precautions

from becoming industry standards. My hope is not only to earn my client a substantial award, but to push Ryobi, OWT, and other table saw manufacturers in the direction of consistently incorporating necessary safety measures in their design to ensure that injuries like these stop happening."

Available and relatively inexpensive table saw technology exists which can detect the presence of human flesh and stop the saw blade within five milliseconds of detection. This technology, which uses electrical conductivity, can prevent virtually all table saw flesh injuries. Alex Mai has filed a Complaint in the Philadelphia Court of Common Pleas against Ryobi and OWT for failing to utilize the available technology. Alex Mai contends that the Ryobi and OWT table saw was unreasonably dangerous because it did not include the inexpensive safety technology which would have prevented his injuries.

Flavor of the Month: Distracted Driving

April is Distracted Driving Month the attorneys at Messa & Associates encourage drivers to take extra caution while driving as this month brings distracted driving to the center of attention. According to the National Safety Council, thousands of people die each year because of car accidents that result from distracted driving. The most common type of distracted driving is the use of cell phones while driving, either handheld or hands-free.

Here are a few things the National Safety Council suggests that you remind your loved ones of and that put into practice yourself to help decrease the number of distracted drivers on the road;

- Refrain from using cell phones while driving
- Recognize that hands-free devices offer no additional safety benefit
- Realize the dangers of the cognitive distraction to the brain
- Talk to others about the dangers of cell phone distracted driving

In addition to talking on a cell phone, distracted driving can also include other activities such as texting, grooming, using a navigation system, eating, drinking or anything else that diverts a driver's attention from the road. According to reports, more than 421,000 people were injured nationwide in 2012 as a result of motor vehicle accidents where a distracted driver was involved. Some states have passed laws banning texting and/or cell phone use while operating a motor vehicle. In Pennsylvania, drivers have been banned from texting while driving since March 2012. Although there is no statewide ban prohibiting talking while driving, Philadelphia, Erie, Harrisburg and Wilkes-Barre all have banned the use of handheld cell phones.

BREAKING IT DOWN

'TIS THE SEASON FOR PLAYGROUND INJURIES

■ By Noelle L. Palazzo

Spring has finally sprung and after this snowy winter, parents are happy to finally be able to get their children out of the house to engage in outdoor activities, which typically include lots of playground visits. Although we know that these visits are likely to result in the occasional bruise and scraped knee, which we can easily treat with some Neosporin and a Band Aid, what is not expected is our child leaving a playground with a severe and serious injury, such as a bone fracture, dislocation, severe head injury, or even death. Although we would like to be able to trust that our children are safe while on the playground, playground injuries are unfortunately much more common than we may think.

According to the Centers for Disease Control and Prevention (CDC), each year hospitals treat more than 200,000 children, ages 14 and younger, for injuries sustained on the playground. Approximately 45 percent of those child injuries are severe, including fractures, concussions, brain injuries, dislocations and internal injuries. Sadly, around 15 children die each year as a result of injuries sustained on the playground. The Consumer Product Safety Commission (CPSC) received reports of 147 deaths involving children under age 15 in a 10 year period. Over half of those deaths involved hanging, with other causes of death including falls, equipment tip over, equipment collapse and impact with moving parts.

Under the theory of premises liability, the persons or entity who own and/or maintain the playground your child is play-

ing on has a duty to maintain the playground with due care and to follow the rules for safety established by the CPSC. Duty of care and the rules of the CPSC apply to playgrounds in most states, including those in Pennsylvania. Playgrounds at schools, day-care centers, recreational centers maintained by private or public entities, and playgrounds on private property, including those found in fast food restaurants and retail stores, all owe a duty to operate and maintain a safe playground. According to the CPSC, playground hazards which can lead to accidents and cause injuries often involve unsafe or defective playground equipment, unsafe maintenance of the playground equipment, unsafe surfacing beneath the playground equipment, inappropriate height of the playground equipment, and failure to post proper signage advising of the dangers in connection with the use of the playground equipment.

Recent playground injury data has revealed that the lack of proper supervision is considered a "contributing factor in playground injuries over 40% of the time." Under the theory of negligent supervision, a person or entity who has accepted the responsibility of watching your child, including at school, daycare and/or camp, can be held liable for injuries to your child as a result of a playground incident due to a lack of supervision. Teachers and staff typically have a heightened duty of care toward your child because they are acting *in loco parentis*, which is Latin for "in the place of parents," at school. As such, they must have an effective system of supervision in place to keep students safe and take reasonable steps to prevent foreseeable harm to students.

In addition to a cause of action stemming from negligence, there is also the possibility of recovery for playground injuries under a product liability cause of action. Manufacturers of playground equipment are required to meet safety requirements long before their products hit the sales floors. Unfortunately, design defects, manufacturing errors, improper installation of equipment and inadequate product label warnings can cause catastrophic and even life-threatening injuries to children on the playground. Under the theory of strict liability, responsibility regarding products, including playground equipment, lies with each company that has a part in making it a consumer good. This includes not only the manufacturer of the playground equipment, but also with its designer, seller and marketer.

Messa & Associates, P.C. specializes in the handling of all types of personal injury matters. Our attorneys have obtained verdicts and settlements for several playground related injury cases, including a settlement in the amount of \$5.75 million dollars for the family of a 2-year old girl who sustained a hypoxic brain injury and cardiac arrest, which caused her death a few days later, after becoming wedged under a jungle gym in the outside playground area at her Philadelphia day care as the result of negligent supervision by her teachers. If you and/or a loved one have sustained a playground-related injury, please contact us at 1-877-MessaLaw.

Noelle L. Palazzo, (npalazzo@messalaw.com), is a junior associate at Messa & Associates, representing medical malpractice and personal injury clients throughout PA and NJ.



Settlements and Verdicts

Confidential

\$900,000 settlement in a Philadelphia County medical malpractice action for the family of a 58-year-old man who died as a result of heart attack.

The day before his death, the man went to his primary care physician complaining of back and chest pain as well as numbness in his hands. He complained of chest pain radiating into his arm. Despite abnormal EKG results and a family history of early heart disease, his physician failed to send him to the hospital for emergency care or more definitive testing.

The following day, he was rushed to the hospital via ambulance. He was unable to be resuscitated, and died of a heart attack.

AROUND THE OFFICE



Messa & Associates attorney Jenimae Almquist attended Congreso's Gala Latina last month in support of Ken Trujillo, former city solicitor and 2015 mayoral candidate hopeful. For the last 35 years, Congreso has served Philadelphia's Latino community through education, employment, health, and social services.



Marketing Coordinator, Angela Leone, is set to star in two musicals this summer. She will play *Angela* in the 2012 revival of *Godspell* at the **Ritz Theatre** in Oaklyn, NJ from June 5—June 14. After that, she will star as *Melpomene* in **Mazeppa Productions'** *Xanadu* from July 9—July 26 in Philadelphia.



Johnson & Johnson subsidiary Janssen Pharmaceuticals settled 76 cases filed in the Philadelphia Court of Common Pleas in which babies born to mothers who took the anti-seizure drug Topamax while pregnant suffered birth defects. Eric H. Weitz was counsel for the plaintiffs' mass tort cases.

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