

The Legal Outlook

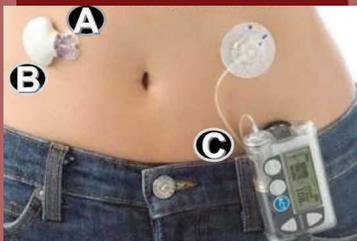
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Consumer News:

RECALL REPORT



Medtronic Infusion Pumps
Linked to 14 Deaths

The Facts:

Device: SynchroMed Implantable Infusion System, an implantable device used to deliver pain and other medications

Injuries: 14 deaths related to four potential flaws in the device

Recall: Class I, denotes potential life-threatening issues

For additional information, visit our blog at www.messalaw.com/blog

Joseph L. Messa Elected As PTLA Vice President



Joseph L. Messa, Jr., founding attorney of Messa & Associates, has been elected as Vice President of the Philadelphia Trial Lawyers Association.

Mr. Messa was elected by the members of the board and will serve a one-year term under new PTLA president, Nancy Winkler.

When asked about his new office as vice president, Mr. Messa let us know that he is,

"...excited to take on a leadership position for an organization that continuously fosters an environment for attorneys to impact the lives of the good citizens of Philadelphia. I enjoyed my tenure as treasurer and I now look forward to taking on this new role and continuing my service to this distinguished organization."

Mr. Messa is a member of the Bars of the Supreme Courts of Pennsylvania and New Jersey, the U.S. District Court for the Eastern District of Pennsylvania and the U.S. Court for the District of New Jersey, as well as the U.S. District Court for the District of Colorado, and the First, Third, and Sixth Circuit Courts of Appeals. He received his juris doctorate, *cum laude*, from Temple University School of Law in 1988.

In addition, he is an active member of the American Association for Justice; American Bar Association; Pennsylvania Association for Justice; New Jersey Association for Justice, Philadelphia, Camden, and Burlington County New Jersey Bar Associations; and the Justinian Society.

Mr. Messa is an AV-rated attorney, listed in the Bar Register of Preeminent Lawyers. He is a member of the Million Dollar Advocates Forum and was named a Top 100 Trial Lawyer by *The National Trial Lawyers*. Mr. Messa is also an advocate of the American Board of Trial Advocates. He has been recognized as a Pennsylvania Super Lawyer in 2009, 2010, 2011, 2012 and 2013 and was selected to the Top 100 Pennsylvania and Top 100 Philadelphia lists for 2012 and 2013.

Mr. Messa has successfully litigated multiple serious injury cases to seven- and eight-figure verdicts and settlements in medical malpractice, products liability, fire and burn injury and construction/work injury matters.

The Philadelphia Trial Lawyers Association is the oldest trial lawyer organization in Pennsylvania. The organization seeks to protect the rights of all individuals.

INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE.

MARTIN LUTHER KING, JR.

MEET THE ASSOCIATES

Eric H. Weitz



Q: If you had one super power, what would it be?

A: I would force people to always tell the truth.

Q: If you could have a drink with one person from history, who would it be?

A: Bill Clinton

Q: Describe yourself in 3 words.

A: Down-to-earth.

Q: What's the best thing about being a lawyer?

A: Being able to make a real difference in people's lives.

Q: What is your proudest moment in court?

A: Winning insurance coverage for a large group of sick children that were being denied coverage.

Q: What about your most embarrassing moment?

A: I showed up in New Jersey for my first court appearance EVER drenched head-to-toe after getting a flat tire in the pouring rain.

Q: What would you do if you weren't a lawyer?

A: I'd be the head of NBC.

Q: What is your favorite thing to do outside of work?

A: Spend time with my family.

SAFETY TIPS FOR THE SUMMER

During the summer months, millions of families will take part in traditional summer activities such as swimming, grilling and enjoying fireworks with loved ones. In some cases, these activities can cause serious injuries especially with children. Messa & Associates has compiled some safety guidelines for your family to keep in mind while enjoying your summer.

Practice Water Safety

- Teach your child to swim.
- Never leave children alone while they are swimming or near water.
- If your child is missing, check the pool first.
- Make sure safety equipment, such as rings or floats, are available and easily accessible.
- Keep children away from drain covers, pipes or other openings to avoid entrapment.
- Cover your pool when not in use, especially if you have small children or animals.
- Make sure your pool drain cover has been properly certified.
- Install a four-foot fence around your pool and use self-closing and self-latching gates.
- Increase security with the use of pool alarms.

Tips for Grilling Safely

- Never use a grill that has been recalled.
- Visually inspect the hoses on a gas grill for cracking, brittleness, holes and leaks. There should be no sharp bends in the hose or tubing and all connections should be secure.
- Check for propane gas leaks.
- Reduce the risk of flare-ups and grease fires by cleaning the grill and grease trap often.
- Use grills outside and only in well-ventilated areas.
- Never use a grill indoors or in a garage, breezeway, carport, porch or under a surface that will burn. Gas and charcoal grills present a risk of fire and/or carbon monoxide poisoning that could result in injury or death.
- Never leave a grill unattended.
- Keep the grill hoses as far away as possible from hot surfaces and dripping hot grease.



Flavor of the month

FIREWORKS! **Not safe for kids**



Fireworks can be dangerous, causing devastating and permanent injuries when used in a private setting. According to the CPSC, approximately 30% of the injuries caused by fireworks in 2012 were to children under the age of 15. In the same year, an estimated 12,000 people were treated in emergency rooms for injuries associated with fireworks. Firecrackers caused the most injuries, followed by sparklers, then bottle rockets.

The CPSC suggests adult supervision always be used when children are using fireworks, even sparklers. They also recommend keeping a bucket of water nearby and observing any local laws to use fireworks more safely. However, the American Academy of Pediatrics says that **children and their families should attend public fireworks displays** rather than purchase fireworks for home use. That is the only way to avoid a potential fire or burn injury that could come of using fireworks at home.

BREAKING IT DOWN

Immigration and the law: Do “aliens” have rights?

As debate begins on immigration reform in Congress, I recall a visit to a South Philadelphia library, where I watched a Latina woman struggle to sound out words in a child’s phonics book. Like many of my clients, she may have come to this country to find a better life. Yet only a few blocks away from that library is a sign that says “Press 1 for English, 2 for deportation.” After representing many undocumented workers, I know that they are forced to live in the shadows, fearing return to war-torn or impoverished countries. Some of my clients came here to avoid starvation. Several have asked me to make arrangements should they suddenly disappear, leaving their children behind.

Should the courthouse doors be open only to those who were born here? Do basic human rights differ depending upon your green card status? The preamble to the Constitution does not purport to refer only to citizens; it says that all “men” are created equal, not that “all citizens are created equal.” After all, the poem at the base of the Statue of Liberty invites the “huddled masses, yearning to breathe free” to come to our shores in search of opportunity.

So let me settle this question once and for all: humans, no matter where they were born, have access to our courts for wrongs that occur in the United States. As a case in Pennsylvania federal Court explained nearly

40 years ago, upholding a factory worker’s right to sue for his injuries:

.. **28 U.S.C. § 1332(a)(2)**, . . . *allows an alien the right to sue any United States citizen, whether both are domiciled in the same state or not. Thus an alien enjoys a greater right to bring suit in federal court than that given United States citizens.*

Hagl v. Jacob Stern & Sons, Inc., 396 F. Supp. 779, 782 (E.D. Pa. 1975). Similarly, injured individuals in New Jersey have a right to sue in state court precisely because the fifth and fourteenth amendments to the Constitution, (which give rise to due process rights), refer to “person” and not “citizen.” *Montoya v. Gateway Ins. Co.*, 401 A.2d 1102 (N.J. App.Div. 1979).

Many citizens do not realize that the IRS agrees not to report undocumented persons to immigration authorities if they file taxes under an Individual Taxpayer Identification Number (ITIN), meaning that our government is perfectly content to accept tax monies from so-called aliens without affording the full benefits of citizenship. This is analogous to an employer who wants to pay cheaper wages to undocumented workers, but cries foul and seeks to avoid just compensation when that worker gets hurt.

Several courts have reasoned that employers cannot violate federal law by ignoring immigration status at the time of hiring, and then turn around and deny benefits when the worker is injured. See e.g. *Majlinger v. Cassino Contr. Corp.*, 25 A.D.3d 14, 28-32 (N.Y. App. Div. 2005). Similarly, the Pennsylvania Commonwealth Court upheld an undocumented worker’s right to lost wages in a workers’ compensation claim. *Reinforced Earth Co. v. Workers’ Compensation Appeal Bd. (Astudillo)*, 749 A.2d 1036 (Pa. Commw. Ct. 2000).

When I sue corporate defendants that have wreaked havoc upon the lives of a family by marketing a defective drug, manufacturing a faulty machine, or failing to adopt safety procedures to ensure proper medical care, I become outraged that the rights of corporate entities are often more highly valued than those of a foreigner. With both major political parties courting the Latino vote, and the numbers of Spanish-speaking and other immigrants dramatically rising every year, I hope to continue to represent human beings -- no matter their country of origin -- in suits to protect their rights.

Jenimae Almquist . Esq. is a products liability and medical malpractice attorney, representing English and Spanish speaking clients for *Messa & Associates* throughout Pennsylvania and New Jersey.



Settlements and Verdicts

Confidential

\$275,000 settlement for a premises liability action on behalf of a woman who tripped and fell in a school driveway. Parts of the driveway contained broken and deteriorated pieces of concrete, causing her to fall. She suffered a right shoulder injury that is irreparable.

Confidential

\$350,000 medical malpractice settlement for a physician’s failure to diagnose scoliosis in his patient who was a minor child at the time. The child had been a patient of the doctor’s since birth, and did not receive regular screenings for the spinal curvature condition. The physician repeatedly failed to diagnose the spinal deformity despite the fact that the child exhibited signs consistent with the onset or future onset of scoliosis. Additionally, the pediatrician was provided with a note from a routine scoliosis screening done at school indicating that the child had a significant spinal curvature. Shortly after treating with a new physician, the child was diagnosed with idiopathic scoliosis and underwent surgery to correct severe scoliosis.

AROUND THE OFFICE



Elaine Hopkins' daughter, Jayme, married William Allison on Saturday, June 1, 2013. The ceremony and reception were celebrated at Adelphia's in Deptford, New Jersey. Congratulations to the new **Mr. and Mrs. Allison!** We wish you a lifetime of happiness.



Internet Marketing Coordinator, Angela Leone, is starring as 'Kate Monster' in Philadelphia's premier production of Tony-award winning musical, **Avenue Q!** The show runs July 10-27. For tickets, visit www.mazeppaproductions.org or call 267-559-9602.



On Monday, July 8th, attorneys and staff enjoyed a 3-2 Phillies win over the Washington Nationals at the Annual Messa & Associates staff outing at Citizen's Bank Park. Based on those big smiles, looks like everyone had a great time!

Go Phillies!

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