

THE LEGAL OUTLOOK

March 2016 | Volume 8 | Issue 3

FOLLOW AND INTERACT WITH US ONLINE



INSIDE THIS ISSUE

- ⇒ Brain Injury Awareness
- ⇒ Medical Malpractice Legitimate Claim for Third Party Injuries
- ⇒ Settlements & Verdicts
- ⇒ Recall Report—Toy Trucks
- ⇒ FBI starts investigation of South Boston PD

“Spring is nature’s way of saying, ‘Let’s Party!’”

ROBIN WILLIAMS

MEDICAL DEVICES CAUSING CANCER IN WOMEN



A Republican Congressman out of the 8th District of Pennsylvania, Michael Fitzpatrick, is calling on the U.S. Food and Drug Administration (FDA) to investigate a number of deaths linked to the use of a popular surgical device for gynecological procedures including hysterectomies and uterine fibroid

removals. The congressman is also calling for a criminal investigation into the device’s manufacturer, Johnson & Johnson subsidiary, Ethicon.

Power morcellators are drill like devices used by surgeons to, very literally, cut-up the uterus and uterine fibroids before removing them.

In November 2014, the FDA added a serious warning to the packages of Ethicon power morcellators, stating that the devices could potentially spread or upstage (advance) undiagnosed uterine cancer.

According to the FDA’s calculations, as many as 1 of every 350 women could suffer the spread of uterine cancer after use of the device. Shortly after the issuance of that warning, Ethicon pulled the morcellators off the market.

Just over a year later, Congressman Fitzpatrick sent a letter to George Karavetsos, a Director in the FDA’s Office of Criminal Investigations, questioning whether there was factual evidence that hospitals had properly reported adverse events regarding the dangerous devices.

Continued, page 3

Toy Trucks sold EXCLUSIVELY at Dollar General Recalled for Fire Hazards



Popular discount chain, Dollar General, has recalled about 27,000 units of Chinese manufactured remote controlled toy trucks – specifically, an excavator and shovel loader – after reports of the remote control overheating.

The recalled trucks were sold in Dollar General stores nationwide and online at www.dollargeneral.com for \$10 from July 2015 to December 2015. The trucks are made of plastic and painted orange with black and orange wheels. Both recalled trucks have tracking codes located on the back of the battery compartment that read 90RWE15. So far, no

injuries have been reported. Consumers are urged to immediately remove the toy trucks from the possession of children and contact Dollar General for a full refund. Customers with questions should contact Dollar General, toll-free, at 800-678-9258 between 8 a.m. and 5 p.m., central time. Customers may also e-mail custsv@dollargeneral.com.

BREAKING IT DOWN: MEDICAL MALPRACTICE A LEGITIMATE CLAIM FOR THIRD PARTY INJURIES

By Angela Leone

A hypothetical scenario: An ER physician administers pain medication to an emergency department patient. The physician then discharges the patient without warning them that the pain medicine they ingested seriously impairs their ability to operate a motor vehicle. The patient gets behind the wheel of their vehicle, under the influence of pain medication, and gets into a car accident, injuring another motorist. Are the ER physician and the hospital liable for the third party motorist's injuries? The New York State Court of Appeals says yes.

Man Sues Hospital for Injuries Sustained in a Car Accident

In actuality, the above scenario is not hypothetical at all. It is the factual basis of *Davis v. South Nassau Communities Hospital*.

Lorraine Walsh presented to the South Nassau Communities Hospital Emergency Department on March 4, 2009 complaining of stomach pain. After an evaluation, a physician administered Dilaudid pain medication and discharged Ms. Walsh shortly thereafter.

The physician failed to warn her that Dilaudid is a very heavy pain medication that can cause severe drowsiness, nor did he advise her that operating a motor vehicle would be dangerous while under the influence of the drug.

While driving home, Ms. Walsh crossed into oncoming traffic and struck the vehicle of Mr. Edward Davis. Mr. Davis was injured in the accident. Edward Davis sued the hospital and treating physician for medical malpractice, claiming that they were both guilty of a failure to warn, making them medically negligent and liable for his damages.

The defendants moved to dismiss the suit on the basis that Davis' claim lacked legal merit and the court agreed; the case was dismissed.

Davis appealed the decision to the Appellate Division who agreed with the judgement of the trial court. The Appellate Division, as part of their decision, said that the defendants (medical providers) had no duty to prevent injuries to third parties. Davis appealed to New York's highest court – the Court of Appeals.

In a 4-2 decision, the Court of Appeals ruled that Davis' claim was, in fact,

legitimate. Justice Eugene Fahey said, *“by taking the affirmative step of administering the medication ... without warning Walsh about the disorienting effect of those drugs created a peril affecting every motorist in Walsh's vicinity.”*

Justice Fahey explained that the defendant doctor and hospital were the only entities with a professional obligation to warn Walsh of the dangers of driving under the influence of Dilaudid.

The Medical Society of the State of New York and the American Medical Association filed an *amicus curiae* brief (literally, “friend of the court” – unsolicited support of the defense) opposing the Court's decision. They made the argument that this ruling could expose medical providers to a potentially infinite number of lawsuits. Justice Fahey defended the Court's ruling, arguing that it is already a medical standard of care to provide drug warnings to patients and that this ruling imposes no additional obligations.

Power morcellators, cont'd

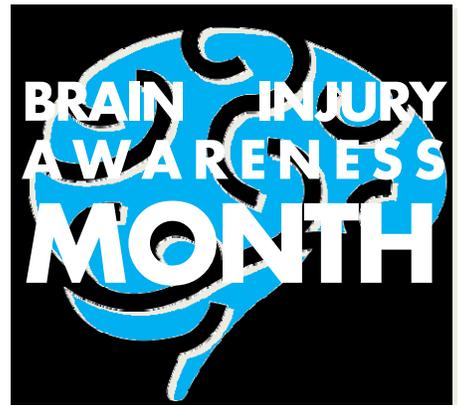
In addition to Ethicon, the congressman's letter also called for investigation into Brigham and Women's Hospital, Rochester General Hospital, and University of Rochester Medical Center, for possible failure to report deaths associated with the use of the morcellators in surgeries performed at the hospitals.

Lawsuits Filed on Behalf of Women with Upstaged Uterine Cancer after Morcellator Procedures

In a multi-district litigation, the families of thirty women diagnosed with upstaged cancer after morcellator procedures have filed lawsuits. The cases are currently consolidated before Senior Judge Kathryn H. Vratil in Federal Court in Kansas. Many additional cases are pending in state courts.

The FDA has not yet responded to the Congressman Fitzpatrick's call for investigation.

If you have suffered an injury as a result of the use of a laparoscopic power morcellator, another defective medical device, or any other type of personal injury, contact the personal injury attorneys of Messa & Associates for a free consultation.



This March, the Brain Injury Association of America (BIAA) would like to remind those who suffer from acquired and/or traumatic brain injuries that they are Not Alone. The BIAA Not Alone campaign is designed to educate the general public about the incidences of brain injury and the needs of those who suffer. Some of the statistics presented during this year's installment of the BIAA yearly initiative are quite surprising.

- Every 13 seconds, someone in the US sustains a traumatic brain injury (TBI).
- Every day, 137 people die in the US due to TBI-related injury.
- One of every 60 people in the US lives with a TBI-related disability.

Traumatic brain injuries, a form of acquired brain injury (ABI), are generally caused by trauma, which comes in many forms. Some of the most common causes include falls, motor vehicle crashes, assaults, and forcible strikes to or against the head. Other acquired brain injuries are caused by forces that are not hereditary, degenerative, or congenital, including electric shock, near drowning, seizure, stroke, and substance abuse, among others.

The BIAA wants TBI/ABI victims and their families to know that support is available and that more than 12 Million Americans live with the effects of acquired brain injury every day. If you are fighting that battle, you are truly *Not Alone*.

For more information, visit www.biausa.org. You can also follow **#NotAloneinBrainInjury** on Twitter to share your own story.

THE FBI HAS STARTED AN INVESTIGATION OF THE EVENTS LEADING UP TO THE 2013 DEATH OF LINWOOD LAMBERT , JR IN THE CUSTODY OF SOUTH BOSTON, VIRGINIA POLICE

Almost three years after an African American man was TASERED to death by police officers in South Boston, Virginia, the Federal Bureau of Investigation is opening their own investigation into whether or not police involvement in the man's death was criminal.

Linwood Lambert, Jr. was not under arrest. He was in police custody to be taken for a mental health evaluation at Halifax Regional Hospital. Upon arriving at the hospital, an agitated Lambert forcefully exited the police vehicle, bound at his wrists, and ran to the ER entrance, where he was tased multiple times by multiple officers. Officers continued tasing him while they shackled his ankles and loaded him back into the police vehicle. Lambert died in the back of the police car.

The FBI's investigation comes on the heels of much criticism of the Virginia Commonwealth attorney, who has yet to complete her own investigation of the events of Lambert's death. Gwendolyn Smalls, the sister of the deceased, is represented in a civil trial against the South Boston Police Department by Joseph L. Messa, Jr. and Thomas Sweeney of Messa & Associates, P.C.



SETTLEMENTS & VERDICTS

Richard J. Heleniak earned a confidential **\$900,000 settlement** for a client who lost the use of her right hand due to a spinal chord injury caused by her Pain Management Physician. During a series of cervical epidural injections, the defendant doctor negligently injected air into the plaintiff's spinal cord, causing permanent nerve root damage.

AROUND THE OFFICE



Lots of birthdays to celebrate at MessaLaw in March! We wish happy, happy birthdays to firm founder, Joe Messa (24th), attorneys Tom Sweeney (16th), Suzanne dePillis (27th), and Rich Heleniak (30th), and staff members Angela Leone (16th) and Adriana Mendoza (19th)!



Angela Leone, the firm's Marketing & Public Relations Coordinator, is performing in a cabaret on Saturday, April 2nd for Nightcap Cabaret, a not-for-profit production company in Philadelphia that donates proceeds to local charities. Admission is *pay what you can* at L'etage in Queen Village and the show starts at 7:30.



Many congratulations to attorney Justin Groen and his wife, Kim, who are expecting their second child, a boy, later this year! Their daughter, Jara, is "so much happy" to be welcoming a little brother into the family. Much love and happiness to the growing Groen family!!

MAIN LOCATIONS

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

CHERRY HILL
2091 Springdale Rd.
Suite 2

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

Messa & Associates

TRIAL ATTORNEYS WITH A REPUTATION FOR RESULTS