

## THE LEGAL OUTLOOK

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“It is during our darkest moments that we must focus to see the light.”

Aristotle Onassis

### JUSTIN L. GROEN EARNS RECORD MEDICAL MALPRACTICE VERDICT IN NORTHUMBERLAND COUNTY, PENNSYLVANIA



On September 22<sup>nd</sup>, a Northumberland County jury awarded \$625k in damages to 57 year-old Charles Smith of Kulpmont, PA, the victim of a misdiagnosed TIA (transient ischemic attack, or “mini-stroke”) that is now permanently disabled. The decision is the largest medical malpractice verdict awarded in PA’s Northumberland County in *at least* the last sixteen years.

On June 4, 2012, the then 53 year-old Smith presented to the emergency department at Geisinger-Shamokin Area Community Hospital with chest pain, arm numbness, shortness of breath, and undocumented headaches. Mr. Smith was at an increased risk of stroke due to prior medical history and a family history of cardiovascular disease. His medical providers were aware of these risk factors and noted them in his chart, however, defendant Dr. Jere Wagner’s medical evaluation of Mr. Smith that evening did not include a neurologic exam or an upper extremity exam to determine whether or not Mr. Smith was suffering from a stroke. After an EKG, chest x-ray, and only one troponin test, Charles Smith was discharged from the hospital by Doctor Wagner with a diagnosis of “non-cardiac chest pain.”

Five days later, on June 9, 2012, Mr. Smith was taken by ambulance to the Emergency Department at Geisinger-Danville with weakness in his left leg and left arm, left facial numbness, and decreased sensation on his left side. He was admitted with left hemiparesis and administered TPA.

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Breast cancer is the most common form of cancer among women in the United States (aside from skin cancer) and the second leading cause of death in women. There is no way to prevent breast cancer, but risk factors can be managed by limiting alcohol intake, exercising regularly, and maintaining a healthy body weight.

You may be at a high risk if: you have a known BRCA1 or BRCA2 gene mutation or a first-degree relative with a BRCA1 or BRCA2 gene mutation; had radiation therapy to the chest between the ages of 10 and 30 and have Li-Fraumeni syndrome, Cowden syndrome, or Bannayan-Riley-Ruvalcaba syndrome; or have first-degree relatives with one of these syndromes.

Early detection is also vital to increasing chances of effective treatment. Breast cancer can be detected through self and clinical examinations, mammograms, and Magnetic resonance imaging (MRI) testing. Consult your physician about the best method for you based on your personal risk factors.

For more information, visit  
[www.nationalbreastcancer.org/  
breast-cancer-awareness-month](http://www.nationalbreastcancer.org/breast-cancer-awareness-month)

## **Groen verdict, cont'd**

Mr. Smith remained hospitalized until June 12, 2012, when he was discharged with prescriptions for home healthcare and physical therapy. Despite an extensive course of physical therapy and other medical treatments, including additional surgery to his left carotid artery, Mr. Smith remains with residual deficits from the stroke, particularly in his left arm and left hand. He cannot perform any activities of daily living requiring the use of two hands.

On January 9, 2013, defendant Geisinger's own physician deemed Mr. Smith permanently disabled and unable to return to work.

When asked about the outcome of the case, attorney Groen commented, "My clients and I are hopeful that the jury's verdict will ensure that Dr. Wagner and his medical community will take steps to protect all future patients from preventable harm."

The case was tried before The Honorable Charles H. Saylor in the Northumberland County Court of Common Pleas. Attorney Justin L. Groen of Messa & Associates, P.C. represented the plaintiffs against defendants Jere Wagner, M.D., Geisinger Clinic, and Geisinger-Shamokin Area Community Hospital. The jury found Dr. Wagner 100% liable for Mr. Smith's injuries as Geisinger stipulated that Dr. Wagner worked as an agent of the hospital.

Justin L. Groen is a trial attorney focusing his practice on complex personal injury litigation, primarily working with victims of medical malpractice, defective products, and other forms of catastrophic negligence.

## **Messa & Associates Welcomes New Attorney**



Messa & Associates, P.C. is pleased to announce that Ashley B. DiLiberto, Esq. has joined its team of experienced and skilled personal injury and medical malpractice attorneys as a Junior Associate. DiLiberto is a recent law school grad licensed to practice law in the state of Delaware and will concentrate her practice on complex injury cases, including medical malpractice, products liability, and premises liability.

Ms. DiLiberto earned her *juris doctor cum laude* from Delaware Law School at Widener University in 2016. During her time in law school, Ms. DiLiberto served as Copy Editor of the Delaware Journal of Corporate Law, President of the Food and Drug Law Association, and was a member of the American Bar Association Law Student Division. As a law student, Ms. DiLiberto published an essay for the Delaware Journal Corporate Law proposing amending federal bankruptcy laws in response to the Puerto Rican debt crisis.

In addition to her memberships and publications, Ms. DiLiberto was the recipient of multiple scholarships and winner of the Widener University Alternative Dispute Resolution Competition in 2014.

Before joining the team at Messa & Associates, Ashley DiLiberto worked as a Summer Associate with a Delaware corporate law firm and as a law clerk for the Delaware Office of the Public Defender. From 2010-2013, Ms. DiLiberto spent her summers working for the Delaware State Senate as a legislative attaché, assisting Delaware Senators with legislative duties on and off the Senate Floor.

# BREAKING IT DOWN:

## NEW GOVERNMENT RULE BANNING ARBITRATION IS A MAJOR VICTORY FOR NURSING HOME RESIDENTS

■ By Jenimae Almquist

When you or your loved one enter a long-term care facility, such as a rehabilitation center or nursing home, sometimes the facility will *make you agree to waive certain rights*. The admission paperwork may contain a **mandatory arbitration clause**, which is a contract that signs away your right to a trial by jury. In a MAJOR victory for patients, on Wed., October 5, 2016, the Federal Health and Human Services Department issued a rule that prevents nursing homes who receive federal funding (and most do) from using arbitration clauses as a condition for admission to long term care.

This new rule promotes consistency and fairness by allowing access to courts for patients with legitimate claims regarding the quality of their care. For instance, judges are required to comply with judicial rules that avoid favoritism and partiality, but private arbitrators often are not bound by such rules. Likewise, the arbitration process helps keep disputes behind the scenes, and is not

open to scrutiny. By contrast, courts are typically open to the public; concerns aired before juries and judges can serve the vital function of exposing sub-standard care and neglect within local communities. The arbitration process is applauded as being cheaper for companies

and the facility, particularly when there may not be many options for the person seeking skilled care because of financial limitations or bed availability. Admission to a nursing home frequently represents a significant life transition that is fraught with emotion and even family conflict,

often coinciding with limited physical or mental resources for the patient. Asking a person to make decisions about later disputes at the time of intake is unfair and, according to CMS, "unconscionable."

This new ban on arbitration clauses ensures that elderly and infirm individuals seeking high quality nursing home care will not be duped into relinquishing their rights. It remains to be seen whether similar measures to protect consumers will take hold in other arenas where the balance of power is uneven, such as in the case of arbitration clauses that may be buried in credit card, cell phone, rental car, or other services agreements.

Other reasons cited by the Centers for Medicare and Medicaid (CMS) for this new rule included the big difference in bargaining power between an incoming nursing home resident

than the legal system, but that savings can mean calculated decisions to put profits above patient care. Not holding nursing homes accountable for inferior care has a tremendous societal cost, particularly with our aging population.

Jenimae Almquist is a catastrophic injury attorney in PA and NJ, focusing her practice on medical negligence and nursing home abuse.



# AROUND THE OFFICE



# MESSA TV *live!*

MessaLaw attorneys attended the Philadelphia Bar Association's annual Bench Bar Conference on Sep. 23rd and 24th at Harrah's Resort in Atlantic City, NJ. During the conference, the attorneys attended courses to earn CLE credits.

We've only got one birthday to celebrate this month and that is the birthday of Messa & Associates attorney, Angelo M. Theodosopoulos. Angelo celebrated his special day on October 4th. Happy Birthday!!

MessaLaw is going LIVE! on Facebook to address a wide range of topics, including popular news stories, happenings around the office, and changes to the law that can affect you or your family. Tune in every Thursday to check out the latest episode of **MessaTV Live!**

## ***MAIN LOCATIONS***

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

CHERRY HILL  
2091 Springdale Rd. , Ste. 2  
Cherry Hill, NJ 08003  
P: 856-810-9500

## ***SATELLITE LOCATIONS***

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

PITTSBURGH  
309 Wyoming Ave  
Pittsburgh, PA 15222  
P: 724-783-8000

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

COLLINGSWOOD  
475 White Horse Pike  
Collingswood, NJ 08107  
P: 877-637-7252

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