

Messa & Associates

TRIAL ATTORNEYS WITH A REPUTATION FOR RESULTS

The Legal Outlook

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Consumer News:

RECALL REPORT



KRAFT Mac-N-Cheese Recalled for Possible Metal Content

Kraft has issued a voluntary recall of 6.5M boxes of the 7.25oz size 'Macaroni & Cheese Dinners' after eight complaints came in of metal content within the boxed dinners. No injuries have been reported. Only 7.25oz Original Flavor boxes affected with Best When Used by dates of Sept 18, 2015 to Oct 11, 2015. Consumers should return boxes to the store for a full refund.

PHILADELPHIA JURY AWARDS \$6.6 MILLION VERDICT TO RECOVERED HEROIN ADDICT FOR MEDICAL NEGLIGENCE THAT RESULTED IN PARAPLEGIA



On Wednesday, March 11, 2015, a Philadelphia jury awarded \$6.6 million in damages to a Philadelphia man who became permanently paralyzed in 2010 as a result of severely negligent medical treatment at Jeanes Hospital.

The plaintiff, Harry Walker, presented to the Emergency Department at Jeanes Hospital in November 2010 seeking treatment for severe back pain and a heroin addiction.

Importantly, he presented with a history of fever and nausea.

The emergency department staff administered narcotic pain medication and ran tests that included an EKG, X-rays, and blood work. The initial blood work showed signs of an infection. Before the final test results were completed, Mr. Walker was discharged with a diagnosis of exacerbated back pain and narcotic withdrawal and given a prescription for more narcotics.

After his discharge, Jeanes Hospital became aware, via blood cultures, that Mr. Walker had a systemic blood infection. The hospital, unable to reach Mr. Walker by phone, chose to send a certified letter to the address in Mr. Walker's file. The letter didn't even have time to arrive before Mr. Walker woke up in his bed, paralyzed from the chest down.

Jeanes Hospital defended their actions by placing responsibility for Mr. Walker's paraplegia on Mr. Walker himself, claiming that his substance abuse was the cause of his unfortunate circumstance and that the emergency department acted in accordance with the standard of care by making a few phone calls and sending a letter rather than following their own policy which provided that the Police be called.

Ultimately, a jury found the emergency room physician, Dr. Dana Mark Weber, not liable for Mr. Walker's injuries, while finding defendant Jeanes Hospital 64% liable for its failure to follow its own policies to protect all patients who receive abnormal test results.

The case was tried before The Honorable Shelley Robins New in the Philadelphia Court of Common Pleas. Attorneys Eric H. Weitz and Justin L. Groen of Messa & Associates, P.C. represented the plaintiff. The trial lasted 7 days - two of those days were used for jury deliberations.

“ NO WINTER LASTS FOREVER, NO SPRING SKIPS ITS TURN. ”

HAL BORLAND



March is Brain Injury Awareness Month

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.

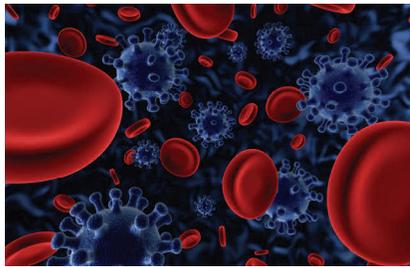
Traumatic brain injuries, a form of acquired brain injury (ABI), are generally caused by trauma, which comes in many forms. Some of the most common causes include falls, motor vehicle crashes, assaults, and forcible strikes to or against the head. Other acquired brain injuries are caused by forces that 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](https://twitter.com/NotAloneinBrainInjury) on Twitter to share your own story.

DUODENOSCOPES TO BLAME FOR SPREAD OF ANTIBIOTIC RESISTANT "SUPERBUG"



In February 2015, seven patients at Ronald Reagan UCLA Medical Center contracted an antibiotic resistant "superbug" known as Carbapenem-resistant enterobacteriaceae (CRE) after undergoing endoscopy procedures that utilized Olympus Corporation duodenoscopes. Two of those patients died from that infection. In addition to the seven superbug contractions at UCLA Medical Center, infections have been reported in Los Angeles, Connecticut, Seattle, Philadelphia, Pittsburgh, and Chicago. These cases of infection have been linked to endoscopes manufactured by Olympus Corp., Pentax, and Fujifilm. Additional cases are expected to surface.

The design of the scope includes many grooves and tiny crevices that collect bodily fluids and can serve as breeding grounds for bacteria. Standard industry cleaning procedures (set and enforced by the FDA) may not suffice in ridding the devices of that bacteria and preventing it from spreading.

A lawsuit was recently filed against Olympus by a California teen, Aaron Young, who contracted an infection at UCLA Medical Center after two endoscopic procedures were performed using Olympus brand scopes. Young is still being hospitalized for the infection and has been given a 50% chance of survival.

Investigations quickly uncovered that the Olympus brand scopes in question, the **TJF-Q180V** model duodenoscopes, underwent a redesign, but the FDA was not alerted and the scopes made it back to market without FDA approval. This intentional, reckless, and negligent action has caused deadly infections in a number of patients. More lawsuits are expected to surface on behalf of patients who contract this potentially fatal infection.

If you or a loved one has become infected by the antibiotic resistant superbug after undergoing an endoscopic procedure, contact an attorney from Messa & Associates. The team of attorneys at Messa & Associates is highly experienced in handling dangerous drug and medical device cases.

Firm founder, Joseph L. Messa, Jr., has earned multiple seven-, eight-, and nine-figure verdicts and settlements for clients injured by defective drugs. Firm partner, Eric H. Weitz, served as co-counsel on Topamax mass tort cases in Philadelphia that earned over \$14 million for victims of Topamax-related birth defects. Claudine Q. Homolash, *of counsel* attorney and author of a dangerous drug blog called Little Ms. Pharma, has dedicated her career to fighting for victims of dangerous drugs and medical devices.

Messa & Associates is armed with the right attorneys and the necessary connections to successfully litigate defective drug and medical device claims.

BREAKING IT DOWN

KING V. BURWELL, THE AFFORDABLE CARE ACT, AND YOU

■ By **Thomas N. Sweeney**

If you are among the millions of Americans that have obtained health insurance under President Obama's Affordable Care Act, (ACA—otherwise known as OBAMACARE) then you should make yourself aware of an influential decision expected from the Supreme Court this June. The United States Supreme Court will rule in *King v. Burwell*, a case which could have a dramatic impact on whether you and millions of other Americans can keep your newly obtained health insurance. Regardless of the outcome, the ruling in *King* will have a very real impact on very real people.

The ACA requires all Americans to have health insurance. Those who do not are monetarily penalized. To help the uninsured obtain coverage and lower the cost of those policies, tax subsidies are provided to those who purchase health insurance through a federal or state insurance exchange. These subsidies, which are based on income level, are a major pillar of the ACA that allows the law to work as a whole. Currently, these subsidies are available to anyone who purchases health insurance under the ACA, regardless of where they live.

In *King v. Burwell*, four citizens from Virginia are challenging whether people from certain states are entitled to the tax subsidies that help make their health insurance affordable. Some states, fourteen to be exact, set up insurance exchanges, or online marketplaces, for

their citizens to purchase insurance. Thirty-four states however, including Pennsylvania and New Jersey, did not set up online marketplaces and instead relied on the federal insurance exchange (healthcare.gov) to help citizens obtain insurance and tax subsidies.

The challengers to the ACA that brought the case claim that people who purchase insurance in states without state run exchanges are not entitled to tax subsidies. Their case is based on a small but important phrase within the statute which states that insurance subsidies are to be provided for consumers who obtain insurance through an “exchange established by *the State*.” They claim that the tax subsidies are not available to citizens who purchased insurance from a federally run exchange. Put simply, because the federal government is not “the State,” the challengers claim that there should be no tax subsidies for policies obtained from federal exchanges. (If you live in states where the state has established the Exchange, don't worry, your subsidies are safe.

Pennsylvania and New Jersey residents: your subsidies could be in danger.)

If you think this whole discussion defies common sense, you are not alone. Several legal commentators have dismissed this case as frivolous. HCA Corporation, the largest health care company in the United States, called the case “absurd.” Yet, several Supreme Court justices seemed supportive of this

challenge to the ACA during oral argument in early March. If the Supreme Court rules in favor of the challengers, tax subsidies would be stripped away from people who live in states like Pennsylvania and New Jersey—states without state run insurance exchanges. As a result, premiums for health insurance purchased by NJ or PA residents would skyrocket. More likely than not, these new buyers may be forced to drop coverage because they could no longer afford it.

This whole case, and the uncertainty for ACA policy holders, can go away if Congress fixed what is essentially a typographical error and added the words “or the federal government” to the clause “established by *the State*.” But Congress has shown no willingness to do so. Also, there is little hope that the New Jersey or Pennsylvania legislatures will work to establish their own state-run exchanges to preserve the tax subsidies of their citizens who obtained health coverage under the ACA. In just a few months, nine members of the US Supreme Court will determine whether millions of Americans will be able to keep their health insurance. Stay tuned.



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

Settlements and Verdicts

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Lee D. Rosenfeld—\$100,000 settlement on behalf of a client who suffered severe, debilitating, and permanent injuries as a result of a car crash in which the defendant made an illegal left turn. Injuries included a torn meniscus, abdominal hematoma, and lingering neurocognitive deficits.

AROUND THE OFFICE



Attorney Thomas N. Sweeney recently planned and headed a Continuing Legal Education (CLE) Course sponsored by the Pennsylvania Association of Justice entitled "What's it Worth?," a course aimed at educating attorneys on valuing real cases. Mr. Sweeney lead the panel and discussion at the Top of the Tower on Tuesday, March 10th, 2015.



March was a big month for Messa Law births! Wishing a huge, heartfelt HAPPY BIRTHDAY to Noelle Palazzo (3/8), Anastasia Buccino-Roth (3/9), Tom Sweeney (3/16), Angela Leone (3/16), Joe Messa (3/24), and Richard Heleniak (3/30).



Attorney Richard J. Heleniak has received his third consecutive selection to the New Jersey Super Lawyers list, a distinction only awarded to the top 5% of attorneys in the state. In addition, Mr. Heleniak has been selected to the Pennsylvania Super Lawyers list for seven consecutive years. Congratulations, Rich!

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