

THE LEGAL OUTLOOK

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JOSEPH L. MESSA, JR. SELECTED TO EXECUTIVE COMMITTEE BY THE NATIONAL TRIAL LAWYERS



Messa & Associates is proud to announce that *The Executive Committee* of The National Trial Lawyers has chosen our founding partner, Joseph L. Messa, Jr., to serve

as a State Executive Committee member for The National Trial Lawyers for 2018. Mr. Messa will be one of ten committee members chosen from the Commonwealth of Pennsylvania to serve on this distinct committee.

Membership invitations for this committee are offered to the top 10 of The National Trial Lawyers: Top 100 in the state. The National Trial Lawyers: Top 100 is an essential source of information, education, and networking for the most accomplished trial lawyers throughout America, and the leadership of each member of the State Executive Committee is critical to the organizations continued success. Mr. Messa has received a Top 100

designation by The National Trial Lawyers for each of the last three years. This marks his first invitation to the State Executive Committee.

The nomination and selection of Mr. Messa for membership in this distinctive group is a testament not just to his continued hard work and dedication to clients, but also to his devotion to service. Mr. Messa recently completed his year-long tenure as President of the Philadelphia Trial Lawyers Association, is a Fellow of the American Bar Foundation, a Diplomat for the American Board of Professional Liability Attorneys, an Advocate of the American Board of Trial Advocates, and serves on the Pennsylvania Association for Justice Board of Governors. Mr. Messa is also very dedicated to serving his community, hosting a yearly event to provide school supplies for underprivileged students in Philadelphia and annually donating to many organizations, including Toys for Tots, The Salvation Army, Philabundance, The Boys & Girls Clubs of America, and more.

“When everything seems to be going against you, remember that the airplane takes off against the wind, not with it.”

Henry Ford

MESSA & ASSOCIATES CELEBRATES BLACK HISTORY MONTH

Messa & Associates is celebrating Black History Month through a blog series on important black lawyers in the United States. So far this month, we've learned about Macon Bolling Allen, America's first black attorney, Charlotte E. Ray, America's first female black attorney, and Thurgood Marshall, champion of civil rights and the first black man to serve as a Justice of the Supreme Court.

Other attorneys we intend to cover in this month's blog series include;

- Violette Anderson, the first black woman to be admitted to practice before the Supreme Court;
- Amalya Lyle Kearse, a business litigation attorney on Wall Street who made partner at only 31 years old, and then appointed to the U.S. Court of Appeals only 10 years later;
- Spottswood Robinson, a civil rights attorney who successfully argued the *Brown v. Board of*

Education case alongside Thurgood Marshall;

- Irving Charles Mollison, the first African American to serve as a federal Judge in the United States ;
- Constance Baker Motley, the first female African American to be appointed to a federal Judgeship;
- Eric Holder, Jr., the highest ranking African American law enforcement officer in United States history; and
- Barack Obama, lawyer, Harvard Law professor, and the first African American president of the United States.

Not so long ago, African Americans had to navigate discrimination, segregation, prejudice, and racial injustice in order to achieve their legal education, and African American *women* had to endure additional biases based on their gender. Even so, these men and women overcame significant challenges in order to become lawyers, professors, judges, senators, governors, and even President of the United States. While their accomplishments should be admired all year long (and are), we take this month to express our admiration for their achievements.

John Deere Issues Recall

-3,700 riding mowers recalled due to laceration hazards

Deere & Company has issued a recall of about 3,700 **John Deere ZTrak riding mowers** sold in both the United States and Canada. The company issued the recall due to a laceration hazard to users and bystanders caused by a defect that allows the mower blades to continue rotating without power when the operator leaves the seat. Fortunately, no injuries have been reported.

The recall includes John Deere models Z335M, Z345M, Z345R, Z355R, and Z375R residential ZTrak riding mowers.

IDENTIFYING INFORMATION

The John Deere mowers are famously green and yellow. The model number and the name "John Deere" are printed on the front. A serial number that begins with 1GX is printed on the rear frame



of the machine near the engine.

CONSUMERS' NEXT STEPS

If you own one of the recalled mowers, manufacturers urge you to stop use immediately. Contact an authorized John Deere dealer for a free repair. John Deere is also contacting purchasers directly.

Consumers may contact Deere & Company at 800-537-8233 or on the Product Recall Information section of their website, www.deere.com.

STATUTE OF LIMITATIONS:

Not So Cut & Dry in Limited Tort Actions

■ By Jennifer L. Gomez Hardy

As advocates, we are painfully aware of the fact that the two-year Statute of Limitations in Pennsylvania is unforgiving. We create various tickler systems such as excel sheets, flow charts, color diagrams, and calendar reminders so as not to “blow” a statute. However, in limited tort actions, the statute of limitations may not be so cut and dry.

In the recent limited-tort case of Varner-Mort v. Kapfhammer, the Superior Court held that the statute of limitations period does not begin to run until the plaintiff knew or reasonably should have known that he or she suffered a “serious injury.” 109 A.3d 244 (Pa. Super. 2015).

This case stems from a motor vehicle collision that occurred on May 6, 2009. A complaint was not filed until forty-nine days *after* the two-year anniversary of the subject crash. The trial court granted Defendant’s motion for summary judgment concluding that Plaintiffs claims were filed after the expiration of the two-year Statute of Limitations. On appeal, the Superior Court reversed.

It was undisputed Plaintiffs were bound by their Limited Tort Election. Pursuant to the Motor Vehicle Financial Responsibility Law (MVFRL), a limited tort plaintiff could recover non-economic damages only if she proved that she suffered a “serious injury.” The MVFRL defines “serious injury” as a “personal injury resulting in death, serious impairment of body function or permanent serious disfigurement.” 75 Pa.C.S. § 1702.

The Defense maintained that Plaintiffs’ negligence personal injury/loss of consortium claims were barred by a two-year Statute of Limitations. It was their position that Plaintiff knew the extent of her injuries days after the crash when she was diagnosed with a back sprain with paresthesia of a lower extremity and continued to treat for said injuries until 2011.

In response to summary judgment, and during the subsequent appeal, Plaintiffs relied on the Superior Court’s opinion in Walls v. Scheckler, 700 A.2d 532 (Pa. Super. 1997). Based on Walls, they argued that the Statute of Limitations did not begin to run until Plaintiff became aware that she suffered a “serious injury.” Plaintiffs argued that summary judgment was not proper because at a minimum, a genuine issue of material fact remained as to when she knew or should have known that she suffered a “serious injury,” triggering the two-year Statute of Limitations.

In Walls, a limited tort plaintiff was involved in an automobile collision but did not commence a Complaint against the defendant until three days after the two-year anniversary of the crash. The Superior Court held that, “[u]ntil a plaintiff is aware or reasonably should be aware that he or she has suffered a ‘serious injury,’ such as would allow limited tort recovery, the Statute of Limitations does not begin to run. The Court reasoned that pursuant to MVFRL **a limited tort plaintiff does not have a valid cause of action unless and until an injury rises to the level of a “serious injury,”** and since the Statute of Limitations period does not ordinarily begin to run until a cause of

action accrues, the Statute of Limitations period cannot begin to run on a limited tort plaintiff until she knows or reasonably should know that she has sustained the requisite serious injury. Walls, 700 A.2d at 533-534. Applying this analysis, [the plaintiffs’] action for personal injuries may have been timely filed, **depending on whether the fact-finder credits [the plaintiff’s] testimony as to when her injury was diagnosed as “serious.”** In Walls, the court found that there was a genuine issue of material fact as to when the plaintiff became aware that she had suffered a serious injury and, therefore, summary judgment was not proper.

Following its decision in Wall, the Superior Court reversed the trial court’s order granting summary judgment and remanded the case, holding that finding a genuine issue of material fact existed as to when Plaintiff Varner-Mort knew or should have known that she sustained a “serious injury.” The Superior Court determined it was up to the jury to accept or reject the Plaintiff’s testimony as to when she realized she sustained a “serious injury” thus triggering the two-year Statute of Limitations.

Although, the Superior Court rulings in Walls and Varner-Mort provide plaintiffs counsel the possibility of avoiding the harshness of the Statute of Limitation defense in limited tort actions, it is strongly suggested that counsel should maintain the tickler systems you have in place and file within the 2 year time limit.

AROUND THE OFFICE



E-A-G-L-E-S EAGLES!!! Fans of the 2018 Super Bowl Champions posed together the Friday before the big game in support of our favorite bird gang.. FLY EAGLES FLY!



The office celebrates just two February birthdays— legal nurse consultant Meghan McCall (February 2nd) and attorney Ashley B. DiLiberto (February 4th). Happy Birthday, ladies! Hope it was a great one!



Happy Valentine's Day!
It's the sweetest thing....getting to call YOU our friend.

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

PITTSTON
309 Wyoming Ave
Pittston, PA 18643
P: 570-883-0800

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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