

## THE LEGAL OUTLOOK

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*“Observe good faith and justice toward all nations. Cultivate peace and harmony with all.”*

**GEORGE  
WASHINGTON**

### Richard J. Heleniak secures seven-figure settlement for paralyzed car crash victim



Attorney Richard J. Heleniak recently secured a seven-figure settlement for a 19-year-old client of Messa & Associates who sustained paralyzing spinal cord injuries when a vehicle in which she was a back-seat passenger collided with a vehicle travelling in the opposite direction on a Northeast Pennsylvania interstate highway.

The passenger car in which our client was riding was being operated by a co-worker when the left wheels dropped off the narrow left shoulder onto a rutted, partially-paved area. The driver maneuvered to regain the roadway, and in doing so lost control of the vehicle, which spun and travelled across the grassy median and into the southbound left lane of the highway where an oncoming pick-up truck operating above the posted speed limit crashed into the passenger car and sent it careening across the southbound lanes and into the guiderail. Vehicle “black box” data was used to establish the speed of the pick-up truck at impact. Due to the extensive damage, emergency responders used heavy equipment to cut the vehicle metal in order to free the young woman, after which she was airlifted to a major university hospital where four surgeries were required to stabilize her spine. Unfortunately, the crash had caused irreversible damage to the spinal cord.

Today, our client remains paralyzed below the waist, unable to walk, and dependent on a wheelchair. She continues to require therapy, medical follow up, and accommodations for her inability to walk and function. The settlement funds will help to pay for the specialized medical care she will require for the rest of her life, and hopefully enable her to return to college to complete her education.

## THOMAS N. SWEENEY CELEBRATES TENTH ANNIVERSARY WITH MESSA & ASSOCIATES

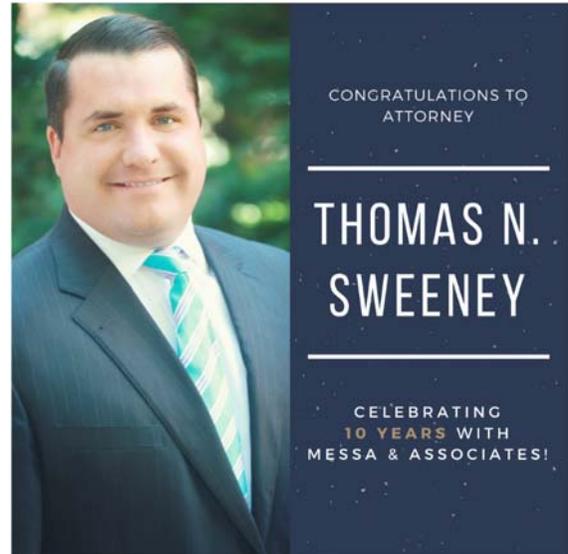
This July, attorney Thomas N. Sweeney celebrates ten years as a personal injury and products liability attorney with Messa & Associates! Those ten years have been marked by superior representation, skilled litigation, and significant awards for victims of train derailments, defective products including smoke detectors, pharmaceutical injuries, civil rights violations, and other acts of negligence.

During his time with Messa & Associates, Mr. Sweeney has been named to the Pennsylvania Super Lawyers or Rising Stars list, has presented continuing legal education courses for fellow trial attorneys, and has interviewed on national news networks including MSNBC and CBS.

Some of Mr. Sweeney's notable victories include a \$35M settlement for a man who was paralyzed after the brakes and seat-belt in his tractor failed, an \$8M settlement for the family of a seven-year-old girl

who perished in a fire caused by defective products, and a \$6.1M settlement on behalf of a four-year-old girl who lost her right eye on a metal latch protruding from a fence at her daycare center.

Many congratulations and wishes for continued success!



## The impact of *JANUS v. AFSCME*:

### *Undermining unions or protecting free speech?*

■ By Jenimae Almquist

One vital power enjoyed by a workers' union is the ability to engage in collective bargaining, meaning that the union may group together all members to generate greater power when negotiating contracts. Members of unions generally are not permitted to negotiate salaries and other essential terms of a contract individually, but rather must rely on the union to do so. **Collective bargaining** allows the union member to benefit from the strength of numbers in establishing such things as overtime rules, wages, safety, and training. In order to function effectively, however, a union must have enough members to give it

that bargaining power, as well as the essential funds required to negotiate and to represent its individual members in disciplinary action or other disputes. Obviously, a worker cannot be defended or supported by a union if the union has no resources.

In a landmark decision affecting unions, *Janus v. American Federation of State, County and Municipal Employees*, the United States Supreme Court declared that this shared strength cannot be funded by compelling public employees to pay union dues. In other words, the union cannot automatically charge fees to employees of public entities (such as teachers of a school

district or nurses of a government hospital or correctional officers at a state prison) in order to support the union's mission.

The reasoning behind the close (5-4) decision in *Janus* stems from the idea that the First Amendment protects not only active speech, but the right not to engage in certain political speech. The majority opinion, written by Justice Samuel Alito, stated that Mr. Janus could not be forced under our Constitution to participate in political activities carried out by the unions by paying a "fair share" membership fee. The Court found that "*union speech covers critically important and public*

*matters such as the State's budget crisis, taxes, and collective bargaining issues related to education, child welfare, healthcare, and minority rights.*" At the same time, the Supreme Court rejected organized labor's argument that unions should not be forced to advocate for freeloading individuals who do not pay their fair share, yet benefit from the union's collective bargaining or other activities.

The Supreme Court chose not to leave the decision about whether public sector workers could opt out of paying union fees to the individual states. Instead, the effect of *Janus* is that all public workers would have to opt in if they want to pay the fees, undermining the budgets of their unions. Illinois, where Plaintiff Mark Janus worked as a child support specialist, allowed such fees, but 28 other states already prohibit "fair share" fees.

The *Janus* decision has lasting implications on public workers and the ability of unions to maintain their existence. If each union member decides not to pay the fee, either because they have deeply-held personal convictions that differ from the union's message or under the pretext of disagreeing, unions may not have the funds to fight for the rights of their members. This would disproportionately affect people of color and LGBT employees whose voices may be silenced without the strong backing of a union. Many also believe that the ban on union fees will allow employers to take advantage of workers in governmental jobs by undercutting the unions' ability to fight for better healthcare, salaries, and safety training.

On the other hand, some conservatives contend that barring fees will not weaken unions because those who agree with unions' policies and see a benefit to their activities will still pay the fees. By reducing the "coffers" of liberal unions, they argue, the *Janus* decision will reduce corruption and uphold individual workers' belief systems. At the same time, conservatives like Jeb Bush cite the ability to take on teachers' unions if those unions have less financial backing, thereby promoting educational reform. President Trump's Secretary of Education, Betsy DeVos, has long voiced anti-union sentiments; she supports alternatives to public schools, such as charter schools, where teachers typically are not unionized and thus may have less ability to advocate for fair wages and benefits.

Perhaps most importantly, *Janus* reflects that this Supreme Court will not hesitate to overturn long-established precedent. In a scathing dissent, Justice Elena Kagan wrote for the minority of 4 justices:

*"There is no sugarcoating today's opinion. The majority overthrows a decision entrenched in this Nation's law—and in its economic life—for over 40 years. As a result, it prevents the American people, acting through their state and local officials, from making important choices about workplace governance. And it does so by weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy."*

*Stare decisis*, which is Latin for "let the decision stand," serves as the backbone of the judicial system. It means that legal decisions on the same

issues must follow the decisions that came before them. In *Janus*, the majority reasoned that it was time to overturn a 41-year old decision in *Abood v. Detroit Board of Education*, which allowed fair share union fees insofar as they were used for collective bargaining. With Judge Anthony Kennedy – the so-called "swing vote" – announcing his retirement, conservatives likely will hold a full majority on the Court and can use the *Janus* reasoning to reverse other cases that have served as pillars of American law for decades. Is any prior case sacred under such a system if a previous decision can be so easily cast aside? By contrast, many believe that changing times demand a change in the way that laws are interpreted as we continue to evolve as a society.

*Janus* points out the tensions between the legislative and judicial branches, and between state laws and the federal government. Above all, *Janus* brings to the forefront the constant struggle under the Constitution to balance between individual freedoms, such as Mr. Janus's right not to pay for union politics, versus the greater good that may arise with the power of a larger group, such as a union's ability to defend a worker against discrimination. Like all judicial decisions, *Janus* was based upon a particular set of facts with the intention of protecting Mr. Janus's individual freedom not to subsidize certain political views, but will have far-reaching and even unintended consequences for workers and employers alike as unions struggle to maintain their power base and resources.

# AROUND THE OFFICE

CONGRATULATIONS TO  
OUR WINNER...



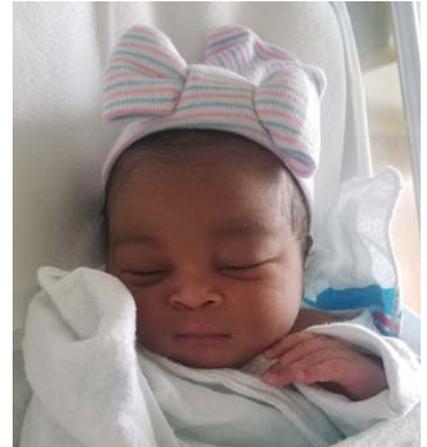
**STEVE HAWK**

Congratulations to the winner of our second annual #MessaTicketGiveaway, Steve Hawk! A panel of voters at Messa & Associates sorted through 73 entries and selected the photo that showed the most creativity and Phillies pride! Steve and his daughter won two loaded tickets for September 2, 2018.



Messa & Associates wishes the happiest of birthdays to Office Clerk, Trevor Ansell (July 12<sup>th</sup>), and Secretary, Michelle Nuciforo (July 5th).

Happy Birthday, friends! Hope it's a great year!



On July 12th, Jaime Hopkins, youngest daughter of Secretary Manager Elaine Hopkins, gave birth to her second child, Journey Hopkins. Journey was born weighing 6lbs. 8oz. and measuring in at 19 1/2" long. Mom and baby are both doing great.

**Congratulations!**

*P D IQ #DR F'D WIR Q V#*

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