

Clifford's Notes



Clifford's Corner

Robert Clifford wrapped up his three-year term as President of the Naples Children & Education Foundation that awarded \$11.9 million in grants to more than 30 organizations dedicated to helping needy children in Florida.

An independent research study conducted by several respected law schools rated Clifford Law Offices #2 out of 1,317 law firms in Illinois between 2000 and 2010.

Clifford Law Offices has been selected by U.S. News and World Report and Best Lawyers as a 2016 "Best Law Firm" in six legal categories.

Clifford Law Offices was a Philanthropic Patron of the annual spring awards of the Lawyers Lend-A-Hand to Youth dinner. The organization helps disadvantaged youth in Chicago's communities

through grants and volunteer tutoring and mentoring. Kim Halvorsen at the firm serves on its Board of Directors along with Erin Clifford, Bob's daughter, who also is a lawyer.

Clifford Law Offices was a proud sponsor of the Court Appointed Special Advocates (CASA) that represents foster children in the Cook County legal system.

Final Judgments

Record Verdict Obtained by Clifford Law Offices

Kevin P. Durkin and **Colin H. Dunn**, partners at Clifford Law Offices, obtained a \$22.7 million verdict on behalf of a widow and son whose young husband was killed in an accident four years ago.

A jury in the Cook County Circuit Court reached the record result in favor of Theresa Swenson, now 31, of Chicago following a two-week trial in the Daley Center before Judge Thomas Lipscomb. The verdict of \$10 million for grief and sorrow ties a previous record in Cook County set for that category, according to John Kirkton of the Jury Verdict Reporter. The jury also awarded \$10 million for loss of society. It is the largest wrongful death verdict in the county in more than a decade.

The case involved a speeding driver with drugs in his system who slammed into the back of Aaron Swenson's car stopped in a construction zone on Interstate 294 on May 22, 2012, crashing him into the vehicle in front of him.



Press Conference: Colin Dunn and Kevin Durkin flank their client, a 31-year-old widow whose husband was killed in a tragic crash on an Illinois highway when a driver did not slow down in a construction zone.

In another case, **Bob Clifford** and **Shannon McNulty** settled a lawsuit filed against a local hospital for \$16.5 million. The case involved the successful heart transplant of a 70-year-old patient who was discharged to return home. The lawsuit alleged that at the time of discharge the defendant hospital negligently supplied erroneous medication instructions to the patient and his family, both verbally and in writing. Once home, the patient received the dosage of long-acting insulin as prescribed by the hospital, which was effectively a double-dose, resulting in a brain injury. The patient, a recently retired teacher, now requires 24-hour attendant care.

Keith Hebeisen and **Bradley Cosgrove** obtained a \$7.75 million verdict June 1 on behalf of the family of a 56-year-old man who died from cardiac issues following neurosurgery. The verdict was against the neurosurgeon who failed to recognize the Chicago man's previous heart issues and the physician failed to receive cardiac clearance from the appropriate doctors prior to the man's spinal surgery. **Susan Capra** worked on the case for eight years prior to the two-week trial before Judge Donald Suriano in the Daley Center.

Press Room



Pamela Sakowicz Menaker has been named to a two-year term on the Board of Managers of the Chicago Bar Association (CBA).

Menaker currently serves on the CBA's Judicial Evaluation Committee, Public Affairs Committee and *CBA Record* Editorial Board. A CBA Nominating Committee selected eight lawyers and judges among 16 vying for the positions. Also among those selected for the Board of Managers was the Hon. Thomas M. Durkin, federal judge of the Northern District of Illinois and brother of **Kevin P. Durkin**, partner at Clifford Law Offices. Menaker also won a seat in a contested election for the Illinois State Bar Association (ISBA) Board of Governors for Cook County. Menaker has served two three-year terms on the ISBA Assembly as well as on the ISBA Journal Editorial Board and its Marketing Committee. Pam also served as the 2016 ISBA Ask-A-Lawyer Day Chair.

Robert Clifford and **Michael Krzak** were invited to write a chapter of a book for WestLaw on aviation law. It is part of a 12-volume set entitled "Business and Commercial Litigation in Federal Courts, Fourth Edition." Their insights and commentary on aviation law will be published along with critical aviation forms in December.



Keith Hebeisen spoke at the annual Illinois State Trial Lawyers Association (ITLA) Damages Seminar on "Maximizing Damages Outside of Cook County."



Michael Krzak was profiled in *Leading Lawyers* magazine where co-counsel said, "Michael attacked the file.

I would describe his style as aggressive, thorough and very prepared. He is a very good lawyer. He has goals for his depositions and a battle plan." He spoke at the 22nd Annual National Institute on Aviation Litigation in New York on "Who Controls You? Handling Air Traffic Control Issues in Aviation Mishap and Air Crash Cases."

Women Everywhere hosted its 17th annual Educational Projects Day for female Chicago Public School students who had the opportunity to take guided tours of the various divisions of the Circuit Court of Cook County and the Northern District of Illinois. After the tours, Women Everywhere hosted a luncheon for the students and **Sarah F. King** co-chaired the event for the second consecutive year. Sarah also was appointed to a two-year term on the ISBA Assembly.

Robert Walsh spoke on "The Client Interview" at the Illinois Trial Lawyers Association (ITLA) Nuts and Bolts of a Case seminar.

Craig Squillace spoke at the ITLA Ethics and Professional seminar on "Social Media: Protecting Yourself and Your Client."

Tracy Brammeier volunteered to teach a fifth grade class at Decatur Classical Elementary on Chicago's northwest side to mark Law Day. She discussed a simple legal hypothetical with them and how the law works for everyone.

See Back Page For Bob Clifford On The Move.

Bill of Particulars

These interesting news items have been taken from the blog that appear on the website of Clifford Law Offices, www.CliffordLaw.com/blog

Baby Powder Found to Cause Cancer in Women

Johnson & Johnson, the world's largest maker of health care products, was slammed with a \$72 million verdict by a Missouri jury for the death of an Alabama woman who died from ovarian cancer caused by the company's well-known baby powder and other products containing talcum.

The verdict, that was handed down Monday, February 22, 2016, is reported to be the first of among some 1,200 cases nationally involving this product and others that reportedly contain harmful ingredients.

Since May, 2009, a coalition called the Campaign for Safe Cosmetics began pushing Johnson & Johnson to eliminate questionable ingredients from its personal care products. After much negative publicity and a boycott threat by consumers, the company agreed in 2012 to eliminate the potentially carcinogenic ingredients 1,4-dioxane and formaldehyde, by last year. For some that has come too late.

For the 62-year-old Alabama mother who used the company's talcum powder for feminine hygiene for years, she died of ovarian cancer last year. Talc is mined from the soil and composed of magnesium, silicon, oxygen and hydrogen. Years ago, it was linked to asbestos.

After deliberating three hours, the jury decided the family was to get \$10 million in actual damages and \$62 million in punitive damages, meant to punish the corporation for its behavior. Plaintiffs' experts at trial explained to the jury their studies that linked talc to ovarian cancer. For information or consultation on potential talc cases, please contact us at 312-899-9090.

New Study Finds Third Leading Cause of Death in U.S. is Medical Error



The latest study on deaths in America indicates that the third leading cause is medical errors.

A professor of surgery at Johns Hopkins University School of Medicine is asking the Centers for Disease Control (CDC) to correct its records and list medical errors as the third most common cause of death in the United States with 251,454, following heart disease (614,348) and cancer (591,699). Dr. Martin Makary, a cancer surgeon and professor of health policy and management, examined four separate studies involving medical error from 2000-08 and found that more than a quarter of a million U.S. hospital patients die each year as a result of a medical error.

But the under-estimation of these numbers, according to Dr. Makary, is that the CDC does not allow physicians, medical examiners, coroners and funeral directors to list medical error as a the cause of death, he said in his letter to the CDC.

"The U.S. government and private sector spend a lot of money on heart disease, research and prevention. They also spend a lot of money on cancer research and prevention. It is time for the country to invest in medical quality and patient safety proportional to the mortality burdens it bears," he later wrote in a paper published in the British Medical Journal.

Medical errors cost taxpayers some \$4.4 billion each year, according to the Department of Health and Human Services' Inspector General.

Dr. Makary defined medical error from scientific literature as falling in one of four categories:

- An unintended act (either of omission or commission) or one that does not achieve its intended outcome.
- The failure of a planned action to be completed as intended (an error of execution).
- The use of a wrong plan to achieve an aim (an error of planning).
- A deviation from the process of care that may or may not cause harm to the patient."

As Dr. Makary points out, hospitals are more interested in a medical coding system as to what caused a death in order to maximize billing for services. Hospitals are not interested in collecting accurate health statistics for purposes that may help the sick population.

So when someone dies from cancer that went undiagnosed, it would likely be coded as cancer, when in fact that patient may have been saved had a correct diagnosis been made in time. That means that the same mistake could happen again and again, with hospitals and health care providers ignoring the underlying problem.

CLIFFORD LAW OFFICES CONTINUING LEGAL EDUCATION PROGRAM

Robert Clifford once again moderated a free continuing legal education webinar sponsored by the firm with nearly 4,000 attorneys registered throughout the state. Held at his alma mater, DePaul University College of Law, the program was entitled "*The Ethics of Pre-Trial and Trial Work.*"

Mark your calendars for next year, February 16, 2017, when Clifford Law Offices will present "Ethics of Jury Selection & Social Media."



The panelists speaking on this subject were (left to right): Honorable John C. Griffin, Mary Robinson and Professor Thomas Burns of Northwestern University Law School.

Mass Victims Compensation Expert Hired by Volkswagen to Handle Rigged-Emissions Claims

Kenneth Feinberg, an attorney internationally recognized for working out payments to victims of the BP Gulf oil spill, General Motors ignition switch scandal, the 9/11 victims' compensation fund and other high-profile cases, has been hired by Volkswagen to work in a similar capacity to resolve thousands of lawsuits involving its emissions scandal.

The German automaker has said that Feinberg, 70, will design and administer an independent claims programs for owners of the affected diesel cars that have software designed to hoodwink the U.S. emissions testing system. About a half-million diesel cars in America are affected and several federal agencies are investigating the conduct of VW's executives over the past several years.

The move by VW to hire Feinberg has been considered by some to be a public relations idea as well as an alternative dispute resolution process meant to clear up many of the thousands of lawsuits filed by car owners against the company. Affected car owners are still allowed to pursue individual claims or class claims, should they choose, depending upon how they were impacted by the scam.

Feinberg is quoted as saying that his plan may include compensation for loss of gas mileage and buybacks. He also noted that if recall repairs were made, those car owners may mean giving up one's right to sue VW in order to obtain cash payments.

Experts have said that the repairs may not be a simple software change. They may include a hardware change that involves the exhaust system and a possible chemical treatment system that could affect the car's performance or gas mileage.

Consumers' Corner

Lumber Liquidators Flooring Reportedly has Higher Cancer Risk than Initially Announced

People who bought certain kinds of flooring from Lumber Liquidators "are potentially at a greater risk of cancer than previously thought," according to a warning from the Centers for Disease Control (CDC), perhaps as much as three times higher.

The sale of certain types of laminate flooring has been halted and customers are being offered air quality tests.

The flooring in question is manufactured in China and reportedly has too high a concentration of formaldehyde levels causing as many as six to 30 cancer cases per 100,000 people, according to more recent CDC testing.

If you have been a victim of this false and misleading advertising by the U.S. company, Lumber Liquidators, and have suffered injury, contact Clifford Law Offices to further discuss the litigation presently pending against Lumber Liquidators.

Approach the Bench

Marta Kowalczyk Davidson

The daughter of two physicians in Poland, Marta (Kowalczyk) Davidson immigrated to the United States when she was just three years old. Her father continued working as a board certified family practice physician in the U.S. and her mother worked in the health care field.

The Kowalczyks eventually settled in Park Ridge, a northwest suburb of Chicago. Marta attended Maine South High School. It was there that Marta's love of the law crystallized. She was selected to compete in the We the People: the Citizen and the Constitution competition and her team won first in state. They traveled to Washington, D.C., when she was a high school senior, and the team was among the finalists in the country. "It was all very exciting to be a part of such a prestigious group and to be recognized for our hard work," Marta said.

Although Polish is her native language, Marta quickly acclimated to life in America. She grew to love its history as well as political science and ultimately the law, deviating from the health care paths of her family just a bit because now she focuses her legal work on medical malpractice cases. "I never had the stomach for blood," she says, so she headed to University of Illinois Law School in Champaign-Urbana. "I knew I wanted to help people and I felt I could do that through the law," she explained. "It's where the law and medicine meet that I felt I could best help those who are suffering at probably the most challenging time of their lives."

Marta was hired by Dr. Kenneth Chessick, a highly successful doctor and lawyer who had a thriving med mal practice in the suburbs of Chicago. Marta found herself working up cases and in a courtroom right from the start. "When I first hired Marta so many years ago, she was an eager rookie. Today, Marta has blossomed into a high quality, hard working, tireless attorney, who is passionate in her efforts to achieve justice for our clients," said Dr. Chessick. "She has made me proud."

When Dr. Chessick combined his legal practice with that at Clifford Law Offices, Marta began working on LaSalle Street. As part of the medical malpractice trial team, Marta has achieved several multi-million dollar verdicts and settlements. For example, she was part of the trial team that obtained a record \$3.157 million verdict in Winnebago County for the amputation of a 65-year-old man's left leg due to a doctor's negligence. Most recently, Marta was part



Marta Kowalczyk Davidson, revisiting her alma mater Maine South, holds the certificate she received as a senior when her team captured a top national position in the U.S. Constitution competition.

of the trial team that obtained an \$8.25 million verdict in Cook County on behalf of the family of a 68-year-old man who died two days after a knee replacement surgery. Marta has also taken part in settlement negotiations resulting in multi-million dollar settlements, including a \$2.75 million partial settlement in DeKalb County on behalf of the family of a 45-year-old man who died from medical malpractice and a \$2.55 million settlement, on behalf of a 54-year-old man who suffered severe and permanent injuries from negligent emergency room care. She currently handles a wide variety

of medical malpractice matters on surgical, cancer, cardiovascular, cardiology, orthopedic, obstetric and anesthesia cases in Cook County and the collar counties. She also handles other types of personal injury matters, including a case involving the drowning death of a six-year-old boy at a park district pool during day camp.

Marta attended the University of Illinois in Champaign-Urbana, majoring in political science and Spanish and it is where she met her husband, Philip. They were married last year with many of her relatives from Poland traveling to Park Ridge for the wedding. "It was very beautiful and, of course, memorable with so many of my family members able to share that day with us," Marta said. Her husband also is a lawyer and as newlyweds with intense jobs, much of their time since their August wedding has been devoted to their work and making a home in the southwest suburbs of Chicago.

Speaking fluent Polish, she has a large number of Polish clients given the large Polish population in Chicago. "Although language has never been a barrier for me, I empathize with people who have legal problems whose native language may not be English. I feel that I can better explain to them what may happen and what they can expect in seeking justice through the legal process. It is very heartwarming and satisfying as a career," she said.

Marta also considers herself fortunate to have some great teachers in her life. "I'm lucky to have a great number of mentors in my life – from Bob Clifford and Dr. Ken Chessick to Keith [Hebeisen], Brad [Cosgrove] and Susan [Capra] at the office," Marta says of the law partners at Clifford Law Offices on the medical malpractice team who have helped her since she arrived. "I see myself working here a long, long time."



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Clifford's Notes

A Newsletter from Clifford Law Offices, P.C., a Chicago Law Firm

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Personal Injury Transportation
Wrongful Death Aviation
Medical Malpractice Premises Liability Law
Product Liability Commercial Litigation

Consumer and Health Care Fraud
Whistleblower Litigation
Mass Tort/Class Actions

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Very Sincerely Yours,
Hon. Henry R. Simmons (Ret.),
Managing Partner, Clifford Law Offices, P.C.

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Clifford Law Scrapbook



Bob Clifford spoke to Roe Conn on WGN radio on The Trial of Antigone. He, along with Judge Charles Kocoras, spoke on the popular afternoon radio show from the studio on Michigan Avenue. Conn was joined by co-host Anna Davlantes who also introduced the mock trial to the sold-out crowd.



The Corporate Counsel College sponsored the International Association of Defense Counsel (IADC) two-day program in Chicago. Plaintiffs' attorney **Robert A. Clifford** addressed the group on "What is the Other Side Thinking?" with lawyers from around the country in attendance.



Bob Clifford received rave reviews for his portrayal of Al Capone in a mock trial sponsored by the American Bar Association. For the first time ever, the 1920's "gangster" was put on trial for the 1929 Valentine's Day massacre of Bugsy Malone and his gang. The result of the mock jury: not guilty.



Bob Clifford teamed up once again with fellow top litigator Dan Webb in The Trial of Antigone, sponsored by the National Hellenic Museum. The two argued for the rule of law in asking the evenly split "celebrity" jury to convict Antigone of violating the gods' law. They were pitted against Patrick Fitzgerald and Patrick Collins who defended Antigone and won favor among the audience jurors who packed the Field Museum in March.



Robert Clifford sponsored a book signing for Professor Stephen Daniels (center) who co-authored the book, "Tort Reform, Plaintiffs' Lawyers, and Access to Justice" with Joanne Martin. Dozens gathered to hear him speak of the 20 years of study and interviews that went into explaining the fallacies of tort reform. Daniels is a research professor for the American Bar Foundation. Its Executive Director, Ajay Mehrotra, also attended (far right).



Clifford Law Offices was a Diamond Sponsor of the Women's Bar Association of Illinois at its 2016 Judicial Reception at the Chicago Cultural Center. Several judges were honored with the Mary Heftel Hooten award including the Honorable Chief Judge Ruben Castillo, U.S. District Court for the Northern District of Illinois, who was given the award by Bob Clifford. The award is named for Hooten, a former Chicago lawyer and judge.