



# CLIFFORD'S notes

A Newsletter from Clifford Law Offices, P.C., a Chicago Law Firm • Winter, 1999 • Vol. 3 No. 4

## Clifford's Corner



*Robert A. Clifford*

### Robert Clifford Named One of State's Top 10 Litigators

Robert Clifford was listed as one of the National Law Journal's top civil litigators from Illinois, in what the newspaper called a list of "heavy hitters" which included "four of the country's most successful plaintiffs' lawyers."

Mr. Clifford was feted by the highly respected legal publication for his impressive achievements in the courtroom including his 80 settlements of \$1 million or more as well as his dozen multimillion-dollar verdicts.

## Chicago Sun-Times

October 7, 1999

The notion of independent boards to review HMOs' medical decisions, while laudable, is not likely to find consensus among the various parties involved: physicians, specialists, patients and insurers. And if the idea, originally posed by House Speaker J. Dennis Hastert, is meant to water down HMOs' liability for their negligent actions, it should not be instituted.

The Illinois Supreme Court bravely found that HMOs can be legally liable for medical malpractice. The decision is a courageous one, for the issue is most contentious in the political arena. It is one that has been attempted to be tackled on many fronts.

Last August, Gov. Ryan signed a law that forbids gag rules that prevent doctors from informing patients of treatment options, gives greater access to specialists and creates new ways to appeal insurance decisions. But the legislators intentionally left out any mention of whether a patient had a right to sue an HMO. Congress, too, is working on expanding patients' rights to sue health care providers, but the issue of HMO liability is the subject of intensive lobbying by insurers to defeat such a measure.

The U.S. Supreme Court is expected to enter the HMO fray when it decides sometime next year whether it is legal for doctors to cut back on treatment to save money for an HMO. The court agreed to answer the question whether an Illinois HMO breached a legal duty to a patient given its financial structure to award bonuses to physicians who hold down costs. This decision could affirm the Illinois Supreme Court's recent ruling or render the decision moot.

Forcing HMOs to stand up in court and defend their decisions is not a malicious plan to run them out of business. On the contrary, it was a fiction to grant these companies the unfettered control of people's health care needs, yet with no accountability when mistakes were made.

That is the very foundation of this country's civil justice system: responsibility for one's wrongdoing. So why should HMOs be allowed to make business decisions that amount to medical care while at the same time immunizing themselves from liability on the ground that they are mere insurers? The Illinois Supreme Court finally pierced that bogus argument.

Hastert's proposal to form an independent appeals board to review coverage decisions certainly is not mutually exclusive to the Illinois Supreme Court's decision last week. It can work in consort with the findings of the Court.

But keep in mind: The bottom line is the health of some 2.4 million members of HMOs, or about 25 percent of the Chicago health care market and nearly 20 percent of those covered by health insurance in Illinois. And when they find themselves in a medical crisis, they will need all the help they can get to ensure the right decisions are made for the right reasons.

ROBERT A. CLIFFORD  
PARTNER, CLIFFORD LAW OFFICES

A Chicago Sun-Times' editorial questioned the Illinois Supreme Court's landmark decision allowing patients to sue their health maintenance organizations and endorsed independent review boards to resolve disputes as an alternative to consumer lawsuits. Robert Clifford responded to the newspaper's proposal. For more on the latest in the volatile health care arena, see inside.

### Recent case filings by Clifford Law Offices:

- \* High school football player paralyzed during practice after he was tackled into an un padded steel post less than five yards from the field.
- \* Class action for fraud against LifeCare Systems, an Aurora, Illinois clinic that allegedly bilked money from multiple sclerosis patients.
- \* Alaskan helicopter crash killing several passengers including a Florida couple
- \* An innocent motorist who was shot in the eye by a Chicago police officer chasing a fleeing suspect on foot in a residential area.
- \* A Chicago-area physician who was partially paralyzed following the negligent administration of a spinal/epidural anaesthetic.
- \* Scuba diver who lost his leg in a Lake Geneva, Wisconsin boating incident when a power boat rammed him.
- \* More than a dozen passengers injured in the Amtrak train crash which collided with a truck at the Bourbonnais, Illinois crossing.
- \* Chicago-area family who lost their mother in the Egypt-Air crash Flight 990
- \* Amoco worker who developed brain cancer at it's now closed Naperville high-tech research facility which has been labeled a "cancer cluster" complex. The cancer rate is eight times higher among workers there than that of the general population.
- \* A woman who had her ovaries removed after she was incorrectly told by a Maryland lab that she had a genetic defect indicating a higher incidence of ovarian and breast cancer. The lab later admitted to her it was wrong.
- \* A young woman who suffered a flesh-eating disease from a bacteria located in areas where a Chicago-area plastic surgeon had performed liposuction on her body.
- \* Several survivors of the June 1 American Airlines crash of Flight 1420 in Little Rock, Arkansas. Nine of the 145 passengers were killed when the plane slid off the runway and crashed into a metal tower before catching fire.
- \* Several young men who allegedly have been molested by a priest when they were young boys.

TRIAL NOTEBOOK

## Final Judgment

Robert Clifford was lead co-counsel in the recent \$43.7 million settlement on behalf of three families who lost loved ones aboard USAir Flight 427 from Chicago to Pittsburgh.

One of the settlements was for \$25.2 million, the largest settlement to a person in a commercial airline disaster. Mr. Clifford also holds the record for the largest verdict in a commercial aviation disaster. That was back in 1994 when a jury returned a verdict for \$28.2 million on behalf of a 70-year-old woman who was seriously injured in the Sioux City, Iowa crash.

# Bill of Particulars

## Accountability of HMOs

The Illinois' Supreme Court's decision finding that HMOs may be held liable for their negligence appears to be part of a national trend giving victims of medical negligence the right to sue these agencies when they deny, delay or otherwise prevent proper medical care of a patient. *Petrovich v. Share Health Plan of Illinois*, No. 188 ILL. 2d 17 (decided Sept. 30, 1999).

California Governor Gray Davis signed a health reform package into law that allows patients to sue HMOs for malpractice, a right now allowed in Texas. Georgia and Louisiana provide patients a mechanism to appeal HMO decisions.



In August, Illinois Governor George Ryan signed a new managed care and patient rights law which forbids gag rules that prevent doctors from informing patients of treatment options, gives greater access to specialists and creates new ways to appeal insurance decisions. The legislators intentionally left out any mention of whether a patient has a right to sue an HMO.

The Supreme Court of the United States, though, has agreed to hear a case from Illinois that will decide whether it is legal for doctors to cut back on treatment to save money for an HMO. The court agreed to answer the question whether an Illinois HMO breached a legal duty to a patient given its financial structure to award bonuses to physicians who hold down costs. *Pegram v. Herdrich*, No. 98-1949. That decision could impact the *Petrovich* ruling.

## Lawsuits Stir Gun Makers' Conscience

Lawsuits and verdicts have had a social impact on the collective conscience of gun manufacturers.

In the wake of rulings that found the weapons' makers negligent in their irresponsible marketing of handguns as well as lawsuits filed by cities such as Chicago, New Orleans, Miami and Cleveland against gun manufacturers, Colt has discontinued manufacturing small handguns, used largely in assaults.

Another major company, Smith & Wesson Corporation, has instituted a code of ethics to which dealers must agree before guns are sold.

The code requires dealers to pledge that they will sell the company's guns with safety locks and that they will closely monitor buyers to avoid illegal purchases that facilitate the flow of handguns to minors and criminals. Those who refuse to sign on will be banned from selling its products.

This code marks the first time a gun maker has attempted to assert formal control over the sale and distribution of its products.



## Let's Not Kill All Lawyers

Since at least Shakespeare's time, non-lawyers often have considered the profession as one not worthy of respect, yet it seems only until late that attorneys are proactively trying to do something about it.

The New York Times recently reported ("Some Lawyers Try to Make Nice," Nov. 28, 1999) that slick public relations campaigns are no longer the answer. Instead, a range of strategies are being used around the country in an effort to reverse the slide in stature.



Bar associations are convening town meetings for people to air their gripes about the legal system. Television commercials and videos are being produced portraying attorneys as protectors rather than predators.

Even soul-searching conferences for the sincere are being held around the country to sensitize the profession to the public's needs.

A recent survey conducted by the American Bar Association, nonetheless, found that 75 percent of people expressed satisfaction with their own lawyer's performance, regardless of what they thought about the profession in general.

## Small Planes' Safety Questioned

The death of pro golfer Payne Stewart in a plane crash has drawn attention to corporate jets and their safety. The following chart indicates the latest statistics on accident rates for these planes. Although the figures have gone down by about 20 percent in the last five years, they are still a great deal higher than that experienced by commercial airliners.

Accident Rates	
Commercial planes	.262 accidents per 100,000 flight hours
Privately-owned planes	7.12 accidents per 100,000 flight hours

## Responsible Snow Removal

A governmental entity may be responsible for the removal of ice and snow, the Illinois Supreme Court has ruled.

While recognizing that the state's tort immunity act (745 ILCS 10/3-105(c)) precludes liability for injuries caused by "the effect of weather conditions," the court also found that the county must exercise due care to maintain its property in a reasonably safe condition.

County workers had piled the snow at an intersection so high that it obstructed the plaintiff's and other drivers' view, thereby possibly causing the accident.

*Ziencina v. County of Cook*, No. 188 ILL. 2d 1, decided Sept. 30, 1999.



# APPROACH THE BENCH

Your friend's sister's mother-in-law was driving her son's van when a plumbing truck, personally owned by the plumber, hits her. He is ticketed.

Two children in the van are seriously hurt—one is the mother-in-law's grandson; the other is his 10-year-old best friend. The son, who owns the van, has limited insurance coverage.

The plumbing company has a \$250,000 policy and the plumber has an individual policy for \$20,000. Grandma has a million dollar umbrella underinsured motorist policy. Can you recover damages? And from whom?

Although the factual scenario may seem a bit complicated, it's the type of question Bob Walsh gets asked routinely. As one of the firm's insurance coverage lawyers, he sorts through the complications and fine print that auto accidents seem to propagate.

"I didn't start out specializing in this area, but the more Clifford Law Offices handled these types of matters, I guess I became the go-to guy," Walsh said. And he is that type of a person—always on the go, juggling a complex caseload which means countless phone calls with clients, insurance adjusters and accident investigators, sandwiched in-between court appearances, depositions and trial preparation.

He started with lead partner Bob Clifford in 1985 as a clerk. Four months later, after his law school graduation on a Sunday morning, he rushed to Northwestern Memorial Hospital to pick up his wife Laura and newborn son. The next day he went to work. It's been nonstop ever since, even in the Walsh household.

He's the father now of four sons—Bobby, Barry, Danny and Casey—ranging in ages from 13 to five. And with all those boys in the house, it's only natural that Walsh is an avid sportsman. He and his wife are constantly car pooling one son or another to everything from football to track, basketball to soccer.

But Walsh readily admits that baseball is the family's first love, particularly when Clifford Law Offices has sponsored the back-to-back championship team that Walsh coached in the western suburbs of Chicago. "We live, eat, sleep and breathe baseball," Coach Walsh says. "And we hope this coming year is a three-peat season."

He and his sister grew up in Elmwood Park; his sister married fellow Clifford Law Offices attorney Richard Burke in 1992 and they have three small children who add to the Walsh holiday fracas.

Walsh played baseball at St. Vincent Ferrer grammar school in River Forest and for Fenwick High School in Oak Park. He graduated from St. John's University in Minnesota in 1981 and decided to coach Little League in Minneapolis. His team won the city championship with an undefeated

season against 40 other teams.

But then he decided to go to law school. He bartended his way through school at Loyola University School of Law in Chicago to help pay tuition.

"President Truman once said, you don't get to know people unless you've driven a cab or tended bar. Bartending is one of the best jobs to learn to be a lawyer," Walsh says with a smile. "It teaches you to be a great listener. People open up and you have to listen



Coach Bob Walsh will lead the Clifford Law Offices baseball team to its hopeful third straight championship—and Bobby, Barry, Danny and Casey will be there.

because you can't run away from them."

And Walsh puts those listening skills to use every day on the job. The results are most impressive.

Last year he received a \$1.81 million verdict for a 21-year-old man who broke his neck in an auto accident with a UPS truck, resulting in the largest verdict in Cook County for a person with a fractured vertebrae which did not result in paralysis.

And he has settled four million-dollar-plus cases in the last year which also garnered newspaper headlines.

His advice to all of his clients? "Although most everybody carries auto insurance, practically no one understands each and every element of the coverage they have. I have even represented attorneys who didn't know the limits of their coverage.

"Your best bet is to make sure you carry ample under-insured motorists' (UIM) coverage. That way, even if you're hit by someone who doesn't have any insurance or if it's insufficient, you can fall back on your own UIM coverage."

The law in Illinois requires all drivers to carry a minimum of \$20,000, but in most cases involving physical injury, that's just not enough, Walsh says.

"Time and time again, I see horrific injuries where the recoverable damages are limited to \$20,000 because the injured person assumed the other guy would have enough insurance. But if you have only \$20,000, it's difficult to complain that the wrongdoer only has \$20,000."

Where does Walsh see this area of the practice heading? "I'm seeing a lot more cases in the collar counties being tried to verdict in amounts that fairly compensate the injured person. The myth that the outlying areas don't fully compensate the injured is being dispelled," says Walsh who has had

cases in more than a dozen counties in northern Illinois and even as far away as Springfield, Illinois.

The cases keep him busy from early morning till sometimes late in the evening, but Walsh says he wouldn't give up the frenetic pace—at home or on the job—for anything.

By the way, Bob Walsh's answer to the hypothetical in the beginning: the injured boys should look first to the plumber for his vehicle coverage, then to the plumbing company, and finally turn to grandma's policy for supplementary coverage, if necessary.

## Clifford Tort Seminar

The impact of popular culture on the civil justice system is the topic for the sixth annual Clifford Tort Law and Social Policy Symposium to be held in March, 2000. Already national television commentator Bill Kurtis is scheduled to make presentations at the week-long seminar to be held at DePaul University College of Law. The American Bar Association Section of Litigation is a co-sponsor.

Six years ago, Robert Clifford made a million dollar donation to his alma mater to establish the country's first Chair of Tort Law and Social Policy. This endowment supports the annual symposium that brings together the best and the brightest to explore significant issues of the civil justice system.



### CLIFFORD LAW OFFICES

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# ON THE DOCKET

Clifford Law Offices has been recognized as one of the leading personal injury firms garnering multi-million dollar awards. Some of the verdicts and settlements attained this year include:

Amount	Date	Attorney	Case
\$3 million (verdict)	July 2	Richard Burke	6-year-old boy killed by a garbage truck driver
\$2.75 million	Sept. 29	Kevin Durkin Isobel Thomas	52-year-old woman suffered fractured vertebrae when she was struck in her stalled car on the side of the road
\$2.583 million (verdict)	June 18	Jeffrey Kroll Michael Krzak	Two women involved in car accident; one killed, the other suffered post-traumatic stress in witnessing her best friend's death
\$2 million	Nov. 1	Jeffrey Kroll	Worker impaled by metal rod at construction site
\$2 million	Oct. 19	Keith Hebeisen Susan Capra	Loss of leg due to undetected infection following podiatric surgery
\$2 million	July 20	Keith Hebeisen	Brain damage resulting from failure to diagnose lithium toxicity
\$1.8 million	Oct. 15	Kevin Durkin Michael Krzak	Construction worker fractured hip and vertebrae after falling off unguarded bridge
\$1.8 million	Sept. 8	Robert Walsh	19-year-old woman suffered closed head injuries and broken pelvis in car accident
\$1.5 million	July 6	Robert Walsh	10-year old daughter killed in 1995 Mother's Day car accident
\$1.4 million	July 20	Keith Hebeisen Susan Capra	Negligent obstetrical care resulting in pre-term delivery

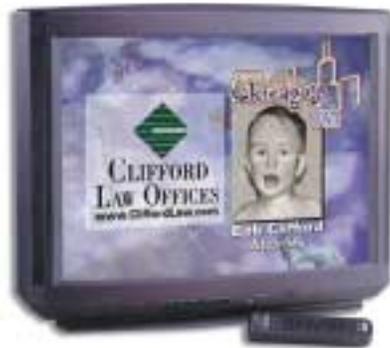


The Catholic Charities of the Archdiocese of Chicago asked Robert Clifford to serve as Honorary Chairman of its fund raiser for the new millennium.

"Hearts for the Homeless—Here's Hollywood!" is the Feb. 12, 2000 extravaganza for the North/Northwest Region.

Catholic Charities provides shelter and other services to thousands of needy and distressed persons each year.

## Chicago's Own



Clifford Law Offices was asked to sponsor a series of children's programs on Chicago-based Public Broadcasting System (PBS) station, WTTW/Channel 11.

In the 20-second commercial, Bob Clifford, along with a number of other nationally-prominent Chicagoans, is being shown both as a child and as an adult in a new marketing campaign entitled "Chicago's Own." The commercial will begin airing in Spring, 2000.

Clifford Law Offices has prepared this newsletter for its many friends, clients and colleagues worldwide. It is purely a public resource of general information. Although it is not intended to be a source of either solicitation or legal advice, it must be regarded as an advertising or promotional communication in the terms of the lawyers' professional responsibility law. Accordingly, it is necessary that certain information be supplied to and noted by the reader.

This newsletter should not be considered as an offer to represent in any legal matter, nor should it be the basis of legal hiring decisions. Thus, the reader should not consider this information to be an invitation for an attorney-client relationship, should not rely on information provided herein, and should always seek advice of competent counsel.

All lawsuits are different, and Clifford Law Offices makes no representation or promises that it can obtain

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the same results as reported in this newsletter in other legal matters. Nothing in this newsletter constitutes a guarantee, warranty or prediction regarding the outcome of any future legal matter. Further, it should be noted that even where the fee arrangements are on a contingency basis, clients will still be responsible for payment or reimbursement of the costs and expenses of litigation.

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Finally, this newsletter is disseminated to our many friends around the world. We hope you find the information here useful and informative. Anyone, however, who does not wish to receive future newsletters can contact us at the numbers or locations listed here, and the matter will be promptly attended to.

Very Sincerely Yours,

Thomas K. Prindable  
Managing Partner  
Clifford Law Offices, P.C.



Attorneys for Clifford Law Offices attended the American Bar Association's annual meeting in Atlanta, Georgia. One of the highlights of the four-day program was a visit to the Coke Museum. At that meeting, Bob Clifford was elected Vice Chair of the ABA's Section of Litigation, the largest in the national organization with some 60,000 members nationwide.

Left to right: Jeffrey Kroll, Kevin Durkin, Robert Clifford, Thomas Prindable.



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