

Clifford's Notes



Clifford's Corner

Robert Clifford was inducted into the International Society of Barristers, an honor society of outstanding trial lawyers chosen by their peers on the basis of excellence and integrity in advocacy.

Bob Clifford was inducted as Illinois State Delegate to the American Bar Association House of Delegates at the

Annual Meeting in Chicago in August.

He also was appointed Chair of the Section of Litigation of the American Bar Association Task Force on Hurricane Katrina, coordinating efforts to help those impacted by the disaster. He also was appointed to serve on the ABA's Task Force on Hurricane Katrina.

Robert Clifford and Kevin Durkin were appointed to the newly created

Advisory Board of the International Aviation Law Institute at DePaul University College of Law, gathering lawyers and experts from around the world to examine aviation issues facing the public.

Clifford Law Offices was featured as the top firm in Chicago by the Chicago Lawyer magazine, garnering \$87 million in settlements in the past year.

Latest Gaming Board moves against Emerald a waste of time

CRAIN'S CHICAGO BUSINESS, DEC. 5, 2005

Finally, a voice of reason amid the rhetoric surrounding Emerald Casino.

Greg Hinz recommends that all the parties come together and solve the protracted court battle, because Illinois taxpayers are losing a million dollars a day while the tenth gaming license is not in use ("Time to Cash In," Nov. 28). In fact, Emerald Casino has long supported a Bankruptcy Court compromise that would ensure that the state do what is right for everyone involved.

Unfounded fears that a casino in Rosemont would result in organized crime infiltrating casino dealings led Judge Abner Mikva to recommend stripping Emerald Casino of its license. The previous Illinois Gaming Board and Emerald's owners had agreed to sell this license in bankruptcy through an auction process in which the Gaming Board itself selected the new holder of the license, a move approved even by Lisa Madigan.

Instead, backed by an anti-Rosemont political agenda, the Gaming Board's revocation hearings yielded a foregone conclusion that does not allow Emerald to sell its license and get it to begin working again for Illinois taxpayers. The administrative judge's recommendation means that Emerald Casino and the Illinois Gaming Board will continue a fight in a courtroom battle that could take years as it weaves its way through the judicial process.

Robert A. Clifford, Attorney for Emerald Casino, Clifford Law Offices, Chicago

Press Room

John Karnezis was promoted to partner at Clifford Law Offices. Prior to coming to the firm, he had been a Cook County Assistant State's Attorney.

Pamela Sakowicz Menaker served on the inaugural Chicago Bar Association's Pro Bono Committee that highlighted the city's need for legal services to the elderly, disabled and financially distressed.



Keith Hebeisen, the current President of the Illinois Trial Lawyers Association, has been speaking around the state on the important issue of caps on damages in Illinois. He has been interviewed by various members of the press including the *Chicago Sun-Times*, *Bloomington Pantagraph*, *St. Louis Post Dispatch*, *Chicago Daily Law Bulletin*, *Channel 11 Chicago Tonight* and *CLTV News*. He told the *Chicago Tribune*, "Our clients and our profession are under an unwarranted attack of an unprecedented nature. We need to defend it."

Jeff Kroll is speaking in three states in the upcoming months on trial advocacy.



Tim Tomasik was appointed Chair of the Chicago Bar Association Judicial Evaluation Committee. He spoke to the Illinois

Trial Lawyers Association on experts and to the American Law Institute on cross examination earlier this year.

George Bellas spoke to a national group of product liability attorneys on rollover litigation and electronic discovery.

Michael Krzak was appointed Vice Chair of the Chicago Bar Association's Aviation Committee.



Brian Shallcross, a recent graduate of DePaul University College of Law, was named as an associate at Clifford Law Offices.

Matt Willens spoke at the American Bar Association in April. The topic: "Presenting Psychosocial and Neuropsychological Evidence in Personal Injury Cases."

Robert Walsh was elected President of the Fenwick High School Bar Association, his alma mater.



Clifford Symposium on Civil Justice, Tort Law and Social Policy

"Who Feels Their Pain? The Challenge of Non-Economic Damages in Civil Litigation" was the topic of the 2005 Eleventh Annual Clifford Symposium on Civil Justice, Tort Law and Social Policy. The two-day program was held at DePaul University College of Law and is made possible by a generous grant from Robert Clifford to his alma mater. Some of the nation's finest

scholars from around the country gathered to debate the issue of non-economic damages and their role in civil dispute resolution. Stephan Landsman (at the podium), holder of the Clifford Chair, conducted the conference. The subject of the 2006 Clifford Symposium is "Do Pain and Suffering Mean Anything Anymore?" It will be held April 20-21 and is free to the public.

Bill of Particulars Tort Reform Alert

State Begins Investigation into Medical Malpractice Premiums

In June, the Illinois legislature agreed to cap non-economic damages in medical malpractice cases. That means that patients who are victims of negligence can recover only \$500,000 from a doctor and \$1 million from a hospital for pain, suffering, disfigurement, loss of consortium and other intangible damages that often are the most tragic and devastating. Also, too often the economic portion of a damages claim is too little and victims are forced to tap into the non-economic damages to pay for their medical bills and to just live day to day, often unable to return to work.

As part of the law, though, the legislature also agreed to look into medical malpractice insurance reform. The hearings were billed as “the first of this type in state history,” and they were. Two days of hearings were conducted in Springfield by the Division of Insurance head, Michael McRaith. In an eight-story inconspicuous building near the impressive Capitol building in downtown

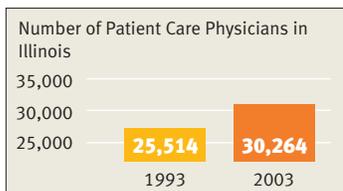


Springfield, dozens of people gathered in the fall to testify under a gold-embazoned State of Illinois emblem. The purpose of the public hearings was to examine the history of the continual spike in premiums in medical malpractice insurance for doctors. Insurance company executives were asked to justify their exorbitant increases rather than have their requests for more money merely rubber

stamped as they had been for the last two decades. Among those testifying were a number of Illinois physicians who complained about the Illinois State Medical Insurance Exchange (ISMIE) which controls doctors’ medical malpractice premiums to the point of being a “monopoly.” Their conclusion appeared to be that reforms of ISMIE are necessary to drive down their premiums.

At this writing, the Division of Insurance is investigating the matter and a report on its findings has not yet been released.

Jury Verdicts Do Not Increase Insurance Rates



DuPage, Madison and St. Clair counties from 1992–2005 and found no upward trend of malpractice claim filings or in filings per physician when adjusted for population growth. He did, however, find an increase in the number of physicians from 1993 to 2003, the latest year for which American Medical Association figures are available. The study did not find a loss of doctors in downstate Madison and St. Clair counties, despite claims by the AMA to the contrary. Professor Vidmar’s study was commissioned by the Illinois State Bar Association.

It is clear that any crisis in states’ medical malpractice systems is not due to jury verdicts. For example, a study of a database maintained by the Texas Department of Insurance that contains all insured malpractice claims over \$25,000 resolved between 1988 and 2002 found the number of claims constant. The percentage of claims with payments of more than \$1 million remained steady at about 6 percent. The number of total paid claims per 100 practicing physicians per year fell to fewer than five in 2002. The total cost of large malpractice claims was stable and represented less than 1 percent of the total health care expenditures in Texas.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=678601



Limiting Victims’ Rights Nationally

The Republican-dominated U.S. House of Representatives has been busy trying to limit the rights of injured patients and other victims of malpractice with onerous laws. Top on its list was H.R. 420 called the Lawsuit Abuse Reduction Act. It was approved by the House of Representatives in October under the guise of too many frivolous lawsuits. It really, though, amounts to a full-frontal assault on the Federal Rules of Civil Procedure that guide a case through the courthouse. The bill also undermines a judge’s authority to determine what constitutes a lawsuit.

Also, earlier this year, President Bush signed into law the Class Action Fairness Act which severely limits the rights of those injured in great numbers. Whereas usually state court was an appropriate forum for its citizens to have their rights heard, that venue has been all but closed out and most litigants will now find themselves in federal court where different rules apply. Consumer groups expressed concern that the new law will create barriers to an injured person’s effort to obtain redress and virtually wipes out an important venue for redress of injuries or fraud for consumers. Instead of holding wrongdoers accountable for their actions, the law provides fewer incentives for companies to keep their products safe and their actions fair, hardly an act dealing with “fairness.”

Hospitals Must Report Mistakes

A new law in Illinois will require hospitals and surgical centers to report their mistakes if they commit any of 24 types of “never events” – inexcusable foul-ups that never should have occurred.

The law requires each hospital to analyze the cause of the mistake and also to take corrective action. The names of the patients and health care workers involved will remain confidential and the information disclosed cannot be used in malpractice lawsuits, nor will the state take any disciplinary action based on the mistakes reported.

“Unfortunately, this law will not be a useful tool for patients in making medical decisions,” said Keith Hebeisen, partner at Clifford Law Offices. “Even if a pattern is detected at a particular hospital or for a particular procedure, patients will not be informed. What needs to happen is for hospitals to stop making these inexcusable errors. What they need to do is to be more careful.”

Damages in Medical Malpractice Cases Remain Flat

The Center for Justice and Democracy, a national consumer advocacy group based in New York, released a study earlier this year that revealed that of the 15 leading insurance companies, net claims for medical malpractice payouts remained flat over the last five years while net premiums that these insurance companies charge doctors have surged 120 percent. Taken from data compiled from regulatory filings by the insurers to state regulators, the premiums collected were 21 times the increase in the claims they paid, according to the study.

Another consumer group, the Center for a Just Society based in Florida, reported last month that the top 15 medical malpractice insurance carriers in the country raised their rates a startling 120 percent between 2000–2004 even though their payouts increased less than 6 percent. For example, it found that Healthcare Indemnity, Inc., charged its doctors an extra \$173 million even though the company’s payouts had decreased by more than \$70 million during the same time frame.

Limiting jury awards is not the answer to solving the medical malpractice crisis. Rather, the Center suggests adequate staffing levels at medical facilities, policing doctors more vigorously and instituting a “risk pooling” method of insurance where physicians with a history of neglect would be placed in a “high risk” pool and would pay premiums commensurate with their risk. www.centerforjustsociety.org



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Approach the Bench

John Karnezis



The go-to guy. That's John Karnezis. Since joining the firm five years ago, the partners at Clifford Law Offices have turned to John for assistance and his reasoned approach to difficult legal issues and cases. And his successes haven't gone unnoticed.

For example, last year he worked with partner Kevin Durkin on the case of a young family who was tragically involved in a multiple vehicle crash in dense fog. Their car rammed a truck that was negligently stopped on the expressway, killing their young daughter and permanently injuring their young son. The mother underwent numerous facial surgeries.

The \$38.3 million verdict represented the largest motor vehicle verdict in the country last year, as noted by the *National Law Journal*.

He also teamed with partner Richard Burke and tried the case of a small corporate plane that crashed at Palwaukee Airport, killing the co-pilot. The result was a \$10.45 million verdict where the airport was found 90 percent at fault for failing to provide a safe landing terrain.

What has really been a testament to John's trial skills this year has been his superb work on the Emerald Casino case. A highly complicated, multi-pronged litigation approach in several venues, John was part of the summer-long hearings that involved dozens of witnesses in the corporation's attempt to sell its gaming license in bankruptcy court.

"The people of the state of Illinois deserve to have the tenth license working for them so that the tax revenues can reap benefits across the state and particularly in and around the Chicago area," John said of the case. "We are trying to get the license up and running so that millions and millions of dollars are not continued to be lost."

That's John. A conscientious, hard worker, but also a sensitive guy with a great sense of humor. The oldest brother in a family of eight children, he says he has always enjoyed the role of taking care of others, watching over them. The son of Justice Themis Karnezis, appellate court judge in the First District, John recalls his father taking the bench when he was just 15 years old. "I always wanted to be a lawyer and certainly my dad had a great influence on me. His work ethic as well as his belief in family first has molded me as the person I am today," John said.

A photo of John's beautiful bride, Dena, sits on his credenza. They were married in a ceremony last year that reminded guests of



Chicago Tribune
SATURDAY, SEPTEMBER 6, 2003
Damages sought in jail death; Sheahan sued in fatal beating
The widow of an inmate allegedly beaten to death by Cook County sheriff's deputies filed suit Thursday against the sheriff's office, accusing the department of tolerating an environment at a suburban courthouse that allowed deputies to use excessive force against prisoners.

Daily Herald
Wednesday, May 7, 2003
Jury awards pilot's family \$10.45 million
A Cook County jury Tuesday found Palwaukee Municipal Airport largely responsible for a 1996 corporate jet crash that killed four people on takeoff, and awarded \$10.45 million to the family of the dead pilot. John Karnezis ...

THE NATIONAL LAW JOURNAL
MONDAY, JULY 28, 2004
The Plaintiffs' Hot List
...and John T. Karnezis. A toddler was killed and her mother severely injured in a multi-car crash on an interstate highway where several trucks negligently blocked the roadway. The jury awarded \$38.3 million.

Chicago Tribune
JUNE 15, 2005
Ruling boosts bid for casino
Tossing a potential monkey wrench into the state's plans to permanently strip Emerald Casino of its riverboat gambling license, a Cook County judge Thursday ordered the Illinois Gaming Board to renew the casino's license and allow it to locate in northwest suburban Rosemont.

"My Big, Fat Greek Wedding," and the love exuded from all of the family members throughout the day and throughout their lives. "Family is most important to me. And I see that especially when families are devastated by terrible incidents that were avoidable," John said. "I like to take someone's hand and lead them to a better place. It is tremendously rewarding."

But don't be fooled by John's sensitivity. He also likes a good fight. "I started by being a prosecutor and it was a smooth transition to this job. I was not bullied then and I will not be bullied now," John said.

John worked in the Gang Crimes Unit of the Felony Trial Division as well as in the Public Integrity Unit of the Special Prosecution Bureau of the Cook County State's Attorney's Office. He tried more than 65 jury trials and hundreds of bench trials there. After moving to Clifford Law Offices five years ago, he became a partner at the firm in the shortest length of time for any young associate.

"John is not afraid of hard work," said Robert Clifford of his newest partner. "He is a tremendous asset to the firm and is someone on whom we have come to rely. His intelligence, his logic, his ability to look at the big picture is something that cannot be taught. It is just innate in John."

Many of John's cases have wound up as headlines in the news. He is modest about his accomplishments but in a corner of his office one can spy the Top 40 Attorneys Under 40 in the State that he received in 2001 from the Chicago Law Bulletin Publishing Company. He also was voted by his peers as a Super Lawyer.

He gives back to the profession as well as a member of the Chicago Bar Association Judicial Evaluation Committee and as a mentor in the Chicago Catholic school system where he financially and spiritually supports a student during his high school years.

John Karnezis truly is a go-to guy, not just at the firm but by everyone with whom he comes in contact.



CLIFFORD LAW OFFICES

120 North LaSalle Street
31st Floor
Chicago, Illinois 60602
Telephone (312) 899-9090 Fax (312) 251-1160
www.CliffordLaw.com

Partners: Robert A. Clifford, Keith A. Hebeisen, Kevin P. Durkin, Robert P. Walsh Jr., Susan A. Capra, Jeffrey J. Kroll, Richard F. Burke Jr., Robert A. Strelecky, Michael S. Krzak, Timothy S. Tomasik, John T. Karnezis
Managing Partner: Thomas K. Prindable
Communications Partner: Pamela Sakowicz Menaker
Counsel to the Firm: Robert P. Sheridan **Of Counsel:** George S. Bellas
Associates: Brian T. Nash, Katherine L. Dzik, J. Ryan Potts, Craig J. Squillace, Heather A. Begley, Vivian T. Tarver, Matthew L. Willens, Shannon M. McNulty, Brian S. Shallcross

s' Family



Jaci Mike Keith
 Sue Ellen Chato
 Katrina Kevin Susie
 Debbie Rich Kerry
 Mike Caroline Jeff
 Carlos Jimmie Jackie
 Karen Sandra
 Beth Andrea KAREN
 Lindsay Claudia W.
 Rachel Diane Matt
 Kate John F. Kete
 -Denise Janne Bob Mary O. Chris
 Teresa Alix Ama O. Myraie Kim Sue Jennifer

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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 verdicts and settlements. Some of the recent successful cases in the last year include the following:

Attorney	Amount	Case
Bob Clifford Keith Hebeisen	\$16 million	newborn suffers permanent brain damage requiring round-the-clock care when oxygen is cut off after doctors and hospital personnel fail to perform timely cesarean section
Bob Clifford Kevin Durkin Michael Krzak	\$13.73 million	29-year-old laborer sustains severe burns over half his body when coal dust ignites in Hammond, Indiana power plant
Bob Clifford Jeff Kroll J. Ryan Potts	\$12.5 million	17-year-old football player rendered a quadriplegic during a high school football practice after he is tackled into an unpadding steel pole less than 12 feet from the sideline; school subsequently moved the field further from the pole
Jeff Kroll J. Ryan Potts	\$6.8 million	37-year-old mother of two falls through unmarked styrofoam flooring of a home under construction while viewing upon invitation of builder
Bob Clifford Keith Hebeisen	\$6 million	62-year-old man dies during second surgery to remove a four-inch refractor negligently left in his abdomen during a previous operation to remove tumors
Richard Burke Shannon McNulty	4.5 million	51-year-old man suffers severe electrical burns while standing on fire escape holding a thin strip of metal siding because electric company positioned uninsulated high voltage power lines less than three feet from balcony in violation of industry clearance standards
Robert Strelecky	\$3.1 million	doctor fails to diagnose and treat intracranial pressure leading to death of 12-year-old boy from blood vessel bursting in brain
Bob Clifford Matt Willens	\$3 million	mother and sole support of college student is killed in head-on collision when truck driver crosses center line and strikes her car in suburban Rolling Meadows
Keith Hebeisen Susan Capra	\$2.885 million	oxygen is cut to brain of 54-year-old man during minor hand surgery; he goes into a coma for two weeks and dies
Robert Walsh	\$2.671 million	45-year-old plumber and father of three falls six stories to his death at a Chicago construction site
Jeff Kroll J. Ryan Potts	\$2.6 million	24-year-old truck driver killed in heptane gas explosion in Des Moines, Iowa, leaving a wife and three-year-old daughter
Robert Strelecky	\$2.5 million	44-year-old construction worker dies when medical personnel fail to properly monitor and treat pneumonia at Chicago-area hospital

Trial Notebook

New Cases at Clifford Law Offices

- numerous people injured when a speeding commuter train derailed heading to Chicago on a Saturday morning
- 11-year-old boy killed by a train in Glenview when he attempts to cross the tracks at a busy intersection where no pedestrian crossing gates were constructed despite previous near misses with children on bicycles in the past
- bicyclist is killed by speeding commuter train when railroad employee beckons her to cross the tracks when a crane and derailed train are blocking her view to see oncoming commuter train on third set of tracks
- 18-year-old freshman at University of Illinois is killed when a bus driver who had been on the job just two weeks struck her from behind killing her in the crosswalk
- young mother and her four-year-old son are killed when a speeding Ferrari crosses over the center line in West Chicago and hits her van head-on
- 33-year-old mother and physical trainer is severely disfigured when her right breast is unnecessarily removed following a negligent mix-up of pathology slides
- two major Chicago medical centers operate on wrong side of patients' brains in unrelated unnecessary surgeries
- 67-year-old woman hit and killed by truck driver who crosses over center line and kills her in suburban Romeoville
- motorcyclist in Chicago's Toys for Tots Parade is killed by automobile driver that pulls into the middle of the parade
- two brothers on motorcycle struck by auto that ran a stop sign on Labor Day; 16-year-old passenger suffers permanent brain damage; driver seriously injured
- truck driver on crystal meth forces trailer-truck off the road killing the young husband and father of a 4-year-old son in New Mexico
- young boy dies when he becomes trapped between rear door and fold-down bed that failed to stay latched in a conversion van
- 49-year-old father of two killed when crushed by defective punch press
- explosion at plant in North Chicago severely burns 41-year-old worker and injures another from far northern suburbs
- 22-year-old man killed in Chicago Heights when tractor-trailer crosses the center line striking his car head on



Kevin Durkin, partner at Clifford Law Offices, is pointing out a critical fact at a press conference when Clifford Law Offices filed a lawsuit against Metra in the death of a bicyclist who was killed by a speeding commuter train in Riverside.

A good samaritan came forward who witnessed the incident and reported that the bicyclist had exercised extreme caution but that railroad employees had beckoned her to cross the tracks when, in fact, a train on a third set of tracks that was not within her view struck and killed her.

Advertising Material Only

Clifford Law Offices has prepared this newsletter for its many friends, clients and colleagues world-wide. 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 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.

The owner of this newsletter is a law firm licensed to practice only in Illinois. In preparing and disseminating this newsletter, Clifford Law Offices has made a good faith effort to comply with all laws and ethical rules of every state into which it may be sent. In the event, however, that it is found not to comply with the requirements of any state, Clifford Law Offices disclaims any wish to represent anyone desiring representation based upon viewing this newsletter in such state.

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,

A handwritten signature in black ink that reads "Thomas K. Prindable".

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