



CORNER

CLIFFORD'S □

The Inner Circle of Advocates invited Robert Clifford to join its prestigious group. The organization is comprised of outstanding trial attorneys from across the country who share their expertise and ideas.

Mr. Clifford also was elected to the American Law Institute, a group of 3,000 prominent judges, lawyers and academics from around the world selected on the basis of professional achievement in the law. Justice Benjamin Cardozo and Judge Learned Hand were among its early leaders.

Bob also has been named as a member of the American Bar Association Commission on the 50th Anniversary of *Brown v. Board of Education*, a precedent-setting case that established equality and integration in classrooms across the country.

Clifford Law Offices was named one of the "25 Go-To Teams" in the country by the National Law Journal, making "The Plaintiffs' Hot List."

Robert Clifford and Kevin Durkin settled a series of lawsuits stemming from the crash of Alaska Airlines 261 that killed 88 people when it plunged into the Pacific Ocean in January, 2000.

The \$39.6 million in settlements on behalf of six families came following three years of depositions led by Durkin who served as Co-Chair of the Plaintiffs' Executive Committee for the litigation. These depositions exposed problems with the horizontal stabilizer of the MD-83 aircraft. Boeing admitted liability despite the National Transportation Safety Board giving the corporate giant a virtual pass in its determination of the cause of the crash.

"It's clear that Boeing and Alaska Airlines were trying to avoid the scrutiny of the problems with this aircraft which are still flying in the skies today," Durkin said. Paralegal Jennifer Gordon assisted in these successful cases.



Depicted is the jackscrew component of the horizontal stabilizer assembly that was recovered in the Pacific Ocean following the crash.

Alaska Air crash

## CHICAGO TRIBUNE VOICE OF THE PEOPLE

### DON'T HURT THE INJURED BY CAPPING DAMAGE AWARDS FEBRUARY 25, 2003

Dozens of families traveled to Washington in mid-February to tell legislators how negligent doctors or hospitals ruined their lives. There were dozens of stories, each a tragedy of how a family tries to get through a day after negligent doctors left someone injured for life: brain-damaged babies, now teenagers, who can't dress themselves or eat; a man in a wheelchair on round-the-clock oxygen because his good lung was removed instead of the cancerous one; a healthy teenage boy who goes into the hospital for simple hernia surgery and is left unable to walk or talk because of improperly administered anesthesia.

These people talked of how they had put their trust in professionals, in doctors who took an oath to do them no harm. Instead they recounted how doctors committed negligent acts or omissions and then continued to neglect them or attempted to cover up their mistakes by evading or lying or even altering medical records.

The Tribune suggested a \$500,000 cap in "Solving the malpractice mess" (Editorial, Feb.7). What does that mean for, say, a 20-year-old medical malpractice survivor in a wheelchair for the rest of a normal life expectancy? That's \$24 a day for the rest of his life. What can you do on \$24 a day, much less if you have special needs and are confined to a wheelchair?

Are the families mad? Sure. But they made the trek to our nation's capital to try to help others, so that it wouldn't happen to anyone else. They were there to plead with those who pass legislation asking them to focus on the real problem: a crippled health care industry coupled with an insurance lobby that tries to blame trial lawyers for the entire problem.

As insurance companies try to be competitive, they lower premium rates to attract customers when the bond market is good. When the bond market is soft, as in recent years, their investments, as does everyone else's, suffer. But that doesn't justify passing those losses on to physicians in the way of higher premiums. Why are they exempt from antitrust regulation and, instead, allowed to charge whatever they see fit?

Many congressmen indicated they would not discuss the issue of capping damages, when it is expected to come before Congress this session as a Bush priority, unless insurance industry practices were scrutinized and regulated as well.

The time has come to focus on this multifaceted problem, but let's look at the entire picture and the real culprits behind the skyrocketing insurance rates. The number of lawsuits filed in Illinois actually has decreased per capita since 1993 because the number of lawsuits has remained steady while the population has increased, according to the Illinois Department of Insurance.

Illinois already has in place a number of controls over medical malpractice cases: Punitive damages are banned, a doctor's certificate of merit is required in order to file a lawsuit and contingency fees by lawyers are controlled by statute with a graduated scale that decreases the higher the damage award.

Capping compensatory damages is not the answer. Those who suffered only minor injury won't reach the \$500,000 cap anyway. On the other hand, those severely injured, who need a jury to determine fair and just compensation over a lifetime, would see their damages arbitrarily capped at a figure set by someone who never even heard their story, understood their pain or walked in their shoes for even a minute, much less a lifetime. Why target those deserving victims with a cap?

Robert A. Clifford  
Clifford Law Offices  
Chicago

## Press Room

Brian Nash was selected from among 900 nominees across the state as one of the Top 40 Attorneys Under 40 Years Old by the Chicago Law Bulletin Publishing Company. Brian also received the Outstanding Service as a Young Alumnus Award from DePaul University College of Law.

Robert Walsh spoke on "Winning Back and Neck Injury Cases" at the Illinois Institute for Continuing Legal Education.

Robert Clifford was named the top Marist High School Alumnus at its inaugural awards program.

Susan Capra recently spoke to the Illinois Paralegal Association on "How to Prosecute a Medical Malpractice Claim."

Kevin Durkin was Co-Chair of the Event Steering Committee for the Chicago Bar Foundation's Annual Fall Benefit with the proceeds working to improve access to justice. Thomas Prindable also served on the Committee.

Robert Clifford spoke to members of the Chicago Surgical Society on medical malpractice in November.

Jeff Kroll is speaking on trial techniques in Aspen, Colorado, and at the "Winning With the Masters" program in New Orleans next month.



Robert Clifford congratulates two new associates joining Clifford Law Offices: Heather Begley (left) and Vivian Tarver.

## BILL OF PARTICULARS : TORT REFORM ALERT

### Would-Be Doctors Must Pass Bedside Manner Skills Test

Starting next year, medical students around the country will have to pass a live test of their clinical skills and bedside manners before they can become doctors.

The National Board of Medical Examiners said it will measure skills needed to produce an accurate diagnosis including how well medical students listen to patients and how they answer patients' questions.

This requirement marks the first time a national test has been required of doctors since 1964 when a similar evaluation was abandoned amid criticism that it was too subjective.

The tests will be administered in Chicago, Atlanta, Los Angeles and Houston. The 20,000-student class of 2005 will be the first required to take the test next year which will include examining 10 people trained to act like they have various ailments. After a 15-minute exam, the student will have 10 minutes to record their observations and then meet with senior physicians to report their findings. If the aspiring physician fails, the student will be allowed to repeat the exam after 60 days.

### Study Concludes Caps Don't Impact Malpractice Costs

An independent study found that caps on damages are of dubious value in slowing medical malpractice premium hikes. According to Weiss Ratings, an independent rating company



in Palm Beach Gardens, Florida, it was found that the median annual premium that doctors pay rose at a higher pace in states with damages limits in the last 12 years than in states without caps.

"It's the opposite of what you'd expect," Chairman Martin Weiss said, noting that neither consumer groups and trial attorneys nor the medical and insurance trade groups commissioned the study. "We found a series of factors that had nothing to do with caps that drove premiums higher."

The number of lawsuits filed in Illinois actually has decreased per capita since 1993, according to the Illinois Department of Insurance. The reason for this drop is that the population in the state has increased while the number of lawsuits filed has remained steady.

#### Medical Malpractice Premiums in States With Caps

2002	1991	Percentage Increase
\$30,246*	\$20,414*	48.2%

#### Medical Malpractice Premiums in States Without Caps

2002	1991	Percentage Increase
\$30,056*	\$22,118*	35.9%

\*figures not adjusted for inflation

### Special In-Flight Radio Program



Robert Clifford was invited by major airlines to be a featured guest and the only plaintiffs' trial attorney to speak on the issue of tort reform. Mr. Clifford will join other distinguished speakers including the governors of Florida and Texas and the President of the American Medical Association. They will present the various sides of the controversial issue on all flights of United and American Airlines during the month of February. Tune in to Channel 7 on your headset to hear a lively and informative debate while in the air.

### Texas Approves Caps by Narrow Margin

Texas has become the first state in the nation to approve a constitutional cap on non-economic damages in medical malpractice cases. The amendment, known as Proposition 12, narrowly passed Sept. 13 by a 51-49 percent margin. A mere 32,000 votes out of 1.5 million pushed the proposition over.

The amendment sets a limit of \$750,000 on non-economic damages, such as pain and suffering, disfigurement and disability, with a maximum of \$250,000 against doctors and \$500,000 against hospitals.

The method of approval means that the possibility of appellate challenges to the caps is weakened. Critics of Proposition 12 stated that the narrow margin of approval clearly indicates there is no mandate to place caps on other types of lawsuits.

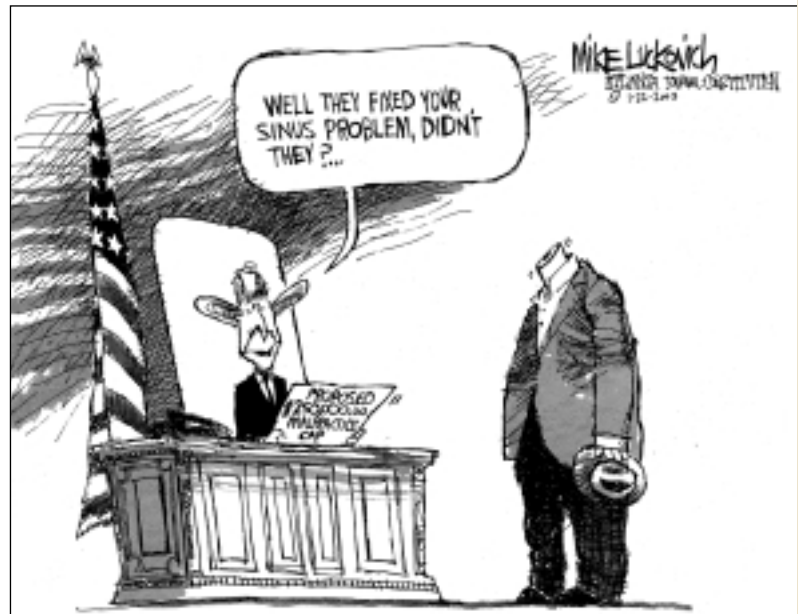
Twenty-six states already have legislative caps on non-economic damages. Only two states are currently trying to pass similar constitutional caps: Pennsylvania and Florida.

### Maryland to Require Hospitals to Report Errors

Starting Jan. 1, Maryland's Department of Health and Mental Hygiene will require hospitals to report serious adverse events, including those caused by accidents and medical errors. The step comes nearly four years after a report from the nonprofit Institute of Medicine estimated that medical errors kill up to 98,000 patients each year in hospitals across the country. That report also recommended preventative strategies be developed.

At least 21 states require hospitals to report adverse events but experts say many such deaths and injuries are never brought to light. At times, extensive medical records deter the process.

The intent in Maryland is to identify when and where the process breaks down and to improve patient safety. The rules require hospitals to inform the state of an adverse event as well as thoroughly investigate why the event happened. Hospitals also will be required to tell patients when they have unexpectedly been harmed and how to file a complaint with state regulators.



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### TIM TOMASIK

Tim Tomasik is a person you want on your side in a legal battle. It's apparent that he's always thinking, taking a studied approach to a problem.

It might stem from his appreciation of the law since a child. As a teenager, Tim would walk across the Jefferson Street Bridge after class at Joliet Catholic High School and watch the trials at the Will County Courthouse.

"I was fascinated with trial and cross examination," Tim said. "I was impressed with how a lawyer could effectively tell a story and, at the same time, was methodically building a case." He knew then he was destined to be a lawyer.

"I always thought that all disputes should be settled in a civilized manner and I was drawn to the compelling and persuasive techniques of advocacy I saw in the courtroom."

After studying journalism at the University of Colorado, he obtained his law degree from the University of Denver. After graduation he went to work as an Assistant State's Attorney in Chicago where he tried numerous high profile cases. In his eight-year career, he worked his way up to the Bureau of Special Prosecutions in the Gang Crimes Unit. "I stayed as long as I did because I found the public service aspect of my work extremely gratifying in representing victims of crime, and now I enjoy the same satisfaction in helping victims of personal injury."

The American Legion honored Tim by giving him its Award of Excellence for his "outstanding devotion and dedication to public service as an extraordinary attorney in the Gang Unit of the Cook County State's Attorney's Office and for his remarkable ability as a civil litigator."

He joined Clifford Law Offices in 1998 where he has amassed more than \$50 million in verdicts and settlements. In 2000 he was named one of Chicago's Top 40 Attorneys Under 40 Years Old to Watch, the year that the Chicago Law Bulletin Publishing Company inaugurated the award.

He is now working on behalf of several victims of the John Hancock Building scaffolding collapse. Tim is on the Hancock trial team and has taken dozens of depositions involving the tragic and unnecessary incident that occurred on a windy day in March 2002 when improperly secured scaffolding fell 42 stories, striking and killing three people and severely injuring several others.

Tim also was involved in a high profile case involving an Arlington Heights police officer who was severely injured when a speeding hearse ran a red light, ramming the squad car on routine patrol. After the hearse driver gave conflicting statements, it was

discovered that the hearse was equipped with a "black box" that had recorded its speed.

But perhaps Tim's greatest achievement was when he tried the case of a 67-year-old orthopedic surgeon beside Robert Clifford. "Working with Bob on this highly complex case was the highlight of my legal career thus far," Tim said. The surgeon, who had volunteered in Africa helping those without medical care, had himself been partially paralyzed following anaesthesia that was negligently administered. The three-week trial resulted in a \$12.6 million verdict. "Prior to trial, we conducted many mock trials and focus groups. The results of our extensive jury research was confirmed by the verdict."

He also co-chaired the two-week trial involving an Elgin woman who was seriously injured when a Commonwealth Edison truck caused a multi-car accident. It resulted in a \$14 million verdict.

"Tim is an intelligent, hard-working attorney who is meticulous in his preparation of a case," said Robert Clifford. "He also has a great personality and is a great professional person with whom to work."

His parents were a driving force behind his career aspirations. His father Frank, a hard working and highly respected physician, taught Tim a great work ethic at a very young age, and his mother Gerryann always inspired him to work hard to achieve the many high goals he had set for himself. Growing up with three sisters and a brother also taught him the fine art of negotiation at a very young age.

He married Jennifer Durso, also an attorney, who he worked with at the Cook County State's Attorney's Office. Jennifer still practices in the Preliminary Hearings Division.

"She is the most amazing woman in the world. She is very understanding of the demands of a trial attorney in civil practice, not only because she is an excellent lawyer but

because of her wonderful nature," Tim said.

Tim and Jennifer's work schedules leave them precious little time together so they make the most of it. Skiing, golfing, running and traveling are some of their mutual interests. They even took time to visit Ireland earlier this year.

Tim also keeps busy with bar activities including serving as Co-Chair of the Chicago Bar Association Hearing Section of the Judicial Evaluation Committee as well as a speaker at various legal and medically related seminars. This January he will serve on the faculty of the prestigious University of Virginia Law School's Trial Advocacy Institute that will include U.S. Supreme Court Justice Anton Scalia.

In 10 years where does Tim see himself? "Doing exactly what I'm doing right now, but with a couple of children," Tim said.



Tim Tomasik is a member of the trial team for the scaffolding collapse at the John Hancock Center.



## CLIFFORD LAW OFFICES

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**ON THE DOCKET** SOME OF THE RECENT VERDICTS AND SETTLEMENTS OBTAINED BY CLIFFORD LAW OFFICES INCLUDE:

ATTORNEY	AMOUNT	DATE	CASE
Robert Clifford Kevin Durkin	\$39.6 Million	2003	Six passengers killed in the crash of Alaska Air 261 that plunged in the Pacific Ocean on a return flight from Puerto Vallarta, Mexico
Robert Clifford Keith Hebeisen Susan Capra	\$11 Million	Aug. 18	Premature newborn given intravenous overdose of glucose in hospital and suffers severe brain damage
Richard Burke John Karnezis	\$10.45 million (verdict)	May 5	Pilot killed in corporate jet crash; municipal owners of airport and corporation held liable
Robert Clifford Kevin Durkin Tim Tomasik	\$10 million	March 24	Speeding hearse hits squad car on routine patrol, severely injuring police officer; black box in hearse recorded speed
Keith Hebeisen	\$6 million	April 8	Failure to treat strep infection results in severe and permanent brain damage and blindness; also negligent treatment of leg results in amputation
Keith Hebeisen	\$4.75 million	April 9	34-year-old man sustains severe and permanent brain damage following botched surgery on his leg
Robert Clifford Tim Tomasik	\$4.5 million	Jan. 14	39-year-old woman suffers permanent disfigurement and disability to her leg following routine surgery
Keith Hebeisen Katherine Dzik	\$3 million	Sept. 25	Hospital fails to timely diagnose and treat blood clot in leg resulting in amputation for 28-year-old man
Jeff Kroll	\$2.775 million	Feb. 21	Bus makes tight right-hand turn and pins 34-year-old woman against barrier; leg is degloved
Richard Burke	\$2.5 million	April 1	Passenger killed in plane crash at Palwaukee Airport
Jeff Kroll	\$2.5 million	April 16	49-year-old woman dies following improper post-operative care at Chicago hospital
Kevin Durkin Kim Braband	\$2.5 million (bench trial)	Aug. 8	62-year-old pedestrian struck by a U.S. postal truck, dragged for 25 feet, then is run over by semi's rear wheels; dies at the scene

**CASES IN THE NEWS** On Oct. 17, 2003, a fire in a Loop high-rise county administration building kills six people and injures many more. Clifford Law Offices is retained by the families of several of the victims.

**Chicago Sun-Times** October 22, 2003

**The fire tragedy...**  
... The irony: Konopka had reportedly been told by building management that in case of fire, the stairwells were safe. Her attorney **Kevin Durkin**, of the **Robert Clifford law firm**, filed the first personal injury suit stemming from the tragedy that claimed six lives. The lawsuit lists the building management as defendants. . .

**Chicago Tribune** October 28, 2003

**Attorneys say they need more time**  
... Attorney **Robert Clifford** said they were still learning about the system and trying to understand whether it was functioning on the day of the fire. . .

**Chicago Tribune** November 5, 2003

**City denies stalling lawyer on information**  
... Attorney **Robert Clifford** had asked Cook County Circuit Judge William D. Maddux to require the city to produce the names of witnesses and others involved so **Clifford** could question them. "They are dragging their feet and not giving us the information we are entitled to," **Clifford** charged. . .

**Chicago Sun-Times** October 30, 2003

**Loop fire probe targets PA control**  
... "If the fire department did not take control of the situation, we're going to see if they followed the letter of this order," said **Durkin**, an attorney at **Clifford Law Offices**. "We do know the evacuation orders were coming out when the fire department was on the scene." . . .



**Chicago Tribune** October 24, 2003

... Also on Thursday, plaintiffs' lawyers who have filed lawsuits got their first look inside the buildings with their experts. **Kevin Durkin**, one of the lawyers, said the fire damage was in a limited area on the 12th floor. . .

**Chicago Sun-Times** October 29, 2003

**Investigator calls fire 'landmark'**  
... Attorney **Kevin Durkin** said the smoke tower in the county building was a small vestibule between the offices and the deadly south-east stairwell. . .

**Chicago Sun-Times** October 28, 2003

**Daley says he won't ax Joyce**  
... **Bob Clifford**, an attorney representing several of the dead and injured, was equally unimpressed with Joyce's pledge to consider doing top-to-bottom stairway searches at future high-rise-fires. **Clifford** was more concerned with the source of the initial order to evacuate the building, which flooded the stairwells with potential victims. . .

**Chicago Sun-Times** November 1, 2003

**Lawyers want quick answers in Loop fire**  
... **Robert Clifford** said he plans to go before a Cook County judge on Tuesday and ask for "accelerated" depositions from the engineer who might have ordered the evacuation and two security guards who might have made the announcements over the public address system. Attorneys also want to talk to any other building engineers and guards on duty at the time. **Clifford**, an attorney who represents six victims of the fire, said his clients are eager to know what happened. He also fears crucial details could be forgotten if a normal schedule of depositions - which can take months - is followed. "With the passage of time, memories diminish," **Clifford** said. "My clients are entitled to some answers as quickly as possible." . . .



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Very Sincerely Yours,  
*Thomas K. Prindable*  
Thomas K. Prindable  
Managing Partner  
Clifford Law Offices, P.C.



*Holiday Greetings from the Clifford Law Offices' Family*

*Jaci Sandra*  
*Pam Cassi Jackie Tom Dave*  
*Ann Sue Amy Jeff Cate*  
*Keith Ken Jennifer Violet Alan*  
*Kelly Dr. T. Kim Heather Brian*  
*Colleen Rick Debbie Karen Pas*  
*Kerry Alesia Mike Joe Heather Cathy*  
*Deanna Alan Rob Traci Chato Anne*  
*Juan Heather Laurie Kim Denise*  
*John Heather Allison Theresa Jay Kim*  
*Theresa Brian Jose*

*Wishing You Holiday Greetings*

*Robert A. Clifford*



**CLIFFORD LAW OFFICES**