

# Clifford's Notes

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

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Clifford Law Offices serves clients nationally and internationally with 21 personal injury attorneys. Our personal injury law firm concentrates in:

Personal Injury	Transportation	Consumer and Health Care Fraud
Wrongful Death	Aviation	Whistleblower Litigation
Medical Malpractice	Premises Liability Law	Class Actions
Product Liability	Commercial 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,  
Hon. Henry R. Simmons (Ret.),  
Managing Partner, Clifford Law Offices, P.C.

## Clifford Law Scrapbook



**Robert A. Clifford**, founder and senior partner at Clifford Law Offices, spoke on "Closing Arguments" at the annual Damages Seminar sponsored by the Illinois Trial Lawyers Association (ITLA). Bradley M. Cosgrove, partner at the firm, is the program planning co-chair of this Presidents' Day seminar presented in Chicago.



**Bob Clifford** (moderator) speaks to the panelists, U.S. District Court Judge Virginia Kendall and Fordham Law School Professor Bruce Greene for the 8th annual free continuing legal education (CLE) program sponsored by Clifford Law Offices. More than 3,700 lawyers and judges from across the state registered for the seminar, "The Ethics of Conflicts of Interest."



**Robert Clifford** participated in a mock trial involving the 1915 Eastland Disaster that left 844 people killed in a steamship tragedy on the Chicago River. Company officials were believed to be responsible for the deaths but were found not guilty in a criminal trial 100 years ago. Clifford served as prosecuting attorney with Dan Webb defending the accused. Here Bob delivers his closing argument.



#### Keith Hebeisen Receives 2015 Pro Bono Excellence Award by Federal Bar

Keith A. Hebeisen was given an Award for Excellence in Pro Bono Service by the U.S. District Court in conjunction with the Chicago Chapter of the Federal Bar Association. The award was presented at the 16th Annual Excellence in Pro Bono and Public Interest Service Award Ceremony in the James B. Parsons Memorial Courtroom of the Dirksen Federal Building Courthouse in Chicago. Hebeisen, a highly acclaimed trial attorney for 30 years, was nominated for the award by Judge Rebecca Pallmeyer for Hebeisen's pro bono work in a case on behalf of Robert Hernandez, a federal prisoner who injured his shoulder while lifting heavy items during his kitchen duties and prison officials allowed his physical problems to worsen without proper evaluation, treatment or physical therapy. Necessary care was administered after Hebeisen filed a motion for a preliminary injunction and the case also settled for a confidential amount. Sarah F. King assisted on the case.

# Clifford's Notes



## Clifford's Corner

Robert A. Clifford was again named as one of *Chicago Magazine's* Most Powerful 100 People. He ranked #76 along with Mayor Rahm Emanuel (#1) and Governor Bruce Rauner (#3), Chicago Ald. Edward Burke (#60) and Cubs President Theo Epstein (#79). The Magazine went on to say, "... Chicago's fiercest personal injury litigator still has his hands in big cases, including City Hall ride-sharing ordinance."

Mr. Clifford participated in a mock trial in New Orleans representing the state in the retrial of Sacco and Vanzetti, a famous case in the 1930's of two Italian immigrants who were convicted and sentenced to death in the electric chair. The all-day program was a teaching tool for litigators on the various aspects of a trial. Clifford presented Opening Statements on behalf of

the prosecution at the American Bar Association Section of Litigation Annual Meeting.

Robert Clifford participated in the American Bar Association Magna Carta program in London, England, marking the 800th anniversary of the signing of this historic charter. Clifford moderated the panel in June dealing with Trial Skills in America.

## Final Judgment

### \$25.9 Million Verdict Against Yellow Cab



Robert Clifford and another personal injury law firm came together to obtain a \$25.9 million verdict on behalf of a lawyer, Marc Jacobs, who was severely injured in a

horrific taxi crash 10 years ago that involved a speeding cab that went hurling off an expressway ramp and smashed head-on into a concrete barrier.

News of the verdict immediately spread across the media in light of the parent company of Yellow Cab immediately filing for bankruptcy in the middle of the night following the verdict.

Jacobs, then 44 years old, was returning home by cab after a late dinner with a long-time client on Aug. 31, 2005, to his Hinsdale home when the Yellow Cab in which he was a passenger in the back seat was speeding on I-294 as it exited at Ogden Avenue. The taxi careered out of control onto a grass drainage area adjacent to the ramp when it suddenly vaulted 32 feet through the air and slammed into a concrete barrier.

The tremendous crash into the concrete barrier resulted in severe permanent brain damage to Jacobs. After many surgeries and long-term rehabilitation, Jacobs is unable to continue his high-level legal work in his same capacity at a Chicago law firm.

"It is unquestionable that the taxi company, as the apparent principal for the driver, was negligent in this horribly tragic case," Clifford said following the verdict that took three hours to reach. "An entire family has been injured because of a company's negligence, a company that holds itself out as one that can be trusted to safely carry people to their destinations."

The seven-man-five-woman jury deliberated before Judge Daniel J. Lynch at the Daley Center.

Within hours of the verdict, Yellow Cab filed for bankruptcy. It continued to operate business as usual.

## Press Room



**Bradley Cosgrove** was elected to the Assembly of the Illinois State Bar Association. He also was elected to sit on the Illinois Trial Lawyers Association Board of Managers where he serves as Program Co-Chair. A partner at Clifford Law Offices, Brad was named one of the Top 100 Trial Lawyers in the country by the National Trial Lawyers, a professional organization composed of premier trial lawyers from across the country who exemplify superior qualifications as civil plaintiff or criminal defense trial lawyers. Cosgrove was named to its Top 100 for his recent string of successful verdicts and settlements in recent months, including a record \$14 million verdict on behalf of a woman who suffered a debilitating stroke after taking Yasmin for 13 days and a record \$3.157 million verdict in Winnebago County for the amputation of a man's left leg due to a doctor's negligence. *The National Law Journal* named the \$14 million verdict as the top one in the state in 2014.



**Shannon M. McNulty** was profiled in an editorial piece published by *Leading Lawyers Magazine* in the Women's Edition for 2015. In the article McNulty talks about her background in criminal justice, her successes and how she currently heads the consumer class action work as one of the partners at Clifford's Chicago-based law firm.

**Michael Krzak** spoke at the ABA Aviation Litigation National Institute in New York on "Major Issues in Regional Air Crash Cases."

**Kevin P. Durkin** spoke at the Illinois Trial Lawyers Association (ITLA) annual Trials Seminar. Durkin, who has received numerous record verdicts and settlements in transportation cases as well as other areas of personal injury and wrongful death law, talked on "The Value of Focus Groups." Durkin utilizes the gathering of random people before a trial in order to better prepare the case and focus on issues that matter to potential jurors, particularly in complex cases.



**Sean P. Driscoll** has been named a partner at Clifford Law Offices. His wide-ranging, successful trial experience led to his being named one of Chicago's Top 40 Under 40 Attorneys in 2011 by the Law Bulletin Publishing Company. He recently spoke at the ITLA Ethics and Professionalism Seminar on "Ethics and Social Media."



**Tracy A. Gibbons** has been named an associate attorney at Clifford Law Offices. Gibbons served as a law clerk at the firm for more than two years and recently graduated from Loyola University School of Law.

**Pamela Sakowicz Menaker** serves on the American Bar Association (ABA) Host Committee for the 2015 Annual Meeting to be held in Chicago in July-August.

**Clifford Law Offices** was chosen as the 2015 Professional Malpractice Law Firm of the Year in Illinois by Global Law Experts in London for its excellence in medical malpractice.

## In The News

*A Germanwings airliner crashed in the French Alps in March, killing all 150 on board. Kevin Durkin, a leading aviation attorney, was contacted by a number of national and international media outlets about legal liability concerning the tragedy.*



The Sunday *New York Times*, "Germanwings Crash Settlements Likely to Vary by Passenger Nationality," by Jad Mouawad and Nicola Clark, March 29, 2015.

*International Business*, "Germanwings 4U9525: Lufthansa Liability to Victims' Families Could Reach Over \$150,000," by Esther Tanquintic-Misa, March 31, 2015.

*International Business Times*, "Germanwings: How Much Will the Families of Flight 9525 Receive in Crash Settlements?" March 30, 2015.

*Wall Street Journal*, "Liability for Germanwings Crash May Still Rest with Airline, Insurer; Copilot's secrecy wouldn't necessarily exonerate Lufthansa, lawyers say," by Robert Wall, March 30, 2015.

*The Washington Post*, "Germanwings Co-Pilot was Unfit to Work on Day of Crash," by Karin Matussek, Richard Weiss and Tino Andresen, March 28, 2015.

Bloomberg News, "Germanwings Crash Cause Means Recoveries Uncapped," by Stephanie Bodoni, March 27, 2015.

# Bill of Particulars

These interesting news items have been taken from the blog that appear on the websites of Clifford Law Offices, [www.CliffordLaw.com/blog](http://www.CliffordLaw.com/blog)

## ABA Extends Free Membership to All Law Students – Bob Clifford Chaired Special Committee

The American Bar Association (ABA) is offering free membership to all law students starting in August, waiving the \$25 annual dues for those enrolled in ABA accredited law schools across the country.

ABA President William C. Hubbard of South Carolina made the announcement in April on behalf of the 395,000-member organization. It comes on the heels of a recommendation of the special Task Force to Examine Association Policies Impacting Recruitment and Retention of Law, chaired by Robert A. Clifford, founder and senior partner at Clifford Law Offices.

Clifford was appointed last June by then ABA President James R. Silkenat of New York to examine the policies, strategies and tactics for the recruitment and retention of new members.

## Statement of Kevin Durkin, Co-lead Counsel in Bourbonnais Amtrak Crash that Killed 11, Injured 100+, Following Tragic Amtrak Crash in Philadelphia

Amtrak derailment in Philadelphia is a tragedy, as is the decades-long failure of the Federal Railroad Administration (FRA) and Amtrak to provide safe, positively controlled rail transportation to patrons across the country, particularly in the Northeast region. As the NTSB and its parties continue to uncover what caused the horrific May 12 event, one thing that appears reasonably clear is that the passengers aboard this speeding train, those who paid for their tickets in return for the reasonable expectation of a safe passage, were the victims of gross negligence.

While this negligence is likely attributable to the train's engineer in part, there may also be blame to spread amongst the FRA and Amtrak for their failure to require and implement Positive Train Control (PTC) in some fashion throughout the track on which Amtrak operates. The NTSB has made PTC recommendations for decades, in part because this is not the first time Amtrak engineers have more than doubled the posted speed limit in a curve and caused derailments with hundreds of injuries. On Dec. 12, 1990, an Amtrak train derailed after speeding in a curve at Boston's Back Bay, injuring hundreds, closing the track for weeks, and causing millions in track and other infrastructure damage. Despite Amtrak's attempts to intentionally erase the event recorder data from that locomotive, the NTSB recovered the data and found that the engineer was operating the train at more than double the speed limit, causing it to derail.

Initial investigations by the NTSB into this Philadelphia Amtrak accident reveal that the passenger train attempted to circumvent a curve in the tracks at 106 mph, more than double the speed limit of 50 mph. In fact, the train should have never even approached speeds of 100 mph, as the speed limit of the strip of track immediately before the curve was 80 mph. The result is that eight passengers have died and hundreds more were injured and transported to hospitals. This is unacceptable. FRA and Amtrak should have long learned their lesson from the 1990 Back Bay crash and implemented PTC throughout Amtrak territory.

Amtrak serves more than 30 million people annually – once again the safety of its operation and commitment to PTC and accident prevention has been called into serious doubt. Amtrak is now saying it will look to implement PTC to prevent such accidents, but after 25 years of reason and opportunity to do so, without fulfillment, they will likely pay dearly in reputation, trust and tort settlements for this crash and the pain and suffering it has heaped on its passengers and their families.

I served as Co-Lead Counsel in the litigation involving the crash of an Amtrak train in Bourbonnais, Illinois, among other railway accidents. In order for the victims of this latest crash and their families to sort through this complicated morass that is certain to play out in America's legal justice system, they need to think carefully about how to protect themselves as well as other future passengers, making a clear statement that this type of conduct will no longer be tolerated, and together they can become a strong voice for change, real change, that will help make other travelers safer in the future.

## Consumers' Corner

By Robert A. Clifford, Senior Partner and Lead Counsel in Pella Window Class Action, and Shannon McNulty, Partner, Clifford Law Offices

**If you have Pella ProLine Casement windows, you may be a member of a class action underway in the Northern District of Illinois. For more information, go to [www.cliffordlaw.com/practice/class-actions/](http://www.cliffordlaw.com/practice/class-actions/)**

**Q. I have Pella ProLine casement windows, but they are not showing any signs of defect or rot. Am I still a class member? What should I do?**

**A. You may still be a class member with a viable claim against Pella because the complaint alleges that the defect is concealed and may not reveal itself until after your warranty expires. You should complete a Pella Class Action inquiry form at [www.cliffordlaw.com](http://www.cliffordlaw.com), and make certain to maintain all documentation related to your windows, including the windows' serial numbers.**

## Drug Manufacturers Underreporting Medications' Side Effects, Report Finds

According to a new study conducted by the Institute for Safe Medication Practices, the main mechanism for tracking and documenting serious side effects associated with medications is deeply flawed, according to *The New York Times* ("Drug Maker's Data on Side Effects Is Called Lacking in a Report," Feb. 2, 2015). The study found that this problem is attributable to drug manufacturers themselves, alleging that these companies are submitting incomplete information in the reports to the Food and Drug Administration (FDA), *The New York Times* reported. It is not that medication manufacturers are not submitting such reports to the FDA, but that reports do not meet the basic standards for completeness in that they omit the patient's age, sex and the date of the event complained of, according to *The New York Times*. This information is critical to the FDA for proper evaluation of how drugs affect specific groups of people, according to the *Wall Street Journal*.

Drug manufacturers are required to disclose to the FDA each and every instance that comes to their attention of an adverse event attributable to a drug they manufacture under FDA rules. However, less than half of reports filed are considered "complete" under FDA standards, the *Wall Street Journal* reported. While a few companies were commended by the FDA for consistently submitting high quality reports, many others were condemned for a complete lack of due diligence, according to *The New York Times* story. Manufacturers responded to these allegations by claiming that the lack of information is attributable to the fact that consumers and/or doctors are not directly filing reports to the manufacturers, but instead the companies are left learning of the complications from medical literature that does not always contain the information the FDA claims is lacking, according to *The New York Times*.

## Auto Recalls and Driving Safety



For the automotive industry, 2014 was the year of the recall. You couldn't pick up a newspaper, turn on the evening news or check your favorite news site without hearing about another new and alarming recall. And unfortunately for car owners everywhere, recalls show no sign of letting up. What's even more concerning is a lapse by automakers and federal regulators in responding soon enough to reports of serious injury and death.

Industry advocates and safety experts say the recalls are the culmination of years of mismanagement by manufacturers and the agencies that regulate them. Take Justice Back and the American Association of Justice (AAJ) have issued an updated report on the safety improvements made possible by an aggressive search for justice. However, problems still remain, as evidenced by the following examples:

**GM Ignition Switch Failure** – GM's defective ignition switch has now resulted in more than 39 million recalls and at least 13 fatalities, although the death toll could go much higher.

**Takata Air Bags Accidentally Killing Some Drivers** – The recall of air bags made by Japanese supplier Takata has affected 10 automotive manufacturers, more than 30 million vehicles in the U.S. In May, Takata agreed to declare 33.8 million air bags defective, representing the largest product recall in the nation's history.

**Ford Drivers Hit Off Switch Instead of Radio** – Ford has recalled more than 13,000 vehicles over a design flaw that causes drivers to accidentally push the ignition switch instead of the radio touch-screen button, bringing the car to a sudden halt.

# Approach the Bench

## Sarah F. King

So many of the attorneys at Clifford Law Offices are products of growing up in Chicago's back yard – in its wonderful neighborhoods or the surrounding areas.

Sarah King, associate at the firm, could have been literally anywhere in the world, yet she still found her way to Chicago and 120 North LaSalle Street in a story that perhaps only could come from someone's imagination. But it's true.

Sarah grew up in North Hollywood, the daughter of an executive advertising producer. She occasionally traveled with him to shoot commercials on location for major brands. Yet it was her mother, a paralegal, in whose footsteps Sarah followed.

Since she was barely 10 years old, Sarah knew that she wanted to be a lawyer. "My mom took me to the office and court a lot. I knew I wanted to do it, although I didn't know exactly what type of law I wanted to practice. I forced my little sister to play my witness in our reenactments of Law and Order," Sarah said of her childhood. "Even in grade school I was drawn to fighting for the 'underdog' and for women's opportunities." In 7th grade Sarah started a signature drive and spoke at a town hall meeting to prevent a local gas station from unearthing buried piping near her school. She also petitioned the Archdiocese of Los Angeles to allow girls to play in the all-boy flag-football league. "I wasn't a huge football fan, but once they granted my petition I knew I had to try out." Sarah made the team and played safety. She was the only girl in the league. Sarah jokes, "I wasn't as big as them, but I was faster and clearly smarter."

When Sarah was 16 – that critical junior year in high school – her grandmother was diagnosed with Alzheimer's and the family decided to move from Hollywood to Kansas City to help her. Sarah took it all in stride, making life-long friends and applying to colleges around the country. She chose Loyola University of Chicago, wanting to return to the taste and feel of a big city, especially after experiencing all the wonders of the Windy City with her dad on a school visit.

After her grandmother died, her parents, at still a relatively young age, did what so many dream of – they leased their house in Kansas and moved to live in the Bahamas on their sailboat, "Pura Vida," meaning "Pure Life" in Latin. That wanderlust, although buried deep inside Sarah who loves to travel, hasn't struck yet because she says there are so many things she wants to accomplish at the firm, given her "workaholic" personality. Enjoy reading her parents' blog and you will get some insight into Sarah as well: <http://thepurelife.blogspot.com/>

Sarah worked as a waitress and hostess, majoring in Women's Studies and English with a minor in political science. After graduation, she backpacked through Europe for three months with her best friend from Los Angeles, working her way from Turkey to Portugal in a trip of a lifetime.

She was accepted at DePaul University College of Law and initially thought she would be practicing family law. She even worked for a short time at a divorce firm. "I loved the people I worked for but I knew I wanted to be in the courtroom more. I was at the law library late one night waiting for a friend and flipping through magazines. I spotted Susan Capra's profile. She sounded like she was practicing in an interesting area of law in which a lot of women aren't involved," Sarah said.



Sarah F. King introduced the speaker, Lori Lightfoot of Mayer Brown, at the Women Everywhere (WE) annual Education Day that is dedicated to creating opportunities for women through education and community service.

She then contacted Susan, partner at Clifford Law Offices and a nurse, who was impressed with her poise, her background, her research and writing skills, and Sarah was hired as a clerk at the firm. Sarah credits her opportunity at Clifford Law to Susan, "Susan is one of the most impressive and inspiring attorneys I know." Sarah said, "But above all she is a great teacher and a selfless mentor."

Upon graduation, Sarah was immediately hired as an associate attorney, finding out that she passed the bar examination while working on a trial with another mentor, Keith Hebeisen, partner at the firm. They were in downstate Carbondale, Illinois, and she checked her test results at 3 a.m. Coincidentally,

the case settled the next day.

She said she is very appreciative that Keith, one of the state's most experienced plaintiffs' medical malpractice lawyers, has taken her under his wing and taught her all he knows. "Never once has he ever said I couldn't do something," Sarah said. "I enjoy trying medical malpractice cases with Keith. I think we make a great team." Keith describes Sarah as a trial lawyer with great potential: "Sarah is bright, determined and enthusiastic. She has great instincts and poise. She is destined to be a great trial lawyer."

Indeed, Sarah already has had great success in a courtroom, trying some multi-million-dollar cases alongside Keith and Brad Cosgrove, another partner at the firm – a case of the wrongful death of a young mother who died following a C-section that resulted in a \$15.55 million verdict and a trial involving the permanent injury to a young woman who suffered a debilitating stroke following the negligent prescription of the birth control pill Yasmin that resulted in a \$13.55 million verdict.

"There should be more women trial attorneys, especially in tragic cases," Sarah said. "I truly believe that women have a unique ability to connect with jurors and clients. We are effective and empathetic. Our firm handles cases involving childbirth, breast cancer, birth control and other issues personal to women and it takes great resources to take these cases to trial. We are very lucky that Bob Clifford provides us the opportunity to do it."

However, as a young female attorney Sarah has run into many lawyers that are not as encouraging as Clifford and Hebeisen, "A very wise woman once said 'No one can make you feel inferior without your consent.' I think about that quote whenever someone patronizingly calls me 'young lady' during a deposition and I just object louder and work harder to beat them." Her success as a young lawyer is evident in Sarah being named a Top 40 Under 40 Lawyer this year by the Law Bulletin Publishing Company and being elected to the Board of Managers of the Illinois Trial Lawyers Association.

Sarah lives with her two dogs, Bruno and Max, and her long-time boyfriend, Dan, in Wrigleyville. Sarah and Dan are Cubs season ticket holders and she was interviewed opening week this year on Waveland Avenue by a local television station. They also find time to run marathons.

But most of Sarah's time is spent in marathon days at the office, preparing medical malpractice cases for trial on some of the most complex issues-breaking them down for jurors to understand. And she says that's exactly where she intends to stay.



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