Supporting the Effort

The decision is in…but the battle has just begun.

The Illinois Supreme Court’s ruling on the Lebron case was welcome news; their 4 to 2 decision overturned the 2005 legislation that imposed arbitrary caps on medical malpractice awards, and did so in a way that would appear to be the final word on the subject. Unfortunately, that’s hardly the case.

Even as the news of the decision was breaking, supporters of caps were letting their sentiments be known, pontificating on talk radio and popping up on television as “analysts.” The newspaper editorialists spent the next few days excoriating the court and predicting its decision would cause all manner of mayhem.

In almost every instance these pro-cap advocates relied on all the usual lies to make their case: Before caps doctors were “fleeing” the state. Caps drove down medical malpractice insurance premiums. Illinois is a “judicial hellhole.” Medical malpractice awards equal “jackpot justice.” And on and on.

Missing from the discussion was a dissenting voice; no editorial, few letter writers, and no radio host hailed the Illinois Supreme Court. The field was completely given over to cap proponents – and they aren’t going to accept this defeat. In fact, they are already marshalling their forces and mapping their strategy to re-impose caps and more. Their push for public opinion is ongoing, and as we’ve seen, they have on their side much of the print media. They currently, in public relations parlance, control the message, and left unchallenged they will sway public opinion and influence legislators. And they’ve made it clear they’re determined to change the make-up of Illinois Supreme Court.

As simply and as forcefully as it can be said, we can’t sit back and allow this to happen. We must be as aggressive in supporting the court’s decision as they are in attacking it. We must become as strong and vocal advocates for victims of medical negligence outside of the courtroom as we are when we’re inside. And above all else we have to ensure those who believe as we do remain in their positions of influence and power.

In the membership survey conducted last summer, many of you stated ITLA should do far more to promote our profession and our legislative agenda. The same beliefs came through in your comments, strongly urging us to launch public education efforts, increase advertising, and improve our media relations.

All of these are great ideas, and perhaps ITLA could do more to “get our message out.” However, this responsibility is on all of us, not just a few staff members. Some tactics to use take only a few minutes and cost you nothing: write a letter to the editor when you spot a pro-caps letter or editorial, call in to the radio show that’s bashing the court’s decision, post an online comment on the “thread” that follows web stories about the ruling.

A collection of letters to the editor and op-eds can be found at www.iltla.com. Other information can also be found at our new site www.insurancereformillinois.org.

And keep this in mind, too: Even if your practice does not involve medical malpractice, the threat is still there. If caps are re-imposed on medical malpractice, how far behind do you think before caps are placed on auto, property, premises, or workers compensation? This issue affects every one of us.

We cannot let the caps crowd have the only voice in this debate; without a challenge their misrepresentations are the only “facts” the public and lawmakers see.

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hear. Challenging them, advancing our point-of-view, and setting the record straight are vital strategies – and all come with a price tag.

For a starting point, pledge to become a vocal advocate of the court’s decision by writing letters, making phone calls, or posting comments. Next, consider donating to ITLA an amount equal to your yearly dues. If every member did that we’d have enough to help our supporters, advertise, lobby, educate the public, and launch an effective media campaign.

These are all programs and strategies you have said you want ITLA to pursue – all that’s lacking is enough money to launch and maintain them.

This is too big a crisis to ignore, and it although it may cost us some money and effort to fight back, it carries too large a price tag if we lose. We need everyone to step up and become part of the fight – one we all win together, or lose together.

Thank you in advance for your support – and your check.

Peter J. Flowers, President
Illinois Trial Lawyers Association

ITLA On The Record
ITLA President Peter J. Flowers has had letters to the editor and op-eds recently appeared in the following publications:

- Bureau County Republican, January 21, 2010
- The Chronicle (Kane County), January 25, 2010
- The State-Journal Register, January 29, 2010
- Chicago Tribune, January 30, 2010
- Chicago Tribune online, February 3, 2010
- Daily Herald, February 8, 2010
- Crain's Chicago Business, February 8, 2010
- Peoria Journal Star, February 14, 2010
- Champaign News-Gazette, February 14, 2010

The letters are available for viewing on the ITLA website at www.iltla.com under Latest News.

If you see a letter or article in your local paper that ITLA should respond to, please contact Kevilee Burge in the ITLA office at 800-252-8501 or at kevilee@iltla.com.

Ever wish you had access to hundreds of other attorneys when you are looking for an answer to a complex legal question? Join the ITLA Networking listserv and get the advice of members from across the state, any time of day. Call the ITLA office for more information - 800-252-8501.

Want CLE credit without leaving your office?

Watch your email and the ITLA website for information to register for these coming webinar programs:

**Thursday, February 25**
*E-Discovery: Get in step with the 21st Century.*
Site - your computer - 2 p.m.

**Tuesday, March 23**
*Technology 101: how to do a day’s work in 45 minutes Webinar*
Site - your computer - 2 p.m.

The letters are available for viewing on the ITLA website at www.iltla.com under Latest News.
City of Chicago Settles Slip & Fall Case for $800,000

In January of 2005, as she was walking in Terminal 3 of O’Hare International Airport, a 59 year-old doctor passed by a number of restaurants and slipped on an oily substance on the floor. She fell forward onto her left knee, fracturing her kneecap and tearing the cartilage. She was taken to the hospital, where surgery was performed, and was released after six days. Several months later she required a second surgery to properly repair her knee. Not only was the doctor unable to return to her private medical practice for several months, she was also unable to perform her volunteer medical work for an international organization. She and others would parachute with supplies into the jungles of various third world countries, treat the natives and then be boated out of the area by them. When she could no longer parachute due to her injuries, she started doing volunteer work for the poor in remote areas of Appalachia. Plaintiff alleged that the City of Chicago, which controls and maintains O’Hare airport, failed to clean the spilled substance on the floor and failed to warn passengers of dropped food items. The City settled the lawsuit for $800,000.

Jury Returns Verdict in Mesothelioma Case

On August 13, 2009, a Sangamon County jury returned a $2 million verdict against Bondex International, Inc. for damages sustained by the plaintiffs, William and Sharon Willis, arising from William Willis’ diagnosis of mesothelioma. Mr. Willis was a part-time contractor who used joint compound manufactured by the defendant in the 1960’s and 1970’s. The joint compound contained asbestos. Mr. Willis was awarded $1 million for pain and suffering, $250,000 for loss of use of normal life and $250,000 for emotional distress. His wife was awarded $500,000 for loss of consortium. The jury returned not guilty verdicts as against two other defendants, Georgia Pacific and Certainteed Corp.

$1.942 Million Verdict Against Semi Tractor Trailer Operator Shatters Record in Conservative Wisconsin County

An Adams County, Wisconsin, jury returned a $1.942 Million verdict against a trucking company to compensate a husband and wife for personal injuries sustained in a semi truck crash on July 5, 2006. The plaintiffs’ trial attorneys presented evidence that the truck driver was illegally hauling a large piece of logging machinery on the interstate highway without a permit or safe routing information. As a result, when the driver reached the first overpass he had no idea whether the machinery would fit underneath, and he decided to stop the truck in the right southbound lane. Meanwhile, a co-employee driving ahead of the semi-truck pulled over and exited his vehicle to “eyeball” whether the load would fit underneath the overpass. The co-employee ran through the left southbound lane in front of a pickup truck, forcing its driver to hit the brakes to avoid him. The plaintiffs’ vehicle rear-ended the pickup truck and sideswiped the semi-truck, which the defense argued was contributory negligence. The jury allocated fault 80 percent to the trucking company and 20 percent to the plaintiff driver. Past and future medical expenses were $272,000. The verdict shattered the previous county record of $378,500.00, which was in a wrongful death case.

Settlement for Microwave Electric Shock

A $3.0 million settlement was reached in a case in which the plaintiff sustained four limb complex regional pain syndrome when she received an electric shock from touching the microwave oven in the kitchen of her apartment on November 5, 2002. The plaintiff had two spinal cord stimulators surgically implanted in her spine to control the pain. The medical bills claimed were $323,000. The microwave was plugged into an electrical outlet that was not grounded and mis-wired. The management company for the apartment building allegedly used untrained and unqualified workers to install the outlet without an electrical permit and failed to properly inspect the outlet after it was installed. The case settled while the defendants had a dispositive motion for summary judgment on the statute of repose pending.

Tort Briefs are compiled from the submissions of interesting settlements and verdicts provided by ITLA members. If you would like more information or attorney contact information for a particular tort brief, please contact Angela Vincent in the ITLA office at 800-252-8501 or at angela2@iltla.com. If you have an interesting tort brief to share, please email a short synopsis of that case to Angela.
In Memorium: Martin Harnett
January 28, 2010 - We are terribly sad to report that, Martin Harnett passed away due to complications stemming from medical malpractice at birth. He was 14-years-old. Martin and his mom, Donna, touched everyone who met them. The case of malpractice during Martin’s delivery was awful, indisputable and completely preventable. It resulted in substantial brain damage, cerebral palsy and need for around-the-clock care. Donna sued and was able to obtain compensation to help take care of Martin. At that point, Donna could have stepped back from the spotlight, and honestly, who would begrudge her for doing that? But Donna wasn’t finished. She decided to turn this experience into something positive for Illinois and the country, seizing the opportunity to fight anti-patient legislation in both Springfield, IL and nationally. She wanted to make sure that patients who were hurt by their healthcare providers could hold those providers accountable and receive fair compensation for their suffering. Sometimes she even took Martin and her family with her to lobby. Martin’s medical malpractice ultimately proved fatal, but he lived life with a terrific spirit. Sadly, Martin did not live a long time. But his legacy certainly lives on. (www.thepoptart.com)

Texas Nurses Charged with Crimes for Reporting Bad Medical Care
Two Texas nurses were accused of giving patient’s personal information to the Texas Medical Board. A week before their trial was to begin prosecutors dismissed the case against one of the co-defendants. A year ago, when both women were nurses at the same hospital, they were accused of sending private patient information to the state medical board allegedly to “harass a doctor.” The only reason given in the motion for dismissal is “prosecutor’s discretion.” One nurse still faces felony charges of misuse of official information. (www.newswest9.com - February 2, 2010)

Report: Medical Error Leads to Congressman Murtha’s Death
While various news outlets have described the death of Congressman John Murtha’s (D-PA) as resulting from “complications following gallbladder surgery,” the Pittsburgh Post-Gazette is reporting that the “complications” involved an error by Murtha’s surgeons. Mr. Murtha was first hospitalized with gallbladder problems in December. He had surgery Jan. 28 at the National Naval Hospital in Bethesda, Md. He went home, but was hospitalized two days later when complications developed. According to a source close to Mr. Murtha — confirming a report in Politico — doctors inadvertently cut Mr. Murtha’s intestine during the laparoscopic surgery, causing an infection. (http://rijustice.wordpress.com - February 9, 2010)

California Insurer Asked to Justify 39 Percent Hike
Health and Human Services Secretary Kathleen Sebelius has asked California’s largest for-profit health insurer to justify plans to hike customers’ premiums by as much as 39 percent. In a statement, Anthem Blue Cross of California blamed the weak economy and rising health care costs for the rate hike. Sebelius said Anthem’s parent company, WellPoint Inc, “has seen its profits soar, earning $2.7 billion in the last quarter of 2009 alone.” (AP – February 9, 2010)
Need an expert deposition? Call ITLA first.

ITLA's Expert Testimony Exchange now has over 7,900 deposition transcripts accessible to all ITLA members. Transcripts include frequently retained experts and those relatively unknown.

Send us your depositions in storage and receive a $1 purchase credit for each new deposition (not already in the ITLA bank) submitted to the Expert Testimony Exchange.

Call Audra in the ITLA office for more information or go to the ITLA website at www.iltla.com for a list of experts and information.

Have you used your ITLA membership benefits lately? As you get busy with your practice, don't forget ITLA is here to support you.

The following benefits are available only to ITLA members

ListServ – An email discussion group to exchange information and seek referrals among plaintiff attorneys. This has become one of the most sought benefits of ITLA membership.

Educational Programs – The most comprehensive civil educational programs in the state. Reduced rates for 9 seminars a year. Topic specific on-demand webinar programs make getting MCLE credit even easier.

Educational Materials - Our course handbooks and CDs offer you legal education advancement at your home or office.

Auto Litigation Book - 7 chapters, 126 pages
Complaint Book - 27 model complaints covering all topics
Workers' Compensation Notebook and Medical Malpractice Trial Notebook - Written and edited by revered trial lawyers.

Expert Testimony Exchange – Over 7,900 depositions and trial testimonies of defense experts.

Amicus Involvement - The Amicus Curiae Committee offers support for members with significant cases by filing briefs on issues of major importance to Illinois’ citizens.

Brief Bank - An excellent reference source saving hours of search time.

Trial Journal – Semi-annual magazine offering feature articles on current legal trends and tips to help you in your practice.

Vested Interest – Monthly newsletter containing a message from the ITLA President and current "tort briefs" from Illinois and across the nation affecting your practice.

Legislative Representation – The efforts to completely rewrite the tort law of Illinois have not ended. ITLA represents its members and their clients in the halls of the State Capitol, every day, in every possible way.

Conference Room – ITLA has a conference room available for member use for meetings and depositions.

Membership Directory – Updated annually, members are listed geographically and alphabetically. Network with ITLA members for information and advice. Also searchable on the ITLA website.

Insurance Program - Term life insurance for members, spouses and office staff. Guaranteed low premiums.

Available to ITLA Contributing Members
Regular member benefits plus...Free attendance at ITLA seminars and free course handbooks from each seminar conducted by ITLA all year.

For new members only: Optional free one-year subscription to TrialSmith - $299 value.
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**ITLA's Legislative Reception**

**Wednesday, April 14, 2010**

**ITLA Headquarters**

401 W. Edwards St., Springfield

5:00 - 7:00 p.m.

This reception is being held to honor the members of the General Assembly - please plan to attend.