

Response by Philip H. Corboy, Jr., to editorial on limiting malpractice awards appears in Wall Street Journal

December 2008

Philip Harnett Corboy, Jr., president of the Illinois Trial Lawyers Association, wrote the following letter, which was published by the Wall Street Journal on December 8, 2008, in response to the paper's editorial in favor of limiting medical malpractice awards.

In its Dec. 1 editorial entitled "Messing with Malpractice Reform," the Journal urges the Illinois Supreme Court to "side with the patients and the rule of law" in considering a case that could overturn the state's cap on damage awards. Yet, the editorial never even mentions the patient who is at the center of that case.

It's a three year old little girl named Abigaile LeBron, whose life has been forever changed by the severe brain damage she suffered as a result of medical negligence. It is likely that Abigaile will have to be fed through a tube for the rest of her life. She will never develop cognitively or physically as her peers do. And she will likely never live independently. It is inarguably a very painful tragedy for Abigaile and all who know and love her.

The insurance industry and its brethren in the tort reform world have argued that Abigaile's compensation for lifelong disability, pain and suffering should be arbitrarily limited, despite what a jury of average citizens may decide. The question before the Illinois Supreme Court is whether the Illinois Constitution allows Abigaile's rights to be limited in this fashion to the benefit of insurance company profits. Twice before, our state's highest court has decided in favor of patients and against the insurance companies that would limit these rights to protect their own profits. No new arguments have been offered by the insurance industry.

Attorneys

- Philip Harnett Corboy Jr.

The Journal argues that a reduction in malpractice premiums and the return of doctors to the state have resulted from the law containing caps. Nothing could be further from the truth. Not one case has been litigated under the new cap in Illinois. The simple fact is that those positive developments have resulted from strong, long-suppressed insurance reforms in the legislation. That law has now forced malpractice insurance companies to provide greater transparency on rate-setting and payouts that has in turn spurred competition, motivated more companies to enter the marketplace, and lowered premiums for doctors. Important to the discussion for your readers is the additional fact that Illinois' largest malpractice insurer has reported that payouts have remained flat for the last 13 years. By the way, it's the same insurance carrier that admitted during the run up to this legislation in 2005 that capping awards would not guarantee lower premiums for its doctors.

The Illinois Constitution was put in place to ensure individual rights and freedoms. While corporations and profit-hungry executives often stack the decks against individuals in the marketplace and the halls of government, the courtroom can still provide all parties with a level playing field. The Illinois Supreme Court will now decide whether that standard remains in place for patients like Abigaile LeBron. You should let it do its job.

Philip Harnett Corboy, Jr.

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