Nos. 105741 & 105745 (cons.)

IN THE SUPREME COURT OF ILLINOIS

ABIGAILE LEBRON, a Minor, by THE NORTHERN TRUST COMPANY, Guardian of the Estate of ABIGAILE LEBRON, a Minor, *et al.*, Plaintiffs-Appellees, vs. GOTTLIEB MEMORIAL HOSPITAL, a Corporation, *et al.*, Defendants-Appellants.	)	On Direct Appeal from the Circuit Court of Cook County No. 06 L 12109
STATE OF ILLINOIS, Intervenor-Appellant.	)	The Honorable Diane Joan Larsen, Judge Presiding.
In re consolidated motions challenging the Constitutionality of Public Act 94-677.	)	

AMICUS CURIAE BRIEF OF THE ILLINOIS HOSPITAL ASSOCIATION, AMERICAN HOSPITAL ASSOCIATION, ILLINOIS CATHOLIC HEALTH ASSOCIATION AND ILLINOIS RURAL HEALTH ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLANT, GOTTLIEB MEMORIAL HOSPITAL

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STATEMENT OF INTEREST OF THE *AMICI*

The Illinois Hospital Association (IHA) represents virtually all of the approximately 200 hospitals and health systems in Illinois. The IHA strives to promote the cost-effective delivery of high quality health care through advocacy in the General Assembly, federal and state agencies, and the courts. The IHA puts forward positions that are intended to serve the interests of patients throughout Illinois. As the largest representative of hospitals in this State, the IHA has a profound interest in this case. It was actively involved in the legislative debates that led to the enactment of the medical liability reforms of P.A. 94-677. These reforms, which were struck down by the Circuit Court of Cook County, are of great importance to Illinois hospitals and the patients and communities they serve.

The American Hospital Association (AHA) is a national not-for-profit association that represents the interests of nearly 5,000 hospitals, health care systems, networks and other care providers, as well as 37,000 individual members, all of whom are committed to finding innovative and effective ways of improving the health of the communities they serve. The AHA educates its members on health care issues and trends and advocates on their behalf in state and federal legislative, regulatory and judicial fora to ensure that its members' perspectives and needs are understood and taken into account in the formulation of health care policy. Because of their commitment to advancing the health of communities they serve, the AHA and its members have a great interest in the outcome of this case. The AHA has been in the forefront of advocating for meaningful medical liability reform to assure access to health care services for communities across this country.

The Illinois Catholic Health Association (ICHA) is a voluntary membership association open to all Catholic health and social service organizations providing services in the state of Illinois, and to those dioceses, systems, and religious congregations that sponsor such organizations. Its members include thirty-one religious congregations, six dioceses including the Archdiocese of Chicago, six Catholic Charities organizations sponsored by the dioceses, and forty-six hospitals along with the health systems and religious congregations that oversee the hospitals in the state. Illinois has more Catholic-sponsored, health-related organizations than any other state. Currently over 95% of the Catholic hospitals and social service agencies in this State belong to ICHA. Medical liability costs have a profound effect on the mission and activities of Catholic hospitals in Illinois. Every dollar devoted to the resolution of medical liability claims is a dollar that is not devoted to health care.

The Illinois Rural Health Association (IRHA) was organized in 1989 to improve access to health care for rural Illinoisans. The IRHA is a collaborative association whose mission is to strengthen health systems for rural residents and communities through advocacy, education, networking, and leadership. The association is composed of individual, organizational, and student members interested in providing leadership on rural health issues. IRHA's diverse constituency includes persons concerned with rural health, health care providers and administrators from both private and public settings, state and local government leaders, researchers, educators, consumer groups, consultants, and insurance company and employer representatives. IRHA maintains strong relationships with the Illinois Department of Public Health, Center for Rural Health and

other state, public and private associations that advocate for improved rural health. IRHA also is a member of the National Rural Health Association State Association Council. IRHA advocates for the health interests of rural residents in public and private policy issues; supports state and federal legislation that promotes increased availability of health professionals interested in rural practice; and supports ongoing efforts to address all aspects of meaningful medical liability reform to ensure access to quality patient care.

The four *amici* support reversal of the Circuit Court's judgment. They submit this brief to apprise the Court of how these reforms came to be enacted, the nature and scope of the health care access crisis they address, and the importance of upholding P.A. 94-677.

ARGUMENT

I. Plaintiffs' Attack On P.A. 94-677 Asks this Court to Become the Legislature.

P.A. 94-677 (the "Act) is the Illinois legislature's careful and constitutional solution to a problem with which nearly every state legislature in the nation has grappled: preserving access to health care in the face of skyrocketing medical liability costs. As discussed in Section II, the Illinois legislature had extensive and compelling evidence that this cost has reached a dangerous level that is hurting access to health care throughout Illinois. Left unchecked, this damage would continue to grow – at the same time that the healthcare system is already staggering under the weight of increases in other costs. If the Act is overturned, unchecked medical liability costs will undoubtedly begin their rapid climb to the disadvantage of all Illinoisans in ways that are too numerous and difficult to measure, but are felt directly by communities across the State.

When a family physician closes shop in an Illinois rural community, access to care for Illinoisans suffers. When the only obstetrician in a small Illinois town stops delivering babies, access to care for Illinoisans suffers. When a young physician decides to practice his or her specialty in another state that offers lower medical liability costs, access to care for Illinoisans suffers. When neurosurgeons leave an Illinois community and patients must be flown out of state, access to care for Illinoisans suffers. When a large hospital puts an additional twenty million dollars every year into its self-insurance trust instead of hiring more nurses, access to care for Illinoisans suffers.

It is impossible to put a number on the negative impact these decisions carry for Illinois citizens. And it is hard to put a "face" on the members of the public who pay the price for these decisions. But the Illinois General Assembly heard irrefutable evidence that these decisions are taking place on a large scale and that the Illinois public is paying that price. That evidence was so strong that it persuaded the legislature to pass the Act even though it was controlled by a political party traditionally opposed to "tort reform" measures, and persuaded a Governor of the same party to sign it.

Plaintiffs demand that even if the legislature was right in concluding that the spiraling costs of medical liability insurance and self-insurance are hurting the availability of health care in Illinois, this Court should strike down the Act anyway. And they insist that this Court find the ability of a relatively small number of medical liability plaintiffs to recover all of the non-economic damages that a jury awards them outweighs effectively addressing a public health crisis—which would lead to invalidating P.A. 94-677 as a whole, including the provisions concerning enhanced regulation of physicians

and insurers. In short, the plaintiffs contend that recovery of non-economic damages is so important that the legislature is constitutionally prevented from imposing generous limits on the non-economic damage liability of hospitals and physicians as part of a multifaceted solution to a major, statewide health care problem.

Accepting plaintiffs' position would place the Court squarely into the role of the legislature. It is a role for which this Court lacks policymaking standards, tools, resources and processes. First, assessing the *impact* of spiraling medical liability costs on access to care in Illinois is a legislative task. The legislature that passed the Act had an extensive record on which it found this impact to be severe and growing. The trial court in the present case had no record on which to make a contrary judgment, and neither does this Court.

Second, it is not the role of the judiciary to declare that there is a *better way* to address the problem that led the legislature to pass the Act. In 2005, the Illinois General Assembly heard competing theories for why medical liability costs in Illinois where increasing at an alarming rate. And it responded by passing a comprehensive, multi-dimensional public health measure that combines civil justice reform with physician and insurance regulation. P.A. 94-677 is a complex Act trying to solve a complex problem. Plaintiffs did not identify an alternative solution to the trial court. But even if they had done so, the court would have had no basis for concluding that it would work, much less work better than the solution the legislature chose. For example, if plaintiffs were to advocate legislative price control of insurers' premiums, how could a court conclude that such price controls, standing alone, would solve more problems than it would create? If

plaintiffs were to advocate higher liability limits on non-economic damages than the legislature chose, how could a court conclude that any particular higher level would effectively reduce medical liability costs or effectively limit future increases in such costs?

Third, plaintiffs demand that the judiciary give the interests of a relatively small group of severely injured medical liability plaintiffs priority over the interests of the public in general. This is a profoundly legislative demand. All substantive legislation imposes costs in return for achieving the benefits it aims for. For example, the Illinois Good Samaritan Act, 745 ILCS 49/1, bars recovery for negligently provided health care in the absence of willful or wanton misconduct. It does so to encourage health care professionals to volunteer their services to those in need of care. It limits recovery to promote health care access. Under the Illinois Constitution, these sorts of public policy trade-offs fall within the purview of the legislature.

Legislatures must be free to make judgments balancing competing interests to serve that public good. Nothing in the Illinois Constitution holds that the ability of medical liability plaintiffs to recover non-economic damages is more important than the legislature's ability to address the serious and growing impact of such recoveries on access to health care in Illinois. And nothing in the Illinois Constitution prevents the General Assembly from addressing such balancing questions.

II. Illinois Faced a Health Care Access Crisis in 2004 and 2005.

In enacting P.A. 94-677, the General Assembly found that Illinois was experiencing a "health care crisis … endanger[ing] the public health, safety, and welfare of the citizens of Illinois." Pub. Act. 94-677, § 101(4). It further found that:

> (1) The increasing cost of medical liability insurance results in increased financial burdens on physicians and hospitals.
>
> (2) The increasing cost of medical liability insurance in Illinois is believed to have contributed to the reduction of the availability of medical care in portions of the State and is believed to have discouraged some medical students from choosing Illinois as the place they will receive their medical education and practice medicine.
>
> (3) The public would benefit from making the services of hospitals and physicians more available.
>
> (4) This health care crisis, which endangers the public health, safety, and welfare of the citizens of Illinois, requires significant reforms to the civil justice system currently endangering health care for citizens of Illinois.

Id. § 101. These findings, based on a series of public hearings and testimony from a wide spectrum of stakeholders and experts, are entitled to great deference. *See Best v. Taylor*

Machine Works, 179 Ill.2d 367, 689 N.E.2d 1057, 1069 (1997) ("Courts are not empowered to 'adjudicate' the accuracy of legislative findings. The legislative fact-finding authority is broad and should be accorded great deference by the judiciary."). As we discuss below, there was more than an ample basis for the findings of P.A. 94-677.

A. Prior to the enactment of P.A. 94-677, citizens of Illinois voiced widespread concern over lack of access to health care caused by the medical liability situation in this State.

During 2004 and 2005, Illinois newspapers reported again and again that physicians were leaving Illinois because they had to pay huge premiums in this State for medical liability insurance.[1] There were reports, for example, that, as a result of the medical liability situation, for many heart patients the nearest cardiologist might be hours away.[2] For similar reasons, women faced the prospect of losing their obstetrician during

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1 *See e.g.,* Patrick J. Powers, *Doctor Exodus Continues,* Belleville News-Democrat (November 9, 2003)("At least 42 doctors in St. Clair and Madison counties have announced plans to leave, or have left, because of rising insurance rates.") and the many other similar newspaper accounts listed in Appendices I, II and III.

2 Patrick J. Powers, *Doctor Exodus Continues,* Belleville News-Democrat (November 9, 2003)(Memorial Hospital has lost 10 cardiologists since 2003.); Karen Mellen, *Hospital Laments Insurance Costs—Christ Staff Flees Malpractice Rates,* Chicago Tribune (May 4, 2004)("Christ Hospital officials said at a legislative hearing Monday in Oak Lawn that they are losing vascular specialists…").

pregnancy or having to travel great distances to have a baby.[3] Likewise, brain-injured patients in southern Illinois had to travel to St. Louis to find the nearest neurosurgeon.[4]

Public awareness and calls for action in several locales across Illinois took the form of county and no less than ten city ordinances calling for medical liability reform.[5] Newspapers throughout Illinois editorialized in support of malpractice reform to secure health care access for Illinoisans.[6] These calls for change were the direct outgrowth of the diminishing access to medical care, caused by the medical liability crisis in this State.

B. The General Assembly heard substantial testimony establishing that medical liability costs were causing the health care access crisis.

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3 *See e.g.,* Doug Moore, *Red Budd Regional Hospital Will Stop Delivering Babies Beginning Nov. 1,* St. Louis Post-Dispatch (September 10, 2004)(Red Budd "becomes the sixth Southern Illinois hospital within two years to stop offering labor and delivery services…") and the many other similar newspaper accounts listed in Appendices I.

4 *See e.g.,* William Lamb, *Illinois Trauma Cases Surge at SLU,* St. Louis Post-Dispatch (January 10, 2005)("Belleville's Memorial and St. Elizabeth's hospitals canceled emergency neurosurgery in 2003 after one of three neurosurgeons who had been on 24-hour call at both hospitals moved his practice to Missouri, citing high insurance costs.") and the many similar newspaper accounts listed in Appendix III.

5 See Appendix IV.

6 See Appendix V.

During extensive hearings conducted by the General Assembly in the spring of 2005 on medical liability reform[7], no one questioned the existence of a health care crisis in Illinois. Some witnesses contended that the problem stemmed from lax insurance and physician regulation. Hospitals and physicians, however, explained that large, unpredictable medical liability verdicts were a fundamental cause of the crisis. "High risk" medical specialties, such as orthopedics, neurosurgery, obstetrics-gynecology, and general surgery were particularly hard hit by massive spikes in the cost of liability coverage. Feb. 23 Hr'g at 9.

As a result, forty-four percent of the residents in southern Illinois reported having lost a physician because of the physician's liability concerns. *Id.* Eleven percent of the obstetricians in Illinois no longer delivered babies because of these concerns. *Id.* at 16. Not a single neurosurgeon south of Springfield treated head trauma. *Medical Litigation Crisis* at 6. Hospital units lacked physicians willing to staff them. Mar. Hr'g at 12-13. Patients had to travel miles across counties for critical surgery. Feb. 23 Hr'g at 9-12; *Medical Litigation Crisis* at 7; Feb. 23 Hr'g at 21.

Legislators further learned that the medical malpractice crisis caused Illinois hospitals to curtail or abandon complex and high-risk services and to divert scarce resources from medical care. Hospitals seeking physicians to provide such care faced

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7 *See* Appendix VI for a list of witnesses showing the depth and diversity of the interests presented to the General Assembly as it contemplated the passage of P.A. 94-677.

huge and at times insurmountable barriers in recruiting qualified physicians in certain specialties as a result of the insurance problems of Illinois physicians.[8]

There was compelling testimony that the cause of the access crisis was the increase in awards for non-economic damages in malpractice cases. From 1998 to 2003, non-economic damage awards in medical liability cases increased by 247 percent, averaging more than $3 million. Feb. 23 Hr'g at 28-29. From 2000 to 2005, more than 80% of the damages awarded in medical liability verdicts of over $5 million in Cook County were for non-economic damages.[9] The enormous sums awarded in these cases were not being used to pay for economic losses such as future medical care and lost income. Instead, most of these multi-million dollar verdicts consisted of non-economic damages. Based on the abundant testimony before the General Assembly,[10] the following conclusion was well-supported: "Medical liability costs are starting to devour the bottom line of Illinois hospitals – turning what little black ink there is into red ink and threatening the ability of hospitals – even some of the largest hospitals in the state – to carry out their mission to service their community." *Id.*

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[8] Testimony of Harry Maier submitted Apr. 13, 2005 to the Illinois Senate Executive Committee.

[9] Testimony of Mark Deaton at 4, submitted at Apr. 7 Hr'g.

[10] See Appendix VI.

Moreover, The General Assembly also learned that Illinois hospitals are largely self-insured.[11] As a result, these hospitals bear the brunt of large, growing, and unpredictable medical liability awards involving the care they offer. In the eyes of commercial insurers, hospital liability risks were unpredictable and unmanageable. Accordingly, commercial insurers offered insurance only with huge deductibles (e.g., $15 million per claim). This state of affairs required hospitals to pay the "astronomical costs of verdicts and settlements out of their own pocket."[12] As a result, Illinois hospitals devoted huge sums of money to resolving medical liability claims at the expense of funding health care activities.[13]

Moreover, the fact that most Illinois hospitals were essentially self-insuring their medical liability established that the crisis in Illinois had nothing to do with "greedy insurance companies . . . gouging customers to make up for losses in the stock market [or

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[11] About 70% of Illinois hospitals are either self-insured or covered by risk pooling trusts that they own and control (collective self-insurance). Written comments of Mark Deaton, 2, submitted at Feb. 23 Hr'g.

[12] Testimony of Mark Deaton submitted Mar. 3, 2005 to the Illinois Senate Judiciary Comm.; *see also* Testimony of Charles Reiter before the Illinois Senate Judiciary Comm., Mar. 3 Hr'g at 57.

[13] *See, e.g.,* Testimony of Harry Maier, CEO, Memorial Hospital, Belleville, presented to Illinois Senate Executive Committee on Apr. 13, 2005, available at http://www.ihatoday.org/issues/liability/talk/1979test.html; Feb. 23 Hr'g at 101; Testimony of Mark Deaton submitted Mar. 3, 2005 to the Illinois Senate Judiciary Committee.

using] bookkeeping tricks."[14] Nor could the crisis in access to care be explained by the "rising cost of health care." *Id.* Rather, the most reasonable explanation for these rising medical liability costs for hospitals was "unpredictable increases in verdicts and settlements." *Id.* at 3. As one witness testified, "the major, huge force driving" the increases in hospital medical liability costs in Illinois is the growth of "verdicts and settlements." Mar. 1 Hr'g at 113 (Deaton testimony); *see also id.* at 73, 110.

The testimony leading to the passage of P.A. 94-677 supplied the General Assembly with a substantial basis for its legislative findings that unbridled non-economic damages in medical liability cases were causing the health care access crisis in Illinois.

III. Declaring P.A. 94-677 Unconstitutional Amounts To Saying That The Legislature Is Powerless To Address This Health Care Crisis.

Appellants' briefs discuss in detail the legal reasons why P.A. 94-677 passes muster under the separation of powers clause. Here the *amici* simply wish to point out a fact that the plaintiffs never acknowledge. If this carefully crafted statute is struck down, then this Court is holding in effect that the legislature is constitutionally prevented from seriously addressing the adverse effects of spiraling medical liability costs on access to care in Illinois.

As a matter of logic, there are only three ways to control these costs: (1) increase physician discipline to reduce the incidence of malpractice to reduce the volume of judgments and settlements; (2) impose greater regulation of liability insurers to reduce premiums for health care providers; or (3) impose reasonable liability limits that will

[14] Testimony of C. Reiter before Illinois Senate Judiciary Committee at 2 submitted on Mar. 3, 2005.

reduce the amount of non-economic damages that must be funded through insurance and self-insurance. Indeed, P.A. 94-677 attacks the liability cost problem from all of these directions. However, it is important to recognize that the General Assembly concluded that the problem could not be solved without imposing liability limits on non-economic damages for physicians and hospitals.

Measure (1) is a worthwhile objective, and P.A. 94-677, with its provisions encouraging more effective disciplinary measures for the medical profession, pursues that objective. But there is no reason to believe that such measures alone are likely to solve or even significantly reduce the problem. Still, despite the opposition of physician interests, the General Assembly concluded that enhanced regulation of the medical profession was a necessary part of the overall package of reforms.

Measure (2) – imposing more regulation of medical liability insurers – would not by itself solve this crisis. The testimony from hospital witnesses and experts in support of this Act showed that the crisis created by rising medical liability costs was not solely a function of insurance company mismanagement, bad luck or price gouging. Self-insured hospitals were experiencing the same unmanageable costs that affected physician liability insurance companies. These hospitals showed that the cause of the problem had to be beyond the reach of insurance regulation alone. Yet despite the insurance industry's strenuous objection to greater regulation, the General Assembly concluded that it was a necessary part of the overall package of reforms.

That leaves liability limits – the solution that a majority of states have adopted. *See "Medical Liability Reform—NOW,"* American Medical Association (February 5,

2008) available at: http://www.ama-assn.org/go/mlrnow. Interests associated with the plaintiffs' bar expressed doubts concerning the degree to which liability limits have reduced medical liability costs. But the legislature had significant evidence that they work as intended where they have been adopted, and that without them, the rate of increase of these costs would have been even greater than it was. The testimony before the General Assembly revealed that the escalation and unpredictability of large verdicts had caused liability insurers to sharply increase malpractice insurance premiums. *See, e.g.*, Feb. 23 Hr'g at 9, Mar. 1 Hr'g at 72-76, 110, Mar. 8 Hr'g at 71, Apr. 7 Hr'g at 15, 165. Actuary and Professor of Finance at the University of Illinois, Stephan D'Arcy, testified that liability limits on non-economic losses would "likely improve the market for medical malpractice insurance" in Illinois significantly. Apr. 7 Hr'g at 50. He based this conclusion on his knowledge of the positive impact of liability limits in California and Ohio, *id.*, at 48-50, and academic research finding that "limits on non-economic losses were the single most influential of all the forms of tort reform adopted during the 1980s." *Id.* at 44-45. Further, the General Assembly was presented with numerous federal studies concluding that liability limits on non-economic damages had proven effective in limiting claim severity and in reducing insurance premiums.[15]

[15] *See, e.g.*, U.S. General Accounting Office, *Medical Malpractice Insurance, Multiple Factors Have Contributed to Increased Premium Rates,* at 4-5, GAP-03-702, June 2003. Congressional Budget Office Cost Estimate, H.R. 5, Help Efficient, Accessible, Low-cost, Timely Healthcare ("HEALTH") Act of 2003, March 10, 2003, *available at* http://www.cbo.gov/ftpdoc.cfm?index=4091&type=0&sequence=0; CBO, *Limiting Tort Liability for Medical Malpractice,* Economic and Budget Issue Brief, Jan. 8, 2004,

If the liability limits in P.A. 94-677, which are far more generous than most states', do not pass muster, then no limit ever will. Thus, ruling that these liability limits are unconstitutional means forbidding the legislature from legislating effectively against the extremely serious problems created by rising medical liability costs. That is an untenable result. Compensating medical liability plaintiffs fairly is important and P.A. 94-677 accomplishes that objective. But providing unlimited compensation for non-economic damages cannot trump everything else, as plaintiffs might argue.

Illinois is home to over twelve million people. Medical liability plaintiffs whose injuries are so severe as to be affected by P.A. 94-677's liability limits form a very small part of our statewide community and they share in our great need to preserve health care access across Illinois. Medical malpractice verdicts have become so large on average that awards to this very small number of individuals can stagger or even bankrupt hospitals and have driven up insurance costs to physicians to levels that are hurting the public interest. Indeed, unlimited recoveries for non-economic damages may serve to disadvantage the very plaintiffs who continue to rely on care from a health care system that may be severely diminished by such recoveries.

It is untenable to hold that the interest of this very small group in recovering all of their awarded non-economic damages prevents the legislature from effectively addressing a problem which hurts the public as seriously as this one does. As shown in the testimony before the General Assembly and through the experience of other states,

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available at http://www.cbo.gov/ftpdoc.cfm?iniex=4968&type=0. Written testimony of L. Smarr at 6 (study of California's Medical Injury Compensation Reform Act).

liability limits are an essential part of the solution to this public health crisis. Nothing in the Illinois constitution should prevent the General Assembly from employing them.

CONCLUSION

The Illinois Hospital Association, the American Hospital Association, the Illinois Catholic Health Association and the Illinois Rural Health Association respectfully ask this Court to reverse the decision below and to uphold the constitutionality of P.A. 94-677.

Dated: May 8, 2008

Respectfully submitted,

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Appendix I. Illinois Newspaper Accounts regarding Obstetricians

- Doug Moore, *Red Budd Regional Hospital Will Stop Delivering Babies Beginning Nov. 1,* St. Louis Post-Dispatch (September 10, 2004)(Red Budd "becomes the sixth Southern Illinois hospital within two years to stop offering labor and delivery services…");
- Patrick J. Powers, *Maternity Ward Unlikely to Reopen Soon,* Belleville.com (January 24, 2005)("The … hospital stopped delivering babies because of … doctors skyrocketing medical malpractice insurance costs.");
- John Krupa, *Baby's Birth in Alton Makes National News,*(February 10, 2005)(The mother's "first two OB-GYNs moved their practices out of Illinois during her pregnancy, citing skyrocketing insurance costs for doctors in the Metro East.");
- Benjamin Brewer, *When a Pregnant Patient Struggles to Find Care*, The Wall Street Journal (January 5, 2005)(Dr. Brewer is the "only doctor in a county of 14,000 people and 486 square miles who regularly performs Cesarean sections—a delivery method any mother must be prepared for even if it's not what's planned.");
- Michael Sebastian, *Skyrocketing Insurance Rates Fueling Health Care "Crisis,"* Des Plaines Journal (November 18, 2004)(At Lutheran General Hospital the number of doctors delivering babies was going to drop by 39% and "10 out of 15 family practitioners at the hospital have stopped delivering babies completely".);
- Dave Whaley, *Baby Doctors Down by Half,* The Telegraph (September 17, 2004)("The medical malpractice crisis has … touched all areas of medicine, particularly OB/GYN.");
- Kathleen Louden, *Oh, Baby! Moms-to-be Feel Pain of Ob-Gyns' Rising Insurance Rates,* Chicago Tribune (September 22, 2004) (A patient's "northwest suburban ob-gyn of 14 years, … and his partners moved their practice to Kenosha, where malpractice insurance costs much less than what they were paying in Illinois.");
- Dave McKinney, *Rising Malpractice Premiums Force Docs to Quit, Study Says*, Chicago Sun-Times (April 15, 2004)(Rising "malpractice premiums have forced one in 10 obstetricians and gynecologists to quit practicing.");
- Bob Okon, *Joliet Doctors Speak in Chicago,* The Herald News (April 15, 2004) (The "number of obstetricians in Will County has dropped 20 percent in the last year…");
- Dave Whaley, *Another OB/GYN Leaving Madison County,* The Telegraph (Dr. Jabusch's "departure will leave only seven obstetrician/gynecologists in the River Bend.");
- Charles B. Pelkie, *Joliet Doctor Closing Shop,"* Suburban Chicago News, (February 27, 2004)(Dr. Lopez "is one of six obstetricians/gynecologists to leave Joliet practices since 2002.")

Appendix II. Illinois Newspaper Accounts regarding Neurosurgeons

- Susan Frick Carlman, *Local Mother Backs Malpractice Law Reform,* The Naperville Sun (February 3, 2005)("It was only because neurosurgeon ... was able to make the trip from ... Geneva to ... Naperville in less than an hour that Alex survived long enough to undergo the medical procedure that saved his life.");
- William Lamb, *Illinois Trauma Cases Surge at SLU,* St. Louis Post-Dispatch (January 10, 2005)("Belleville's Memorial and St. Elizabeth's hospitals canceled emergency neurosurgery in 2003 after one of three neurosurgeons who had been on 24-hour call at both hospitals moved his practice to Missouri, citing high insurance costs.");
- Elizabeth Davies, *Region Loses 2 Neurosurgeons,* Rockford Register Star (November 17, 2003)("Medical malpractice troubles are being blamed for this departure of one-third of the city's brain surgeons.");
- Caleb Hale, *Surgeons Leaving Over High Insurance,* The Southern Illinoisan (February 24, 2004)("Southern Illinois' only two brain surgeons plan to leave the region this year because of their medical malpractice insurance increasing.");
- Denise M. Baran-Unland, *Surgery No More,* The Herald News (March 26, 2004)("Neurosurgeons at Joliet's two hospitals ... no longer perform brain surgery, treatment of a stroke patient, ... may require, because of skyrocketing insurance premiums ...");
- Larry Avila, *Running Scared,* The Naperville Sun (April 27, 2004)("The effects are already being felt at Edward Hospital in Naperville. Five years ago, the hospital had 12 neurosurgeons on staff. Last year there were seven, and today there are only three.").

Appendix III. Illinois Newspaper Accounts regarding Physicians Leaving Illinois

- Patrick J. Powers, *Doctor Exodus Continues,* Belleville News-Democrat (November 9, 2003)("At least 42 doctors in St. Clair and Madison counties have announced plans to leave, or have left, because of rising insurance rates.");
- Dave Whaley, *Insurance Crisis Drives Doctors Out of Metro East, The Telegraph (December 28, 2003)(Eighteen doctors have left the Alton area within the last 18 months.");*
- Larry Imgram, *Physicians Leaving Anderson Due to Malpractice Insurance, Hospital Says,* St. Louis Post Dispatch at www.stltoday.com (February 23, 2004)("Anderson Hospital in Maryville has lost 14 physicians in the last year because of the high cost of malpractice insurance...");
- Caleb Hale, *Physician in Saline County Leaving Over Malpractice Costs,* The Southern (March 3, 2004)("Another Southern Illinois doctor will be closing his practice at the end of this month because of high medical malpractice insurance costs.");
- Caleb Hale, *Goodbye, Doctor: Another Practitioner to Shut Down Because of Insurance Premiums,* The Southern (April 8, 2004)("Bowman-Marsh is the fifth physician in the region to announce this year she is shutting down operations due to increasing insurance rates.");
- Wynn Keobel Foster, *Insurance Sends Doctors to Other States, Careers, Edison-Norwood Times Review at* www.pioneerlocal.com *(April 29, 2004)*("Arlington Heights resident, Dr. Nick Parise, an internist on staff at Resurrection Medical Center in Chicago, will see his final patient on May 28.");
- Karen Mellen, *Hospital Laments Insurance Costs,* Chicago Tribune at www.chicagotribune.com (May 4, 2004)("Christ Hospital officials said ... that they are losing vascular specialists and general surgeons, in addition to neurosurgeons and obstetricians, because of costlier malpractice insurance ...");
- Patrick J. Powers, *Hospitals Lose 161 Doctors this Year,* Belleville News-Democrat at www.belleville.com (August 8, 2004)("Metro-east hospitals will have lost 161 physicians by the end of the year, ...");
- Elizabeth Davies, *Doctors Leave for State with Malpractice Caps, Rockford Register Star at* www.rrstar.com (August 31, 2004)("Daly and Sacksteder are the fifth and sixth surgeons to leave Rockford in the past year.");
- Patrick J. Powers, *Doctors Flee Area Hospitals,* Belleville News-Democrat at www.belleville.com (March 23, 2005)("Metro-east hospitals experienced a net loss of 136 physicians, or about 15% of those practicing in the metro-east from 2002-04 ...").

Appendix IV. Local Ordinances Calling for Medical Liability Reform

- City of Mascoutah, Ordinance No. 04-21, *An Ordinance Regulating Recovery in Medical Malpractice Suits* (September 7, 2004);
- City of Carbondale, Ordinance No. 2004-45, *An Ordinance Regulating Recovery in Medical Malpractice Suits* (July 6, 2004);
- City of Marion, Ordinance No. 2004-1967, *An Ordinance Regulating Recovery in Medical Malpractice Suits* (June 28, 2004);
- City of Mt. Vernon, Ordinance No. 2004-47, *An Advisory Ordinance Regarding Limitations on Recovery in Medical Malpractice Suits* (August 16, 2004);
- City of Belleville, Ordinance No. 6676, *An Ordinance Adopting Chapter 61 Healing Art Malpractice* (August 17, 2004);
- City of Murphysboro, Ordinance No. 04-01, *A Resolution Requesting State Action on Medical Insurance Rates* (February 10, 2004);
- City of Murphysboro, Ordinance No. 2-2004, *A Resolution in Support of Regulations of Recovery in Medical Malpractice Suits* (July 13, 2004);
- City of Alton, Resolution No. R-04-8-25-519 (August 25, 2004)("Be it resolved ... that [the Governor] be ... urged to call a special session of the Illinois legislature to consider new legislative initiatives to address and resolve the exodus of physicians from the City of Alton, Madison County and the State of Illinois caused by soaring medical malpractice insurance premiums.");
- City of Peoria, Resolution No. 04-644, *Resolution Calling Upon the Illinois Congressional Delegation, the Governor and Legislature of the State of Illinois to Address the Medical Liability Insurance Crisis* (February 1, 2005);
- City of Joliet, Resolution no. 5455, *A Resolution in Support of Medical Liability Reform* (August 3, 2004);
- City of Herrin, Resolution No. 5-2004, *A Resolution in Support of Regulation of Recovery in Medical Malpractice Suits* (July 12, 2004);
- Nicklaus Lovelady, *St. Clair Board Takes Up Malpractice,* Belleville News-Democrat at www.belleville.com (September 28, 2004)("The St. Clair County Board approved two resolutions ... designed to stop doctors from fleeing the area.");
- Becky Malcovich, *Williamson Board Supports Malpractice Reform,* The Southern at www.thesouthern.com (September 14, 2004)("The Williamson County Board adopted a resolution ... requesting state action on medical insurance rates.").

Appendix V. Illinois Newspaper Editorial Calling for Medical Liability Reform.

- *A Costly Way to Keep Doctors,* Belleville News-Democrat (February 12, 2004)("Caps on lawsuits would be a simple way to fix the medical malpractice crisis in Illinois.");
- *Mr. Bush Goes to Collinsville,* Chicago Tribune (January 5, 2005)("The lawyers ... can't explain why states that have adopted caps on pain and suffering awards aren't, for the most part, facing medical malpractice crises.");
- *It's Up to Lawmakers to Get Docs to Hang In There,* Chicago Sun-Times (March 31, 2004)("But something must be done to stem the tide of non-economic payouts.");
- *State Needs Caps on Medical Malpractice Awards,* Daily Herald (April 5, 2004)("...what Illinois needs is what many other states have adopted—caps on non-economic jury awards.");
- *The Doctors are Leaving,* Chicago Tribune (April 18, 2004)("The most significant step Illinois could take would be to establish a limit on non-economic damages.");
- *Lawmakers Need to Seriously Consider Tort Reform,* The Southern (August 4, 2004)("...voices are growing louder and the calls intensifying for our state and federal lawmakers to reach compromise on common sense legal reforms which could help unclog our court system ...");
- *Medical Emergency Needs Prompt Legislative Attention,* Chicago Sun-Times (June 9, 2004)("The state needs to act. Now.");
- *State should Act on Malpractice Reform,* Peoria Journal-Star (January 8, 2005)("Caps on non-economic damages deserve serious consideration.").

Appendix VI.

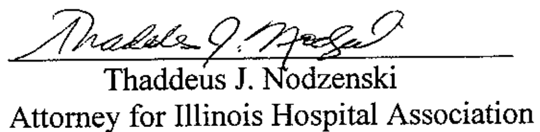
Table of Medical Liability Reform Witnesses before the General Assembly

Witness	Affiliation	Title
Jay Angoff	Missouri Insurance Department	Former Director
Richard Biondi	Milliman Global	Actuary
Tony Bloemer	Milliman Global	Actuary
Daniel Bluthart	Illinois Department of Financial and Professional Regulation	Former Director
Max Brown	Rush University Medical Center	General Counsel
Suzanne Cervantes	Private Citizen	
Robert Clifford	Clifford Law Offices and the Illinois Trial Lawyers Association	Partner and Past President of ITLA
Stephen D'Arcy	University of Illinois	Professor of Finance
Mark Deaton	Illinois Hospital Association	Senior Vice President & General Counsel
Fernando Grillo	Illinois Department of Financial and Professional Regulation	Director
Terri Furlong	Private Citizen	
Amber Hard	Center for Justice & Democracy in Illinois	Staff Director
Keith Hebeisen	Clifford Law Offices and the Illinois Trial Lawyers Association	Partner and President-Elect of ITLA
Thomas Hurley, M.D.	Illinois State Neurosurgery Society	Vice President
David Hyman	University of Illinois	Professor of Law and Medicine
Harold Jensen, M.D.	ISMIE Mutual Insurance Company	Chairman
Harry Maier	Memorial Hospital, Belleview	CEO
Dierdre Manna	Illinois Division of Insurance	Acting Director
Kevin Martin	Illinois Insurance Association	Executive Director

Witness	Affiliation	Title
Michael McRaith	Illinois Division of Insurance	Director
William McVisk	Johnson & Bell	Partner
Jack Messmore	Illinois Division of Insurance	Chief Deputy Director
Allen Nutty	Private Citizen	
Charles E. Reiter, III	Loyola University Health System	Vice President and General Counsel

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief is 19 pages.



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