No. 11-4310

Appeal to the Supreme Court of Illinois

KAREN WILKINS,
Plaintiff-Appellee,

v.

RHONDA WILLIAMS, Individually and as Agent of SUPERIOR AIR-GROUND AMBULANCE SERVICE, INC., and SUPERIOR AIR-GROUND AMBULANCE SERVICE, INC., d/b/a SUPERIOR AMBULANCE SERVICE INC.
Defendants-Appellants.

Appeal from the First District Appellate Court
No. 1-10-1805
Appeal from the Circuit Court of Cook County, Illinois
Cook Judicial Circuit No. 07 L 12829
The Honorable Lynn Eagan, Judge Presiding.

AMICUS CURIAE BRIEF ON BEHALF OF ILLINOIS TRIAL LAWYERS ASSOCIATION

FICHERA & MILLER, P.C.
Alexander Hattimer Loftus
415 North LaSalle Street, Suite 301
Chicago, IL 60654
(312) 673-2222
alex.hattimer@ficheramiller.com

Attorneys for *Amicus Curiae*
Illinois Trial Lawyers Association

STATEMENT OF INTEREST

The Illinois Trial Lawyers Association (hereinafter "ITLA") is a non-profit association of trial and appellate lawyers who represent injured victims of torts and their families, including persons injured by the negligence of emergency medical personnel when operating motor vehicles. The Association believes that the opinion of this Honorable Court on the issues presented in this case will have a substantial effect upon those persons represented by ITLA's members. ITLA tenders this brief as *Amicus Curiae* to provide the court with its views and to assist the court in resolving the important issues presented for review fully and fairly. This brief is submitted in support of the position of the Plaintiff-Appellee, Karen Wilkins.

The trial court's interpretation of the Emergency Medical Services System Act, (hereinafter "EMSS Act"),operates to leave plaintiffs who happen to be injured by the negligence of personnel engaged in activities wholly unrelated to the provision of emergency medical care without redress. The appellate court was correct when it determined that the EMSS Act did not apply to the facts of this case. ITLA urges this Honorable Court to affirm that portion of the decision of the Illinois Appellate Court's decision holding the EMSS Act does not immunize EMS personnel from claims of negligence by third parties and further hold the EMS Act does not grant immunity for negligent transport of patients because the statute is specifically limited to the provision of medical care, the legislature did not intend to grant immunity for the negligent operation of a motor vehicle, and the Vehicle Code governs the operation of emergency vehicles.

ARGUMENT

This Illinois Trial Lawyers Association respectfully submits that this court should reverse the Summary Judgment entered in this case, and find that EMSS Act does not insulate these defendants to the negligence claim the plaintiff, an innocent third party who was not the recipient of the ambulance's services, from negligence particularly when the negligence at issue is based on the defendants operation of their ambulance. Further, ITLA respectfully submits that this court should find that the operation of a privately owned ambulance does not constitute the rendition of "medical care" as contemplated by the EMSS Act.

I. PUBLIC SAFETY MUST BE OF PARAMOUNT IMPORTANCE TO THE PRIVATE INSURANCE COSTS AND LOSS OF PROFITS THESE DEFENDANTS REAP ON THE ILLINOIS ROADWAYS.

The law of Illinois cannot place private ambulance owners and operators in a position of blanket immunity by virtue of their mere ambulance status. No other private entity receives such preferential treatment in this state. These defendants and the entire private ambulance industry is fully capable of procuring insurance for their professional negligence, and if they are negligent with respect to how they drive on the roadways in this state, they should be held accountable in court of law. The very purposes of tort law, which apply in this case and which should be underscored, are the allocation of risk, compensation for injuries from the responsible party and deterrence of the wrongful conduct. *Goldberg v. Ruskin,* 113 Ill. 2d 482, 495 (1986). Private entities like Superior Ambulance must be compelled to stop their negligent practices, such as,

negligent driver training and this plaintiff should be permitted to recover damages for her serious personal injuries. Immunity from liability serves no purpose in this case other than to give defendants an unwarranted pass for their wrongful conduct and to deny this plaintiff a remedy as guaranteed under our state Constitution. The General Assembly and the Illinois courts must continue to protect the public and its safety by denying an immunity privilege absent a compelling state interest. The General Assembly and the Illinois courts must continue to deny parties, such as these defendants who seek to place profit over public safety, an excuse to do so.

It is undisputed that these defendants were operating a for profit corporation. It is undisputed that these defendants had private insurance to compensate victims of their driving negligence which is not only mandated by law, 625 ILCS 5/7-601, but is the reasonable and required cost of doing business and earning profits as a result of conducting business on the roadways in this State. This court is no stranger to a private entity or private industry claiming that it should be exempt, completely, from liability and from being held accountable for its negligence, so that it can maximize its profits. This court has rightly rejected such arguments consistently. See, *e.g., Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17 (1999) (private insurance industry and providers of HMO's were not permitted to escape responsibility for the medical negligence of their agents/doctors to contain costs and to maximize private profits); *Fennell v. Illinois Central R.R. Co.,* 2012 IL 113812 (5th Dist. 2012) (railroad *amici*'s arguments lamenting liability costs unpersuasive); *LeBron v.*

Gottlieb Mem. Hosp. 237 Ill. 2d 217 (2010) (hospital industry *amici*'s tired complaints about the cost of being held accountable and of having to pay for their medical malpractice as a legitimate reason to deny tort victims a remedy in the Illinois courts rejected, repeatedly, by this court) (see also, *Best v. Taylor Machine Works,* 179b Ill. 2d 367 (1997); *Bernier v. Burris*, 113 Ill. 2d 219 (1986),).

An examination of the defendants' entire argument, as roared by their *amicus*, Illinois State Ambulance Association, is that the private ambulance insurance industry should be allowed to maximize the profits they reap on the Illinois roadways at the expense of innocent citizens in this State. Defendants have not advocated any other credible reason for them receiving immunity. This is not a case where, absent immunity, EMS personnel might be chilled from rendering emergency medical services to a patient for fear of a malpractice suit. To the contrary, there is no reason, other than maximizing the defendants' profits at the expense of this plaintiff, to immunize these defendants from their responsibility to be held accountable for the injuries they inflicted in the course of ordinary operation of a motor vehicle.

To achieve this cynical end, the defendants and their *amicus* boldly advocate that they should be exempt from civil liability and damages no matter how poorly they train their drivers. The defendants callously seek immunity from liability no matter if the injury arises from something wholly unrelated to the provision of medical care. According to the position of the defendants and their *amicus*, after the plaintiff's life has been shattered, the defendants should

not be held accountable, much less responsible for the plaintiff's injuries, which again, could have been avoided easily by the mere activation of the lights. To the contrary, according to the defendants and their *amicus*, profit trumps responsibility.

This court should note that this defendant, Superior Air-Ground Ambulance Service, Inc., is no stranger to negligence and collisions with innocent third parties on the Illinois roadways. *See, e.g., Collins v. Superior Air-Ground Ambulance Serv., Inc.*, 338 Ill. App. 3d 812 (2003). In *Collins*, a case where the plaintiff was the recipient of the ambulance services at issue, the Superior Ambulance and the defendant nursing home obtained a dismissal of the plaintiff's negligence cause of action. The plaintiff alleged that her mother was injured while being transported to a nursing home. The appellate court reversed the dismissal order on multiple grounds with respect to the ambulance defendant noting that: "here, the use of the immunity defense as grounds for the dismissal would require proof of many facts outside the pleadings." *Collins* at 42-3. First, as in this case, the record contained genuine issues of material fact whether the EMSS Act even applied to the defendant. Questions of fact existed regarding whether the defendant ambulance service was an authorized agency under the Act. Second, whether the defendant acted in "good faith" is a question of fact. *Id. (citing Schawk, Inc. v. Donruss Trading Cards, Inc.*, 319 Ill. App. 3d 640, 651 (2001). Accordingly, the appellate court stated that it would be the defendant's burden to prove its "good faith" to warrant the benefit of the immunity

provision of the Act. *Id.* at 43. Third, the defendant had to prove that it provided medical services at the time of the injuries at issue. *Id.* at 44. Finally, the appellate court determined that it could not resolve the willful and wanton issue set forth in the statute based on the record before it, and accordingly, refused to affirm the dismissal order on this basis. *Id.* at 45. As in the *Collins* case, the plaintiff should be permitted to present the facts relevant to Superior Ambulance's negligence, or alternatively, its willful and wanton misconduct to a jury.

II. THE 2007 EMSS ACT DOES NOT PROVIDE IMMUNITY FROM CIVIL LIABILITY FOR THE OPERATION OF A MOTOR VEHICLE.

Illinois residents are safer if both the Vehicle Code and EMSS Act are interpreted harmoniously and consistently as the legislature intended. Any interpretation of the EMSS Act's grant of immunity from civil liability in derogation of the common law must be strictly construed against the entity claiming immunity. *Aikens v. Morris*, 145 Ill. 2d 273, 278 (1991). The Illinois Emergency Medical Services Systems Act (hereinafter "2007 EMSS Act") was amended in 2007 to provide immunity from civil liability in the delivery of medical services. The 2007 EMSS Act has never been applied to immunize negligence in driving an ambulance. In fact, no version of the EMSS Act has ever been applied to immunize the negligent operation of a motor vehicle as alleged in this case. None of the rationales for immunity are present in this case as the driver of the ambulance was not providing any medical care at the time of the occurrence complained of nor was the plaintiff a recipient of medical services.

There is no controlling precedent requiring this Court to hold the 2007 EMS Act provides immunity from liability for non-medical functions of paramedics such as driving an ambulance.

a. The 2007 EMSS Act limits immunity to the provision of medical services and operating an ambulance is not a medical service.

The plain language of the EMSS Act clearly states immunity is limited to medical services including medical services provided during transport. The primary rule of statutory construction is to ascertain and give effect to the legislature's true intent and meaning. *Vine Street Clinic v. HealthLink, Inc.*, 222 Ill.2d 276, 282 (2006). The language of the statute is the best indication of legislative intent, and this Court's inquiry should begin with the words used by the legislature. *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 146 Ill.2d 175, 207 (1991). If the statutory language is clear and unambiguous, then there is no need to resort to other aids of construction. *Henry v. St. John's Hospital*, 138 Ill.2d 533, 541 (1990). Here, the statute clearly states that ambulance personnel are only immune from liability when providing medical services including medical services provided during transport thus transport itself cannot be construed to be a medical service.

All provisions of a statutory enactment are viewed as a whole. *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 279 (2003). Accordingly, all words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation. *Id.* at 279-80. Each word, clause and

sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous. *Sylvester v. Industrial Comm'n*, 197 Ill.2d 225, 232 (2001).

The term "medical services" is used throughout the statute. If the term "medical services" is interpreted to mean any action taken by EMS personnel in the course of their employment the term is rendered superfluous. The EMSS Act contains several references to medical services provided **during** transport, thus transport itself cannot logically be construed to be a medical service. 210 ILCS 50/3.10 (e), (f), (g), (n). Furthermore, the statute defines "non-emergency medical services" as "medical care or monitoring rendered to patients whose conditions do not meet this Act's definition of emergency, **before or during** transportation of such patients to or from health care facilities visited for the purpose of obtaining medical or health care services which are not emergency in nature, using a vehicle regulated by this Act." 210 ILCS 50/3.10(g). When defining medical services the statute clearly does not include the actual transport of patients itself as a "medical service" because it defines medical services as medical care or monitoring rendered during said transport. The legislature did not intend to grant blanket immunity to EMS personnel when driving an ambulance.

In determining the General Assembly's intent, the court may properly consider not only the language of the statute, but also the purpose and necessity for the law, the evils sought to be remedied, and the goals to be achieved. *Cryns*, 203 Ill.2d at 280. When explaining the purpose for granting immunity for certain negligent acts by ambulance personnel under earlier versions of the EMS Act

courts pointed to the unique challenges inherent in providing medical care in emergency situations. However, there are no unique challenges present in driving an ambulance such as in the present case. The Third District Court explained that the purpose of exempting emergency medical providers from liability for mere negligence in the provision of medical care is "to encourage emergency response by trained medical personnel without risk of **malpractice liability** for every bad outcome or unfortunate occurrence. Emergency situations are often fraught with tension, confusion, and as here, difficult physical locations **for giving medical care**." (emphasis added) *Gleason v. Village of Peoria Heights,* 207 Ill.App.3d 185 (3rd Dist. 1990). There is no additional threat of liability for negligent operation of an ambulance as the same standard of care applies to ambulance drivers as it does to anyone else under the motor vehicle code. None of the rationales for immunity are present in this case as the driver of the ambulance was not providing any medical care and plaintiff was not a patient. There was no additional "tension" or "confusion" present at the time of the accident complained of in the present case.

b. Cases applying earlier versions of EMS Act do not apply and none hold EMS personnel are immune from liability for negligent operation of a motor vehicle.

The Supreme Court held transporting a patient is "an aspect of **life support services**" as defined under earlier versions of the EMS Act but no court has held that any aspect of transporting a patient is **medical services** under 2007 Act. *American National Bank & Trust Co. v. City of Chicago,* 192 Ill.2d 274, 276-77 (2000). Cases interpreting earlier versions of the EMS Act

should not apply because the statute stated "life support services" rather than "medical services" as the current statute provides. An activity such as driving an ambulance in emergency mode may be life supporting yet clearly not medical. This Court would be stretching the statute beyond its legislative intent if it held negligent driving of an ambulance is a medical service.

Courts have held reading maps and choosing which hospital are "life support services" but no Court has held driving an ambulance is a "life support service" or "medical services." *Affatato v. Jewel Companies, Inc.*, 259 Ill.App.3d 787 (Ill. App. 1st Dist., 1994) and *Johnson v. University of Chicago Hospitals,* 982 F.2d 230 (7th Cir. 1993) are both distinguishable and should not apply where courts held getting lost or choosing to bypass a hospital were "life support services" protected under an earlier version of the EMS Act. Like *American National Bank* above these cases do not apply because they are an application of an earlier version of the statute which stated "life support services" rather than "medical services" as the current statute provides. Holding driving is a medical service would be beyond any controlling precedent and expanding the scope of the EMS grant of immunity contrary to the legislature's intent. There is no controlling precedent requiring this Court to hold the 2007 EMS Act provides immunity from liability for non-medical functions of paramedics such as driving an ambulance.

This case is distinguishable from *American National Bank* where paramedics negligently failed to break down a door because in their medical opinion a young couple with no apparent medical problems would not require

their emergency assistance. *American National Bank & Trust Co. v. City of Chicago*, 192 Ill.2d 274, 276-77 (2000). In that case the negligence related directly to the paramedics' poor medical judgment in an emergency situation as to whether or not to break down a door to treat a patient they were told was young and healthy. *Id.* There is no medical judgment involved in the present case as the negligent act was solely related to the operation of the vehicle. The decisions of whether or not to employ lights and sirens is not even at issue in the present case. Plaintiff does not allege any malpractice or poor medical judgment in the ambulance driver's negligent operation of his vehicle. *American National Bank* does not apply because in that case medical malpractice was alleged while in the present case plaintiff alleges simple vehicular negligence.

c. The legislature did not intend for the 2007 EMS Act to expand the grant of immunity to non-medical negligence.

Operation of an ambulance is not a medical service. The ambulance driver's negligence in turning, applying brakes, or failure to maintain a proper lookout is not the rendition of medical care contemplated by the EMSS Act nor by the decisions interpreting the Act. The *Abruzzo* Court observed the amended statute defined non-emergency medical care as including "medical services given to patients **during** the transportation to health-care facilities to obtain non-emergency medical services." *Abruzzo v. City of Park Ridge,* 231 Ill. 2d 324, 345 (2008). Accordingly the transportation of the patient itself cannot be logically considered a medical service.

Defendants argue, incorrectly, that *Abruzzo v. City of Park Ridge,* 231 Ill. 2d 324, 345 (2008), *Abruzzo* holds that the immunity granted in the 2007 EMSS Act is broader than earlier versions thus including transport of patients. However, this Court clearly explained the immunity is broader only in that it is expanded to non-emergency medical care. This Court explained:

> "In the previous version of the Act, the definitions of advanced, intermediate, and basic life support services referred to providing "emergency care" for the treatment of life-threatening conditions. 210 ILCS 50/4.01, 4.02, 4.06, 4.19, 4.20 (West 1994). Those provisions did not mention non-emergency care or services. The amended statute, however, expressly includes "non-emergency medical care" in the definitions of advanced, intermediate, and basic life support services. 210 ILCS 50/3.10(a), (b), (c) (West 2004). "Non-emergency medical care" is defined to include medical services given to patients during transportation to health-care facilities to obtain non-emergency services. 210 ILCS 50/3.10(g) (West 2004). The phrase "emergency or non-emergency medical services" is broader in scope because it includes both emergency and non-emergency services. Thus, the substitution of "emergency or non-emergency medical services" for "life support services" cannot provide a basis for giving the immunity provision a narrower meaning."

The 2007 amendment expanded the EMSS Act grant of immunity to the provision of all medical care by EMS personnel but it also narrowed the grant of immunity to medical services only. Life support services was a vague term which could be broadly interpreted to any action taken to sustain a patient's life while medical services is an easily defined term limiting immunity to the exercise of medical judgment and provision of medical care. Transporting a patient is clearly not a medical service as defined by the 2007 EMSS Act. The defendant in this case was not providing a medical service to its patient and certainly not

providing a medical service to the plaintiff at the time of the occurrence complained of.

Had the legislature intended to grant the blanket immunity as requested by Defendants it would have done so. When the legislature wanted to immunize the negligent operation of a motor vehicle, it clearly expressed its intent in the statute. If the legislature intends to grant immunity for the operation of a motor vehicle it will do so very clearly. For example, section 5-106 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1 et seq. (West 2006) states:

> "Except for willful or wanton conduct, neither a local public entity, nor a public employee acting within the scope of his employment, is liable for an injury **caused by the negligent operation of a motor vehicle** or firefighting or rescue equipment, when responding to an emergency call, including transportation of a person to a medical facility." (emphasis added) 745 ILCS 10/5-106 (West 2006).

Had the immunity contemplated by the Defendants been intended the legislature would have granted immunity using similar language to the tort immunity act thus allowing complete immunity when transporting a patient. However, the legislature chose to limit the grant of immunity to the provision of medical care including medical care provided during transport.

The statute is silent on whether its immunity provision applies to third parties. However, when the immunity is limited to the provision of medical care it is extremely difficult to imagine a situation where a third party would be injured. There is no reported decision where someone other than the plaintiff is injured by the negligent provision of medical care (excluding derivative claims

such a as loss of consortium). Accordingly the legislature did not intend for the EMS Act to grant immunity for any negligence claims by persons other than patients.

III. THE ILLINOIS VEHICLE CODE CONTROLS THE OPERATION OF EMERGENCY MEDICAL TRANSPORT VEHICLES WHILE THE EMSS ACT CONTROLS THE PROVISION OF MEDICAL CARE THEREIN DURING TRANSPORT.

It is not the intent of the 2007 EMSS Act to provide immunity for the operation of a motor vehicle. Instead the operation of a motor vehicle, including the operation of an emergency response vehicle, is governed by the Illinois Vehicle Code. To accept Defendants' interpretation of the immunity granted by the EMSS Act would render useless the portions of the vehicle code controlling driving an ambulance because EMS personnel would always be immune from suit.

The rule is that a more specific statute preempts the more general provisions of the act. *Bradshaw v. City of Metropolis,* 293 Ill. App. 3d 389 (1997); *Henrich v. Libertyville High School,* 186 Ill. 2d 381 (1998). The Illinois Vehicle Code (625 ILCS 5/11-205, 907) specifically addresses the duty emergency vehicle operators owe to third parties. The vehicle code defines the duty of EMS drivers in painstaking detail. Section 11-205 provides that when responding to an emergency call, the driver of an authorized emergency vehicle may disregard certain rules of the road and proceed past a red light or stop sign, or exceed the maximum speed limit. However, "[t]he foregoing provisions do not relieve the driver of an authorized emergency vehicle from the duty of driving with due

regard for the safety of all persons" 625 ILCS 5/11-205(e). The legislature clearly intended that even in the emergency operation of an authorized vehicle the driver must maintain a due regard for the safety of his passengers. A grant of broad immunity as advocated by Defendants would abrogate this duty.

To give full effect to the Vehicle Code, the 2007 EMSS Act cannot be read to immunize ambulance drivers from claims of negligence in the operation of a motor vehicle whether in an emergency or not. To allow such immunity would render meaningless the Vehicle Code's provisions that EMSS personnel whether employed by a private carrier such as Superior or by a municipality must drive with due regard for the safety of all other drivers. When undertaking the interpretation of a statute, the court must presume that when the legislature enacted a law, it did not intend to produce absurd, inconvenient or unjust results. *Vine Street Clinic*, 222 Ill.2d at 282. Holding the portion of the Vehicle Code regulating travel of ambulances does not apply to anyone in cases of ordinary negligence would be an absurd and unjust result. In order to follow the legislature's intent of both the Vehicle Code with the EMSS Act, the immunity provision of the EMSS Act should not extend to the negligent operation of a motor vehicle.

This Court should follow the plain language of the 2007 EMS Act and hold its immunity provisions do not apply to the provision of non-medical services such as driving a vehicle through an intersection without stopping for crossing traffic because the Vehicle Code specifically controls the operation of motor vehicles.

IV. CASES INTERPRETING THE TORT IMMUNITY ACT SHOULD NOT APPLY TO THIS COURT'S INTERPRETATION OF THE EMSS ACT.

No holding in this case would effect this Court's holding in *Harris v. Thompson*, 2012 IL 112525 nor is *Harris* controlling here as the Tort Immunity Act is distinguishable from the EMSS Act because the purpose of Tort Immunity Act is different and the Tort Immunity Act specifically grants immunity for the negligent operation of a motor vehicle.

The Tort Immunity Act was enacted in 1965 in response to Illinois Supreme Court's abolishment of common law sovereign immunity. *See Moliter v. Kaneland Community Unit District No. 302*, 18 Ill. 2d 11 (1959). The primary purpose of the Tort Immunity Act is to shield public entities from liability rather than to make Illinois safer. "The purpose of this Act is to protect local public entities and public employees from liability arising from the operation of government. It grants only immunities and defenses." 745 ILCS 10/1-101.1.

Conversely the purpose of the EMSS Act is "the intent of this legislation to provide the State with systems for emergency medical services by establishing within the State Department of Public Health a central authority responsible for the coordination and integration of all activities within the State concerning pre-hospital and inter-hospital emergency medical services, as well as non-emergency medical transports, and the overall planning, evaluation, and regulation of pre-hospital emergency medical services systems." 210 ILCS 50/2. Thus the primary purpose of the EMSS Act is to make Illinois a safer place to live by ensuring adequate emergency medical care for patients. This Court

recognized the distinction between the two acts in *Abruzzo* finding the EMSS Act was designed to apply to the provision of emergency medical services. In contrast, the relevant sections of the Tort Immunity Act have a more general application to tort claims against local public entities and public employees for failing to perform, or adequately perform, an examination or a diagnosis. *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324 (2008). Illinois residents are safer if both the Vehicle Code and EMS Act apply to private ambulance operators as the legislature intended.

The relationship between the Tort Immunity Act and the Vehicle Code is distinguishable from the relationship between the EMSS Act and the Vehicle Code because the EMSS Act does not specifically provide for immunity from liability when operating the motor vehicle. It is impossible to give full effect to both the Tort Immunity Act and the Vehicle Code as the Tort Immunity Act specifically provides no public employee "is liable for an injury caused by the negligent operation of a motor vehicle... when responding to an emergency call" thus weakening the Vehicle Code's application. Conversely the EMSS Act is limited to the provision of medical care and the Vehicle Code is limited to the operation of motor vehicles thus both may be given full effect.

CONCLUSION

For the reasons stated above, the Illinois Trial Lawyers Association urges this Honorable Court to affirm that portion of the decision of the Illinois Appellate Court's decision holding the EMSS Act does not immunize EMSS personnel from claims of negligence by third parties and further hold the EMSS

Act does not grant immunity for negligent transportation of patients because the statute is specifically limited to the provision of medical care, the legislature did not intend to grant immunity for the negligent operation of a motor vehicle, and the Vehicle Code governs the operation of emergency vehicles.

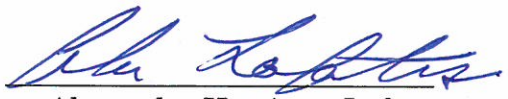
Respectfully Submitted,

The Illinois Trial Lawyers Association, *Amicus Curiae*

Alexander Hattimer Loftus
FICHERA & MILLER, P.C.
Attorneys for *Amicus Curiae*
ILLINOIS TRIAL LAWYERS ASSOCIATION
415 North LaSalle Street, Suite 301
Chicago, IL 60654
(312) 673-2222

CERTIFICATE OF COMPLIANCE

I, the undersigned attorney for the Illinois Trial Lawyers' Association, hereby certified that this brief conforms to the requirements of Rules 341. The length of this brief, excluding the pages containing the rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and those matters to be appended to the brief under rule 342(a) is 18 pages.



Alexander Hattimer Loftus

PROOF OF SERVICE

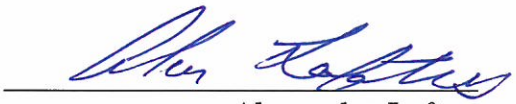
Alexander Loftus, one of the attorneys for Amicus Curiae, certifies that the original (20) copies of the foregoing Amicus Curiae were mailed to the Illinois Supreme Court, Springfield, Illinois, and three copies of the same were mailed to the following persons at the addresses shown by enclosing same in an envelope addressed to them and depositing the same in a United States mailbox at Chicago, Illinois on February 5, 2013.

John A. Krivicich
Karen Kies DeGrand
Donahue Brown Matthewson & Smyth, LLC
140 S. Dearborn St.,Suite 800
Chicago, IL 60603

Christopher Lawler
Hilbert, Lawler, & Power
36 South Wabash Avenue, Suite 1300
Chicago, IL 60603

Lynn Dowd
Law Offices of Lynn Dowd
1776-A Naperville Rd, Suite 105
Wheaton, IL 60189

Hon. Thomas Kilbride
Chief Justice, Illinois Supreme Court
1819 4th Ave.
Rock Island, IL 61201



Alexander Loftus
#6303484