

1. That on October 31, 2005, and all times pertinent hereto, Defendant GOTTLIEB was a general hospital open to the public in the City of Melrose Park, County of Cook, State of Illinois.

2. That at all times pertinent hereto Defendant HOSPITAL had on its staff employees, including nurses and physicians, for the purpose of providing medical, nursing, and related healthcare to patients.

3. That on October 29, 2005, and at all times pertinent hereto Defendant D'ANCONA was a physician within the State of Illinois.

4. That at all times pertinent hereto Defendant D'ANCONA was a board certified obstetrician gynecologist.

5. That at all times pertinent hereto Defendant D'ANCONA was an employee and/or agent of Defendant GOTTLIEB.

6. That at all times pertinent hereto Defendant D'ANCONA was acting within the course and scope of his authority as an employee and/or agent of Defendant GOTTLIEB.

7. That at all times pertinent hereto Defendant MARTINOZ was a registered nurse licensed in the State of Illinois.

8. That at all times pertinent hereto Defendant MARTINOZ was an employee and/or agent of Defendant GOTTLIEB.

9. That at all times pertinent hereto Defendant MARTINOZ was acting within the course and scope of her authority as an employee and/or agent of Defendant GOTTLIEB.

10. That in 2005, FRANCES LEBRON sought medical care and attention from Defendant D'ANCONA.

11. That when FRANCES LEBRON sought medical care from Defendant D'ANCONA she was pregnant.

12. That Defendant D'ANCONA examined and/or treated Plaintiff, FRANCES LEBRON, for her pregnancy on multiple dates, including October 1, 2005,.

13. That Plaintiff FRANCES LEBRON was hospitalized at Defendant GOTTLIEB HOSPITAL on multiple occasions during the course of her pregnancy.

14. That FRANCES LEBRON was admitted to Defendant GOTTLIEB on October 31, 2005.

15. That on October 31, 2005, during the course of her hospitalization, FRANCES LEBRON was examined and cared for by Defendant MARTINOZ.

16. That on October 31, 2005, during the course of the hospitalization, FRANCES LEBRON was examined and treated by Defendant D'ANCONA.

17. That on October 31, 2005, during the aforesaid hospitalization, ABIGAIL LEBRON was delivered by a cesarean section.

18. That the aforesaid cesarean section was performed by Defendant D'ANCONA.

19. That during the aforesaid cesarean section Defendant MARTINOZ was present.

20. That on October 31, 2005, the principal nursing care from the time of Plaintiff FRANCES LEBRON's admission up to and including the cesarean section was provided by Defendant MARTINOZ.

21. That Defendants HOSPITAL and D'ANCONA were then and there guilty of one or more of the following acts and/or omissions:

- a. Failing to perform testing in the presence of vaginal bleeding of undetermined etiology in the third trimester of Plaintiff's pregnancy.
- b. Failing to recognize a non-reassuring fetal heart rate tracing and to intervene in a timely and appropriate manner.
- c. Continuing to administer tocolytic medications despite vaginal bleeding, a non-reassuring fetal heart rate pattern, abdominal tenderness and documented decrease fetal movement.

d. Failing to perform an immediate delivery when a non-reassuring fetal heart rate was present.

22. That on October 31, 2005, ABIGAILE LEBRON was born.

23. That on October 31, 2005, ABIGAILE LEBRON was injured.

24. That ABIGAILE LEBRON's injuries include, but are not limited to, severe brain injury, cerebral palsy, cognitive mental impairment, inability to be fed normally such that she must be fed by a gastronomy tube, and inability to develop normal neurological function.

25. That the aforesaid injuries were the direct and proximate result of one or more of the Defendants' aforesaid acts and/or omissions.

26. That as a direct and proximate result of the injuries sustained, ABIGAILE LEBRON was caused to incur legal obligations for hospital, nursing, therapeutic, and related services, will lose earnings and wages in the future, has been caused to suffer pain, disability, and inconvenience, all of which injuries and conditions are permanent.

27. Attached to this Complaint are reports from a Board Certified Obstetrician and a Registered Nurse pursuant to 735 ILCS 5/2-622. Also attached to this Complaint is the Affidavit of one of Plaintiffs' attorney, Jeffrey M. Goldberg.

WHEREFORE, Plaintiffs ABIGAILE LEBRON, a minor, by THE NORTHERN TRUST COMPANY, Guardian of the Estate of ABIGAILE LEBRON, a minor, and FRANCES LEBRON, her mother and next friend, pray judgment against the Defendants GOTTLIEB MEMORIAL HOSPITAL and ROBERTO LEVI-D'ANCONA, M.D., and each of them, in such an amount in excess of Fifty Thousand Dollars (\$50,000) as shall be just and proper compensation for the injuries sustained, plus costs.

COUNT II

NOW COMES the Plaintiff, FRANCES LEBRON, individually (“Plaintiff”), and complaining of the Defendants, GOTTLIEB MEMORIAL HOSPITAL, a corporation (“HOSPITAL”); and ROBERTO LEVI-D’ANCONA, M.D. (“D’ANCONA”), pleading hypothetically and in the alternative, state as follows:

That on October 31, 2005, and all time pertinent hereto Defendant GOTTLIEB was a general hospital open to the public in the City of Melrose Park, County of Cook, State of Illinois.

1. That at all times pertinent hereto Defendant HOSPITAL had on its staff employees including nurses and physicians for the purpose of providing medical, nursing and related healthcare to patients.

2. That on October 29, 2005 and at all times pertinent hereto Defendant D’ANCONA was a physician within the State of Illinois.

3. That at all times pertinent hereto Defendant D’ANCONA was a board certified obstetrician gynecologist.

4. That at all times pertinent hereto Defendant D’ANCONA was an employee and/or agent of Defendant GOTTLIEB.

5. That at all times pertinent hereto Defendant D’ANCONA was acting within the course and scope of his authority as an employee and/or agent of Defendant GOTTLIEB.

6. That at all times pertinent hereto Defendant MARTINOZ was a registered nurse licensed in the State of Illinois.

7. That at all time pertinent hereto Defendant MARTINOZ was an employee and/or agent of Defendant GOTTLIEB.

8. That at all times pertinent hereto Defendant MARTINOZ was acting within the course and scope of her authority as an employee and/or agent of Defendant GOTTLIEB.

9. That in 2005, FRANCES LEBRON sought medical care and attention from Defendant D'ANCONA.

10. That when FRANCES LEBRON sought medical care from Defendant D'ANCONA she was pregnant.

11. That Defendant D'ANCONA examined and/or treated Plaintiff, FRANCES LEBRON, for her pregnancy on multiple dates, including October 1, 2005.

12. That FRANCES LEBRON was hospitalized at Defendant GOTTLIEB HOSPITAL on multiple occasions during the course of her pregnancy.

13. That FRANCES LEBRON was admitted to Defendant GOTTLIEB on October 31, 2005.

14. That during the course of her hospitalization on October 31, 2005, FRANCES LEBRON was examined and cared for by Defendant MARTINOZ.

15. That during the course of the hospitalization on October 31, 2005, FRANCES LEBRON was examined and treated by Defendant D'ANCONA.

16. That during the aforesaid hospitalization on October 31, 2005, ABIGAILE LEBRON was delivered by a cesarean section.

17. That the aforesaid cesarean section was performed by Defendant D'ANCONA.

18. That during the aforesaid cesarean section Defendant MARTINOZ was present.

19. That on October 31, 2005, the principal nursing care from the time of admission, up to and including the cesarean section, was provided by Defendant MARTINOZ.

21. That Defendants HOSPITAL and D'ANCONA were then and there guilty of one or more of the following acts and/or omissions:

- a. Failing to perform testing in the presence of vaginal bleeding of undetermined etiology in the third trimester pregnancy.
- b. Failing to recognize a non-reassuring fetal heart rate tracing and intervene in a timely and appropriate manner.
- c. Continuing in the administration of tocolytic medications despite vaginal bleeding, a non-reassuring fetal heart rate pattern, abdominal tenderness and documented decrease fetal movement.
- d. Failing to effectuate a chain of command given the presence of Plaintiffs' non-reassuring fetal heart rate pattern, vaginal bleeding, and complaints of abdominal pain and tenderness, and hence in need of an appropriate and immediate delivery.
- e. Failing to perform an immediate delivery when a non-reassuring fetal heart rate was present.

22. That on October 31, 2005, ABIGAILE LEBRON was born.

23. That on October 31, 2005, ABIGAILE LEBRON was injured.

24. That ABIGAILE LEBRON's injuries include, but are not limited to, severe brain injury, cerebral palsy, cognitive mental impairment, inability to be fed normally such that she must be fed by a gastrostomy tube, and inability to develop normal neurological function.

25. That the aforesaid injuries were the direct and proximate result of one or more of the Defendants' aforesaid acts and/or omissions.

26. That at all times pertinent hereto Plaintiff FRANCES LEBRON was and is the mother of ABIGAILE LEBRON, a minor.

27. That as a result of the injuries sustained by ABIGAILE LEBRON, Plaintiff, FRANCES LEBRON, incurred legal obligations for hospital, nursing, medical, therapeutic and related services.

28. Attached to this Complaint are reports from a Board Certified Obstetrician and a Registered Nurse pursuant to 735 ILCS 5/2-622. Also attached is the Affidavit of one of Plaintiffs' attorney, Jeffrey M. Goldberg.

WHEREFORE, Plaintiff, FRANCES LEBRON, individually, prays judgment against the Defendants, GOTTLIEB MEMORIAL HOSPITAL, and ROBERTO LEVI-D'ANCONA, M.D., and each of them, in the actual amount of the costs and expenses that have been incurred and will in the future be incurred, plus costs.

COUNT III

NOW COME the Plaintiffs, ABIGAILE LEBRON, a minor, by THE NORTHERN TRUST COMPANY, Guardian of the Estate of ABIGAILE LEBRON, a minor, and FRANCES LEBRON, her mother and next friend, ("Plaintiffs"), by and through their attorneys, JEFFREY M. GOLDBERG LAW OFFICES; POWER, ROGERS, AND SMITH P.C. and CENTER FOR CONSTITUTIONAL LITIGATION, P.C. and complaining of the Defendants, GOTTLIEB MEMORIAL HOSPITAL, a corporation ("HOSPITAL"); and FLORENCE MARTINOZ, R.N. ("MARTINOZ"), pleading hypothetically and in the alternative, state as follows:

That on October 31, 2005, and all times pertinent hereto Defendant GOTTLIEB was a general hospital open to the public in the City of Melrose Park, County of Cook, State of Illinois.

1. That at all times pertinent hereto Defendant HOSPITAL had on its staff employees including nurses and physicians for the purpose of providing medical, nursing and related healthcare to patients.

2. That on October 29, 2005, and at all times pertinent hereto Defendant D'ANCONA was a physician within the State of Illinois.

3. That at all times pertinent hereto Defendant D'ANCONA was a board certified obstetrician gynecologist.

4. That at all times pertinent hereto Defendant D'ANCONA was an employee and/or agent of Defendant GOTTLIEB.

5. That at all times pertinent hereto Defendant D'ANCONA was acting within the course and scope of his authority as an employee and/or agent of Defendant GOTTLIEB.

6. That at all times pertinent hereto Defendant MARTINOZ was a registered nurse licensed in the State of Illinois.

7. That at all time pertinent hereto Defendant MARTINOZ was an employee and/or agent of Defendant GOTTLIEB.

8. That at all times pertinent hereto Defendant MARTINOZ was acting within the course and scope of her authority as an employee and/or agent of Defendant GOTTLIEB.

9. That in 2005, FRANCES LEBRON sought medical care and attention from Defendant D'ANCONA.

10. That when FRANCES LEBRON sought medical care from Defendant D'ANCONA she was pregnant.

11. That Defendant D'ANCONA examined and/or treated Plaintiff, FRANCES LEBRON, for her pregnancy on multiple dates, including on October 1, 2005.

12. That FRANCES LEBRON was hospitalized at Defendant GOTTLIEB HOSPITAL on multiple occasions during the course of her pregnancy.

13. That FRANCES LEBRON was admitted to Defendant GOTTLIEB on October 31, 2005.

14. That on October 31, 2005, during the course of her hospitalization, FRANCES LEBRON was examined and cared for by Defendant MARTINOZ.

15. That on October 31, 2005, during the course of the hospitalization, FRANCES LEBRON was examined and treated by Defendant D'ANCONA.

16. That on October 31, 2005, during the aforesaid hospitalization, ABIGAILE LEBRON was delivered by a cesarean section.

17. That the aforesaid cesarean section was performed by Defendant D'ANCONA.

18. That during the aforesaid cesarean section Defendant MARTINOZ was present.

19. That on October 31, 2005, the principal nursing care from the time of admission, up to and including the cesarean section, was provided by Defendant MARTINOZ.

20. That the Defendants, HOSPITAL and MARTINOZ, were then and there guilty of one or more of the following acts and/or omissions:

- a. Failing to appreciate a non-reassuring fetal heart rate pattern.
- b. Failing to effectuate chain of command given the presence of non-reassuring fetal heart rate pattern, vaginal bleeding and complaints of abdominal pain and tenderness and hence in need of an appropriate and immediate delivery.

22. That on October 31, 2005, ABIGAILE LEBRON was born.

23. That on October 31, 2005, ABIGAILE LEBRON was injured.

24. That the injuries of ABIGAILE LEBRON include, but are not limited to, severe brain injury, cerebral palsy, cognitive mental impairment, inability to be fed normally such that she must be fed by a gastrostomy tube, and inability to develop normal neurological function.

25. That the aforesaid injuries were the direct and proximate result of one or more of the Defendants' aforesaid acts and/or omissions.

26. That as a direct and proximate result of the injuries sustained, ABIGAILE LEBRON was caused to incur legal obligations for hospital, nursing, therapeutic and

related services; will lose earnings and wages in the future; has been caused to suffer pain, disability, and inconvenience; all of which injuries and conditions are permanent.

27. Attached to this Complaint are reports from a Board Certified Obstetrician and a Registered Nurse pursuant to 735 ILCS 5/2-622. Also attached is the Affidavit of one of Plaintiffs' attorney, Jeffrey M. Goldberg.

WHEREFORE, Plaintiffs ABIGAILE LEBRON, a minor, by THE NORTHERN TRUST COMPANY, Guardian of the Estate of ABIGAILE LEBRON, a minor, and FRANCES LEBRON, her mother and next friend, pray judgment against the Defendants, GOTTLIEB MEMORIAL HOSPITAL and FLORENCE MARTINOZ, and each of them, in such an amount in excess of Fifty Thousand Dollars (\$50,000) as shall be just and proper compensation for the injuries sustained, plus costs.

COUNT IV

NOW COMES the Plaintiff, FRANCES LEBRON, individually ("Plaintiff"), and complaining of the Defendants, GOTTLIEB MEMORIAL HOSPITAL, a corporation ("HOSPITAL"); and FLORENCE MARTINOZ, R.N. ("MARTINOZ"), pleading hypothetically and in the alternative, state as follows:

That on October 31, 2005, and all times pertinent hereto Defendant GOTTLIEB was a general hospital open to the public in the City of Melrose Park, County of Cook, State of Illinois.

1. That at all times pertinent hereto Defendant HOSPITAL had on its staff employees including nurses and physicians for the purpose of providing medical, nursing and related healthcare to patients.

2. That on October 29, 2005, and at all times pertinent hereto Defendant D'ANCONA was a physician within the State of Illinois.

3. That at all times pertinent hereto Defendant D'ANCONA was a board certified obstetrician gynecologist.

4. That at all times pertinent hereto Defendant D'ANCONA was an employee and/or agent of Defendant GOTTLIEB.

5. That at all times pertinent hereto Defendant D'ANCONA was acting within the course and scope of his authority as an employee and/or agent of Defendant GOTTLIEB.

6. That at all times pertinent hereto Defendant MARTINOZ was a registered nurse licensed in the State of Illinois.

7. That at all time pertinent hereto Defendant MARTINOZ was an employee and/or agent of Defendant GOTTLIEB.

8. That at all times pertinent hereto Defendant MARTINOZ was acting within the course and scope of her authority as an employee and/or agent of Defendant GOTTLIEB.

9. That in 2005, FRANCES LEBRON sought medical care and attention from Defendant D'ANCONA.

10. That when FRANCES LEBRON sought medical care from Defendant D'ANCONA she was pregnant.

11. That Defendant D'ANCONA examined and/or treated Plaintiff, FRANCES LEBRON, for her pregnancy on multiple dates, including on October 1, 2005.

12. That FRANCES LEBRON was hospitalized at Defendant GOTTLIEB HOSPITAL on multiple occasions during the course of her pregnancy.

13. That on October 31, 2005, FRANCES LEBRON was admitted to Defendant GOTTLIEB.

14. That on October 31, 2005, during the course of her hospitalization, FRANCES LEBRON was examined and cared for by Defendant MARTINOZ.

15. That on October 31, 2005, during the course of the hospitalization, FRANCES LEBRON was examined and treated by Defendant D'ANCONA.

16. That on October 31, 2005, during the aforesaid hospitalization, ABIGAILE LEBRON was delivered by a cesarean section.

17. That the aforesaid cesarean section was performed by Defendant D'ANCONA.

18. That during the aforesaid cesarean section Defendant MARTINOZ was present.

19. That on October 31, 2005, the principal nursing care from the time of admission, up to and including the cesarean section, was provided by Defendant MARTINOZ.

21. That Defendants HOSPITAL and D'ANCONA were then and there guilty of one or more of the following acts and/or omissions:

- a. Failing to appreciate a non-reassuring fetal heart rate pattern.
- b. Failing to effectuate chain of command given the presence of non-reassuring fetal heart rate pattern, vaginal bleeding and complaints of abdominal pain and tenderness and hence in need of an appropriate and immediate delivery.

22. That on October 31, 2005, ABIGAILE LEBRON was born.

23. That on October 31, 2005, ABIGAILE LEBRON was injured.

24. That ABIGAILE LEBRON's injuries include, but are not limited to, severe brain injury, cerebral palsy, cognitive mental impairment, inability to be fed normally such that she must be fed by a gastrostomy tube, and inability to develop normal neurological function.

25. That the aforesaid injuries were the direct and proximate result of one or more of the Defendants' aforesaid acts and/or omissions.

26. That at all times pertinent hereto Plaintiff, FRANCES LEBRON, was and is the mother of ABIGAILE LEBRON, a minor.

27. That as a result of the injuries sustained by ABIGAILE LEBRON, FRANCES LEBRON has been caused to incur legal obligations for hospital, nursing, medical, therapeutic, and related services.

28. Attached to this Complaint are reports from a Board Certified Obstetrician and a Registered Nurse pursuant to 735 ILCS 5/2-622. Also attached is the Affidavit of one of Plaintiffs' attorney, Jeffrey M. Goldberg.

WHEREFORE, Plaintiff, FRANCES LEBRON, individually, prays judgment against the Defendants, GOTTLIEB MEMORIAL HOSPITAL and FLORENCE MARTINOZ, R.N. and, each of them, in the actual amount of the costs and expenses that have been incurred and will in the future be incurred, plus costs.

COUNT V - DECLARATION OF UNCONSTITUTIONALITY

NOW COMES the Plaintiffs, ABIGAILE LEBRON, a minor, by THE NORTHERN TRUST COMPANY, Guardian of the Estate of ABIGAILE LEBRON, a minor, and FRANCES LEBRON, her mother and next friend, and FRANCES LEBRON, individually, ("PLAINTIFFS"), by and through their attorneys, JEFFREY M. GOLDBERG LAW OFFICES, POWER, ROGERS, AND SMITH, P.C., and CENTER FOR CONSTITUTIONAL LITIGATION, P.C., and complaining of the Defendants, GOTTLIEB MEMORIAL HOSPITAL, a corporation ("HOSPITAL"); ROBERTO LEVI-D'ANCONA, M.D. ("D'ANCONA"), and FLORENCE MARTINOZ, R.N., ("MARTINOZ"), state as follows:

1-26. PLAINTIFFS adopt and re-allege paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of Count V of this Complaint, as though fully set forth herein.

27. PLAINTIFFS desire a judicial determination of their legal rights with respect to Public Law 94-677, as well as a judicial determination that provisions of Public Law 94-677 found applicable to this action violate the Illinois Constitution.

28. ABIGAILE LEBRON has sustained disability, disfigurement, pain and suffering to the extent that damages for those injuries will greatly exceed the applicable limitations on non-economic damages under Public Law 94-677, codified at 735 ILCS 5/2-1706.5.

29. That the limitation on non-economic damages codified at 735 ILCS 5/2-1706.5 violates the separation of powers mandated by Article II, § 1 of the Illinois Constitution by permitting the General Assembly to supplant the judiciary in determining whether a remittitur is appropriate under the facts and verdict of this case. The Illinois Constitution denies the Legislature such authority by granting it only legislative, rather than judicial, authority. Ill. Const. art. II, § 1; *Best v. Taylor Machine Works, Inc.*, 179 Ill.2d 367, 689 N.E.2d 1057 (1997).

30. That the limitation on non-economic damages codified at 735 ILCS 5/2-1706.5 constitutes special legislation in violation of Article IV, § 13 of the Illinois Constitution because, to the substantial detriment of ABIGAILE LEBRON, the restrictions on non-economic damages grant limited liability specially and without just cause to a select group of health care provider defendants. No other defendants receive such special consideration, and no other injured plaintiffs suffer under such a special legal disability. Further, there are no reasonable differences in kind or situation that would justify the disparate treatment.

31. That the limitation on non-economic damages codified at 735 ILCS 5/2-1706.5 violates ABIGAILE LEBRON's "inviolable" right to trial by jury, guaranteed in Article I, § 13 of the Illinois Constitution, by supplanting the jury's determination of facts proven

at trial, namely, proper compensation, and substituting a legislative determination that overrides the facts proven at trial or the jury's determination of those facts, thereby denying Plaintiff's right to trial by jury.

32. That the limitation on non-economic damages codified at 735 ILCS 5/2-1706.5 violates due process as guaranteed in Article I, § 2 of the Illinois Constitution because the limitations do not further a compelling state interest in the least restrictive manner nor bear a rational relationship to a legitimate public purpose.

33. That the limitation on non-economic damages codified at 735 ILCS 5/2-1706.5 violates equal protection as guaranteed by Article I, § 2 of the Illinois Constitution by treating ABIGAILE LEBRON differently from less seriously injured victims of medical negligence or similarly situated victims of other forms of negligence. Those individuals receive full compensation for their non-economic damages whereas ABIGAILE will not under 735 ILCS 5/2-1706.5.

34. That the limitation on non-economic damages codified at 735 ILCS 5/2-1706.5 violates the right to a certain and complete remedy guaranteed by Article I, § 12 of the Illinois Constitution by limiting the remedy of ABIGAILE LEBRON without providing a reasonably just substitute for that more limited remedy.

35. That once this matter is reduced to final judgment, Public Law 94-677, codified at 735 ILCS 5/2-1704.5, will prevent ABIGAILE LEBRON from realizing the full amount of that judgment immediately by enabling Defendants to elect to pay those damages periodically over a lengthy period of time. Enactment of the periodic payment provision exceeded the Legislature's authority as an invasion of judicial authority over the procedural mechanisms that operate in court in violation of the separation of powers established in Article II, § 1 of the Illinois Constitution.

36. That defendant's option to elect periodic payments under 735 ILCS 5/2-1704.5 results in a double reduction of the PLAINTIFFS' judgment because future damages for medical expenses and lost earnings are already required to be discounted to present value. *See Schaffner v. Chi. & N. W. Transp. Co.*, 129 Ill.2d 1, 25, 541 N.E.2d 643 (1989). If a defendant can choose to pay such future damages over a period of time and purchase an annuity to pay damages already reduced to present value, there would be an arbitrary additional reduction of that judgment that lacks any rational basis; treats plaintiffs in tort cases differently, without rational basis, from plaintiffs obtaining similar compensation in non-tort cases; and arbitrarily and without commensurate benefit to plaintiffs effects a reduction in their appropriate compensation. In addition, the periodic payment scheme forces the plaintiff to accept the risks of insolvency or liquidation of the insurance company holding the annuity. As such, the provision violates Plaintiffs' due process and equal protection rights under Article I, § 2 and the guarantee against a taking of private property without just compensation under Article I, § 15 of the Illinois Constitution.

37. That enactment of the periodic payment provision constitutes unconstitutional special legislation under Article IV, § 13 of the Illinois Constitution by providing a select group of health-care defendants, specially and without just cause, the authority to elect to pay certain damages in the future, while other defendants do not have that right, and conversely burdening only victims of malpractice with that limitation on their ability to collect their full judgment.

38. That enactment of the periodic payment provision conflicts with the right to trial by jury guaranteed by the Illinois Constitution, Art. I, § 13, by denying ABIGAIL LEBRON the right to collect the full amount of the judgment when it becomes final, thereby revising the import and effect of the jury's verdict.

39. That enactment of the periodic payment provision violates ABIGAIL LEBRON's rights to due process and equal protection under Article I, § 2 of the Illinois Constitution by arbitrarily imposing delayed payment of judgment on the Plaintiff at the Defendant's option and without rational basis, while treating plaintiffs injured by medical negligence differently from similarly situated plaintiffs injured by other types of negligence.

40. That to prove departures from the standard of care in this case, Plaintiffs will require expert evidence, and that the limitation under Public Law 94-677, codified at 735 ILCS 5/8-2501, on the types of experts whose testimony may be used by Plaintiffs to establish liability exceeds the Legislature's authority, invades the judiciary's authority to set rules of practice and violates separation of powers as guaranteed in Article II, § 1 of the Illinois Constitution.

41. That the limitations on eligible experts to testify under ILCS 5/8-2501 constitute a form of impermissible favoritism for certain defendants, namely, a select group of health care providers, as well as an impermissible form of discrimination against certain plaintiffs, namely, plaintiffs in medical malpractice cases, and thereby violate the special legislation provision of Article IV, § 13 of the Illinois Constitution.

42. That the limitations on eligible experts further violate the due process and equal protection guarantees of Art. I, § 2 of the Illinois Constitution because they prohibit credible and medically sound testimony that would be helpful to the fact finder in ascertaining the truth of the allegations, as well as treat plaintiffs in medical malpractice cases differently and more adversely than other victims of negligence.

43. That the "certificate of merit" requirement, codified at 735 ILCS 5/2-622, invades the judiciary's authority to set rules of practice and thus violates separation of powers as

guaranteed by Article II, § 1 of the Illinois Constitution, as well as the constitutional guarantees of due process and equal protection found in Article I, § 2 and the guarantee of a complete remedy found in Article I, § 12 of the Illinois Constitution.

44. That the requirement in 735 ILCS 5/2-622 that a reviewing health care professional's name, address, current license number, and state licensure be attached to a certificate of merit affidavit unconstitutionally usurps the judiciary's authority to establish the rules of Illinois courts and creates an irreconcilable conflict with the protection provided to consultants under Illinois Supreme Court Rule 201(b)(3) ("A consultant is a person who has been retained or specially employed in anticipation of litigation or preparation for trial but who is not to be called at trial. The *identity*, opinions, and work product of a consultant are *discoverable only upon a showing of exceptional circumstances* under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means.") (emphasis added).

45. That the requirements in 735 ILCS 5/2-622 further arbitrarily and unnecessarily impose on this screening mechanism certain expert standards that will impose additional expenses and burdens, without justification, on plaintiffs, which will deter the filing of meritorious lawsuits or otherwise limit a plaintiff's ability to obtain a complete remedy.

46. That, so as to preserve the issue of whether 735 ILCS 5/2-622 is constitutional without jeopardizing this Court's jurisdiction in this matter, PLAINTIFFS attach the report without disclosing the reviewing health care professionals' names, addresses, current license numbers, and state licensure pending a motion PLAINTIFFS intend to make that this missing information be provided to the Court but not to opposing counsel and that it be sealed in accordance with a protective order pursuant to Sup. Ct. Rules, Rule 201(c)(1).

47. That the evidentiary rule codified at 735 ILCS 5/8-1901 regulating the admissibility of a health care provider's acknowledgement of liability constitutes a form of special legislation in violation of Article IV, § 13 of the Illinois Constitution because, at the expense of Plaintiffs the rule specially and without just cause grants an evidentiary privilege to health care providers when no other parties receive such special consideration, and denies its use to those injured by the negligence of health care providers when no other plaintiffs are so denied.

48. That Public Law 94-677 violates Art. IV, § 8(d) of the Illinois Constitution, which provides that "[b]ills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject." The Act does not comply with this requirement. It is an omnibus collection covering many different subjects, whose provisions were cobbled together in a single bill only because they all advance the agenda of the special interests behind the Act.

49. That a judicial determination is necessary and appropriate at this time because the uncertainty as to whether Public Law 94-677 can be applied constitutionally has a direct and immediate impact on how PLAINTIFFS should prepare for trial and that the future course of this litigation will be controlled by resolution of these constitutional challenges, which portend the ripening seeds of litigation. In addition, whether the damages cap will apply to a jury trial award affects the overall value of the case should there be any discussion of settlement, the types of experts that PLAINTIFFS will choose to hire to prepare for trial, and the trial strategies and court costs at any future trial of this matter.

50. That PLAINTIFFS have been, and continue to be, seriously damaged and harmed by the negligent acts at issue.

51. That the inability to make fundamental strategy decisions and evaluations, due to the current uncertainty as to PLAINTIFFS' legal rights, constitutes an actual controversy between the parties that is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. PLAINTIFFS and their counsel are currently in the process of developing trial strategies, budgeting resources (both time and financial), and making other trial decisions that are directly governed by the provisions of Public Law 94-677 addressed herein.

Prayer for Relief

WHEREFORE, Plaintiffs, ABIGAILE LEBRON, a minor, by THE NORTHERN TRUST COMPANY, Guardian of the Estate of ABIGAILE LEBRON, a minor, and FRANCES LEBRON, her mother and next friend, and FRANCES LEBRON, Individually, pray judgment against the Defendants, GOTTLIEB MEMORIAL HOSPITAL, ROBERTO LEVI-D'ANCONA, M.D., and FLORENCE MARTINOZ, R.N., and each of them, as follows:

- A. Declaring that the limitation on non-economic damages codified at 735 ILCS 5/2-1706.5 is null and void because it violates the Illinois Constitution's guarantees of separation of powers, right to trial by jury, due process, equal protection, right to a certain and complete remedy, as well as prohibition on special legislation;
- B. Declaring that the authorization for period payments codified at 735 ILCS 5/2-1704.5 is null and void because it violates the Illinois Constitution's guarantees of separation of powers, right to trial by jury, due process, equal protection, as well as prohibition on special legislation;

- C. Declaring that the limitations on eligible expert testimony under 735 ILCS 5/8-2501 is null and void because it violates the Illinois Constitution's guarantees of separation of powers, due process, and equal protection;
- D. Declaring that the certificate of merit requirement codified at 735 ILCS 5/2-622 is null and void because it violates the Illinois Constitution's guarantees of separation of powers, due process, equal protection, and guarantee of a complete remedy;
- E. Declaring that the evidentiary rule regulating admissibility of a health care provider's acknowledgement of liability codified at 735 ILCS 5/8-1901 is null and void because it violates the Illinois Constitution's prohibition on special legislation;
- F. Declaring that Public Law 94-677 violates the single-subject requirement of Art. IV, § 8(d) of the Illinois Constitution;
- G. Declaring that, in light of the inseverability provision in Public Law 94-677, § 995, the entire Act is null and void; and,
- H. Granting such further and additional relief as this Court deems just and equitable.



Jeffrey M. Goldberg

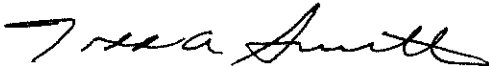
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Atty. No.: 25399



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Francine A. Hochberg, *Admission Pro Hac Vice Pending*

CENTER FOR CONSTITUTIONAL LITIGATION, P.C.

1050 31st Street, N.W.

Washington, D.C. 20007

(202) 944-2874

Attorneys for Plaintiffs

5. That the reviewing health professionals have determined in written reports, after a review of medical records and other relative material involved in this particular action, that there is a reasonable and meritorious cause for the filing of this action.
6. That we have concluded on the basis of the reviewing healthcare professionals' review and consultations and also by reviewing the medical records, that there is a reasonable and meritorious cause for filing of this action.
7. That attached to this affidavit is an unsigned copy of each report.
8. That your affiants, in conjunction with the medical malpractice cause of action filed herein have also filed a declaratory judgment action seeking to have certain portions of the relevant statutes declared unconstitutional.
9. That a signed copy of the reports could be presented to the court to be filed under seal pending resolution of the declaratory judgment action.
10. That your affiants state that the unsigned copies, attached hereto, are true and correct copies of the actual signed reports with the exception of the identity of the experts, the signature of the expert, and the license information being deleted.
11. That your affiants file their unsigned reports to preserve the rights of the plaintiff to challenge the constitutionality of the statute and not for purposes of delay.

Further Affiants Sayeth Not.



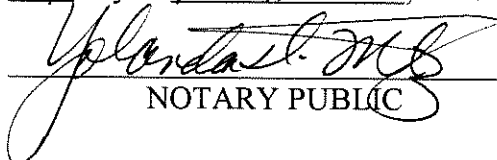
Jeffrey M. Goldberg



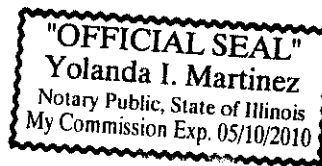
Todd Smith

SUBSCRIBED and SWORN to before me

17 day of November, 2006.



NOTARY PUBLIC



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August 2, 2006

Mr. Jeffrey M. Goldberg
Jeffrey M. Goldberg Law Offices
20 North Clark Street
Suite #3100
Chicago, Illinois 60602

RE: Your Client: Frances Lebron as Mother and Next Friend of Abigaile Lebron, a minor
Your File Number: 3756

Dear Mr. Goldberg:

I am a nurse licensed to practice and am currently practicing and have continuously practiced in this area for more than 10 years. At your request, I have reviewed the medical records pertaining to the care and treatment of Frances Lebron with regard to her pregnancy and delivery of her daughter Abigaile Lebron. These records include:

- Prenatal and Postpartum records for Frances Lebron from Dr. Roberto Levi-D'Ancona dated from 7/2/05 through 1/5/06;
- Labor and Delivery Evaluation for Frances Lebron from Gottlieb Memorial Hospital dated 7/23/05;
- Pre-Term Admission of Frances Lebron from Gottlieb Memorial Hospital dated 9/26/05 through 9/29/05;
- Labor and Delivery Evaluation for Frances Lebron from Gottlieb Memorial Hospital dated 9/29/05;
- Labor and Delivery Evaluation for Frances Lebron from Gottlieb Memorial Hospital dated 10/01/05;
- Admission Labor and Delivery Records for Frances Lebron from Gottlieb Memorial Hospital dated 10/31/05 through 11/03/05;
- Birth and Transfer Records for Baby Girl Lebron a/k/a Abigaile Lebron from Gottlieb Memorial Hospital dated 10/31/05.

These records indicate medical care provided by Gottlieb Memorial Hospital, through its physician Roberto Levi-D'Ancona and nursing care provided by Gottlieb Memorial Hospital's Nurse Florence Martinoz.

Based upon my review of these records, it is my opinion there is a reasonable and meritorious cause to file an action against Gottlieb Memorial Hospital and Florence Martinoz, R.N.

The basis of this opinion is the following:

- 1) Failing to appreciate the significance of a non-reassuring fetal heart rate pattern.
- 2) Failing to effectuate chain of command given the presence of non-reassuring fetal heart rate pattern, vaginal bleeding, complaints of abdominal pain and tenderness and hence the failing of the physician to take appropriate actions.

It is my opinion to a reasonable degree of nursing certainty that if, on October 31, 2005, Abigaile Lebron had been delivered in a more expedient manner, she would not have developed a terminal bradycardia and injuries secondary to a severe metabolic acidosis evidenced by a one minute Apgar of 0, and a cord pH of 6.8.

Should you have any further questions regarding this matter, please feel free to contact me at your convenience.

July 12, 2006

Mr. Jeffrey M. Goldberg
Jeffrey M. Goldberg Law Offices
20 North Clark Street
Suite #3100
Chicago, Illinois 60602

RE: Your Client: Frances Lebron
Your File Number: 3756

Dear Mr. Goldberg:

I am a physician licensed to practice medicine and I am Board Certified in Obstetrics and Gynecology. I am currently practicing and have continuously practiced in this area for more than 10 years. At your request, I have reviewed the medical records pertaining to the care and treatment of Frances Lebron with regard to her pregnancy and delivery of her daughter Abigaile. These records include:

- Prenatal and Postpartum records for Frances Lebron from Dr. Roberto Levi-D'Ancona dated from 7/2/05 through 1/5/06;
- Labor and Delivery Evaluation for Frances Lebron from Gottlieb Memorial Hospital dated 7/23/05;
- Pre-Term Admission of Frances Lebron from Gottlieb Memorial Hospital dated 9/26/05 through 9/29/05;
- Labor and Delivery Evaluation for Frances Lebron from Gottlieb Memorial Hospital dated 9/29/05;
- Labor and Delivery Evaluation for Frances Lebron from Gottlieb Memorial Hospital dated 10/01/05;
- Admission Labor and Delivery Records for Frances Lebron from Gottlieb Memorial Hospital dated 10/31/05 through 11/03/05;
- Birth and Transfer Records for Baby Girl Lebron a/k/a Abigaile Lebron from Gottlieb Memorial Hospital dated 10/31/05.

These records indicate medical care provided by Gottlieb Memorial Hospital, through its physician Roberto Levi-D'Ancona and nursing care provided by Gottlieb Memorial Hospital's Nurse Florence Martinoz.

Based upon my review of these records, it is my opinion there is a reasonable and meritorious cause to file an action against Gottlieb Memorial Hospital, Roberto Levi-D'Ancona, M.D. and Florence Martinoz, R.N.

For the medical providers the basis of this opinion is the following:

- 1) Failing to perform testing in the presence of vaginal bleeding of undetermined etiology in the third trimester of pregnancy.
- 2) Failing to recognize a non-reassuring fetal heart rate tracing and intervening in a timely and appropriate manner.
- 3) Continuing to administer tocolytic medications despite vaginal bleeding, a non-reassuring fetal heart rate pattern, abdominal tenderness, and documented decrease fetal movement.
- 4) Failing to perform an immediate delivery when a non-reassuring fetal heart rate was present.

Additionally, for the nursing provider, the basis of this opinion is the following:

- 1) Failing to effectuate chain of command given the presence of non-reassuring fetal heart rate pattern, vaginal bleeding, complaints of abdominal pain and tenderness and hence the need for an appropriate and immediate delivery.

It is my opinion, to a reasonable degree of medical certainty, these deviations were the proximate cause of Abigaile Lebron's injuries, which occurred on October 31, 2005.

Should you have any further questions regarding this matter, please feel free to contact me at your convenience.