

# Price of Pain

*After the daughter of Illinois attorney general Jim Ryan died tragically, the family filed a personal injury lawsuit—the kind that would have been drastically limited by the tort reform law fervently backed by Ryan's GOP colleagues*  
by Joel Kaplan

**T**WELVE-YEAR-OLD ANNIE Ryan was waking up with painful headaches that led to nausea and vomiting. If her father had not been experiencing his own hellish medical problems, Annie's parents might have taken a more relaxed, wait-and-see attitude. But he had been diagnosed earlier with non-Hodgkin's lymphoma and had spent months in intensive chemotherapy, losing all his hair. So, as a precaution, Annie's mother took her sixth grader to Children's Memorial Hospital in Lincoln Park to have her looked at by a pediatric neurologist. As she recalls, the doctor told her the young girl was suffering from migraine headaches and prescribed some medication. Annie's mother felt relieved.

Eleven days later, Annie Ryan was dead.

The Ryan family's shock and sadness quickly turned to anger and despair after the results of Annie's autopsy came back. The cause of her death was an undetected tumor at the base of her brain. Like most other parents who have endured the sudden death of a child, the Ryans went searching for answers. How could this have happened? Did Annie suffer from the same type of cancer as her father? And what did this mean about the health of her five older siblings?

The answers to those questions have become nearly as painful as the death itself. It turned out that the tumor was benign. More important, according to a neurosurgeon from Johns Hopkins University who was consulted about the case, a simple CT scan of Annie's skull would have discovered the tumor. "Surgery would most likely [have been] curative," the doctor concluded.

Late last year, nearly two years after Anne Marie Ryan died, her mother did what almost anyone else in

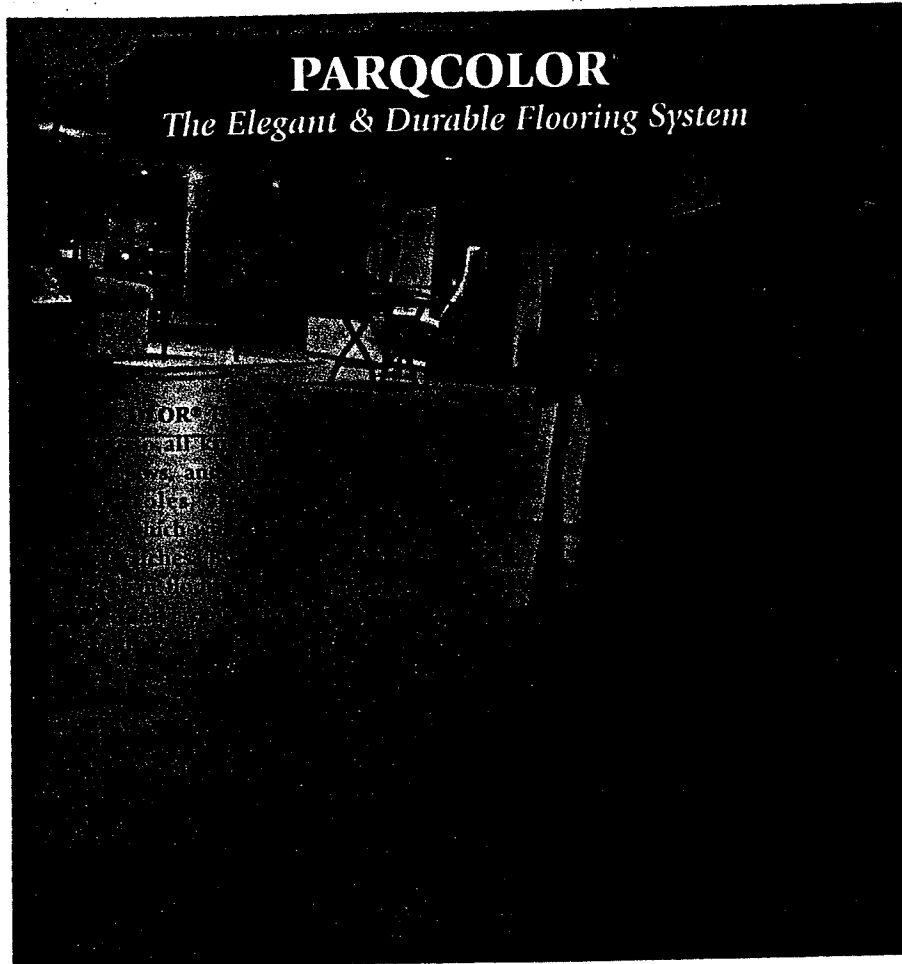


her situation

would do: She instigated a lawsuit against the doctor she says failed to treat her daughter properly and the hospital where she says the correct tests were not performed. "This was a human tragedy for the Ryan family that is every parent's nightmare," says Roger K. O'Reilly, the Wheaton attorney who is representing the Ryans.

But the lawsuit, which is said to be worth at least \$2 million, according to several lawyers familiar with the case, is certain to stir controversy as it winds its way through the Cook County court system over the next few years. That is because Annie Ryan's father, James E. Ryan, is the Illinois attorney general and his office defended the Republican effort to reform the legal system in Illinois. If Ryan and his party colleagues in the legislature had had their way, the lawsuit on behalf of his daughter would have been severely limited, with the doctor and the hospital at most having to pay the Ryan family a combined \$500,000.

The battle over tort reform pits trial lawyers, with their multimillion-dollar fees, against doctors, insurance companies, and businesses, who want to limit their own liability.



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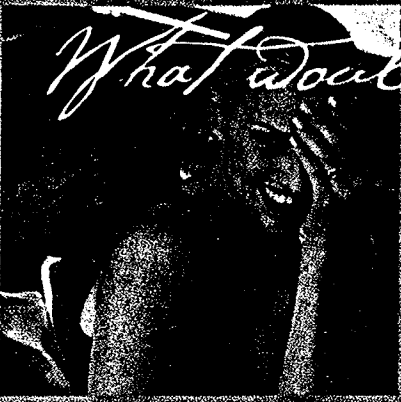

**U**NDER THE TORT REFORM legislation swiftly passed on a partisan basis by the new Republican-controlled legislature in 1995, noneconomic damages—such as damages for pain and suffering by the victim and loss of companionship by the survivors—would be capped at \$500,000 in medical malpractice and other personal injury lawsuits. So-called economic damages—such as medical expenses and the victim's loss of projected income—would be unlimited. But because Annie Ryan was a minor without any income, it would have been difficult to project what she might have earned in the future. Hence, there would have been virtually no economic damages.

A year and a half ago, the Illinois Supreme Court ruled the tort reform law unconstitutional, thus opening the way for the Ryans to seek much more than \$500,000 (and, for example, allowing a jury in March to award violinist Rachel Barton-Lee \$29.6 million, the bulk of it noneconomic damages, in her lawsuit against Metra and the Chicago & North Western railroad after her left leg was severed in an accident). To be sure, the Ryan family isn't interested simply in money; and, in any case, half a million dollars is a large sum. O'Reilly says that while the Ryans deserve to be compensated for their loss, their principal motive is to get the hospital and the doctor to accept responsibility and make sure other children receive CT scans if they complain of the same symptoms as Annie did.

Neither Children's Memorial Hospital, nor the doctor who treated Annie, Charles N. Swisher, would comment on the lawsuit. And Jim Ryan, whose own medical problems have resurfaced with the discovery of a small cancerous growth near his jaw, does not want to talk publicly about the lawsuit filed on behalf of his daughter. But trial attorneys who have been fighting the tort reform movement for the past five years say that the lawsuit filed by the Ryan family shows what's wrong with this Republican effort to change the legal system. And they say at least half a dozen legislators who voted in favor of tort reform have personally benefited from the system they were decrying.

Though in its details the battle over tort reform is dry stuff, the struggle pits two politically potent and well-financed heavyweight groups against each other: trial lawyers, with their multimillion-dollar fees, and doctors, insurance companies,

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and businesses, who would like nothing more than to limit their own liability. The Annie Ryan lawsuit exposes just how raw and complex that battle can be—and how partisan. In tort reform, some Democrats now cry, the Republicans on the state level talk about changing the system—and then they file just the sort of lawsuits tort reform is intended to curb.

**W**HEN I HEARD ABOUT THE [Ryan] lawsuit being filed, candidly, what came to my mind is a statement I always make," says Robert A. Clifford, the Chicago personal injury lawyer who represented Rachel Barton: "People can absorb unending amounts of pain, suffering, and sorrow provided that one thing prevails—that it happens to someone else."

Grant Dixon, an associate with the hugely successful personal injury law firm of Corboy & Demetrio, adds, "My statement to the Ryans is that I think they now understand that tort reform is wrong." And Dixon doesn't mince words in attacking backers of the legislation. "What is hypocritical is to use the law to their advantage and then say, 'Even though I am entitled to compensation, nobody else is,'" he says.

As it turns out, the charges of hypocrisy are flying both ways. At least one former legislator says the trial lawyers themselves are hypocritical—using their potent political and financial powers to blackmail legislators who don't toe the line. Robert Raica, a former Republican state senator from the Southwest Side, sued two doctors in 1994 for medical malpractice, claiming they improperly prescribed medicine for ulcerative colitis that ultimately required a hip replacement. Less than a year later, after the Republicans had taken control of the House and were pushing tort reform, Raica—under pressure from the Senate leadership—reluctantly decided to vote for it. His attorney in the malpractice case was Philip Corboy of Corboy & Demetrio.

Raica claims that after he voted for tort reform, Corboy withdrew from the case. "Who would believe he would do something like that?" Raica says. "There's no doubt he's an excellent attorney, but there's no doubt what he did was wrong." Raica says he hired a new lawyer, but 30 days before the lawsuit was to go to trial, the new lawyer told him he had no case. The suit was never pursued. (Corboy re-

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sponds, "If I had continued to represent Mr. Raica, I could be accused of seeking damages for a man who voted to keep himself eligible to receive those damages [but not future plaintiffs; the reform law wouldn't have affected suits already filed]. I believed it unprofessional and a conflict to my future clients who would have been prevented from seeking those damages.")

Raica, who was defeated for re-election in 1996, says there should be a pox on both sides of the issue. He blames the state Department of Professional Regulation for failing to discipline incompetent doctors and unethical lawyers. The battle over tort reform, Raica says, was a partisan one because of the history in Illinois of Democrats' backing trial lawyers and Republicans' backing doctors.

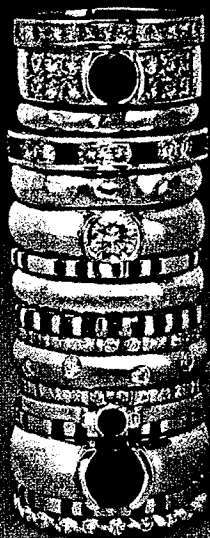
"Jim [Ryan] is a Republican. But I think what happened here is he finally needed as a father to file this lawsuit and say enough is enough," Raica says. "He is probably one of the nicest guys you would want to meet and one of the most devoted fathers and husbands, who lost someone very dear to him. At that point, the partisan stand separated."

Other defenders of Ryan point out that as attorney general he had a public duty to defend the constitutionality of the tort reform bill before the Illinois Supreme Court. Two lawyers in the attorney general's office say that while Ryan was involved in crafting the arguments before the Supreme Court, he left the actual presentation of the case to his staff. And Ryan's spokesman, Dan Curry, said that while the attorney general supports tort reform, "it was not a priority [in either of his election campaigns]. It was not one of the issues he was talking about."

Still, Ryan won some political support based on his defense of the tort reform law. Ed Murnane, president of the Illinois Civil Justice League, spearheaded the reform drive on behalf of the league's membership of doctors, businesses, and local governments. He says that his organization has endorsed Ryan because of his support for tort reform. As to the lawsuit filed on behalf of Ryan's daughter, Murnane says. "We have never argued—and never would argue—that you shouldn't file a suit if you are entitled to some damages or if someone is responsible for injury or loss."

"Obviously, they are asking for more than \$500,000. You should try to get what you are entitled to or what the law allows. We will try to change that law

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Until the law is changed, I don't think that anybody would quarrel with what Jim Ryan did."

**N**OW, THOUGH, JIM RYAN COULD find himself in an embarrassing situation when the issue comes up again. And he won't be alone. Several Republican legislators who voted in favor of tort reform even though their personal interest went the other way are being singled out for criticism by trial lawyers. Several of the targeted legislators are personal injury lawyers who are seeking million-dollar settlements for their clients; others have relatives who have filed suits or won damages in excess of the \$500,000 cap sought by the Republicans.

In the highly charged days of 1995, when the new Republican majority tried to flex its muscles over tort reform, all but one GOP legislator—Al Salvi, a successful personal injury lawyer—voted the party line. (Salvi voted present.) Curiously, Salvi's law partner and fellow representative Peter Roskam did vote for reform even though many of the suits he had filed on behalf of clients had resulted in judgments exceeding the Republicans' proposed cap. "I came away from that experience seeing that there were not too many players with clean hands and pure motives," says Roskam, who lost a bid last year for a congressional seat. "It ultimately didn't revolve around the merits, but became more or less a power play."

Rosemary Mulligan, a Republican representative from Des Plaines, says she was predisposed to vote against tort reform because of two life-shattering events. When she was 26, her father, an insurance agent, was murdered while picking up a premium payment at a Chicago Housing Authority building. Mulligan said the insurance company treated her mother badly and she received only about \$60,000 in workers' compensation. In 1982, Mulligan's former husband was killed in a light plane crash in Canada. A suit on behalf of the children was filed in Canada, but under the Canadian tort system, the losing litigant must pay court costs for the winner. Given that risk, the suit was settled (for relatively little money, she says). "I just didn't think we ever wanted a system that mirrored the Canadian system," she says, explaining her opposition to reform.

Nevertheless, Mulligan was put under enormous pressure from then House

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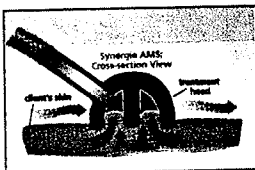


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Speaker Lee Daniels and Governor Jim Edgar to support tort reform. "I had been called into the governor's office. I think Governor Edgar became very dismayed that nobody told him my reason [for opposing reform]. I think he now feels very badly about it."

Mulligan ultimately succumbed and voted for the bill. "It certainly was a career vote for me," she says. Should tort reform come up again in the legislature, Mulligan says she would opt for a modified reform measure. But she adds, "Tort reform is one of those areas where we don't seem to be able to compromise. We are so political and so leader controlled that we can't have a civil discussion to come to a middle ground."

**I**N MARCH 1995 THE TOUGH RE-form became law in Illinois. But two events changed the landscape of the battle. In 1996, with strong backing from the trial lawyers, Michael Madigan and the Democrats retook the House. One year later, the Illinois Supreme Court voted 5-1 to overturn the law. The court said the cap on damages violated the state constitutional ban on special legislation because it discriminated against people who had suffered horrible injuries and benefited those that had caused the injuries. The court also said that the law violated the separation of powers because it took away a jury's power to award damages.

In the decision, the Supreme Court did not rule out all aspects of tort reform—just the hastily drafted plan that was passed in 1995. But advocates for reforming the system know that as long as Madigan and the Democrats control the House, any tort reform plan is dead on arrival.

Governor George Ryan is a staunch supporter of reform, however, and he vows to sign any legislation that passes. If the GOP retakes the House, reform advocates say they are ready. "We're going to try again to change it and we are going to keep trying," Murnane says. "Eventually Illinois will change it. We're surrounded by states that do have some kinds of caps."

And there is no question that tort reform will continue to be a major issue in next year's campaigns, on both the national and local levels. Vice-President Al Gore has consistently supported the trial lawyers against tort reform, while most of the Republicans who are planning to run



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## The Case for Caps

If you are looking for proponents of tort reform, particularly those who favor a cap on noneconomic damages, just talk to some taxpayers and public officials in northwest suburban Hanover Park.

Citizens there are still reeling from the results of a 1988 motorcycle accident that left Thomas Redlin paralyzed below the waist. Redlin sued the village because he had run into an unmarked median. Most residents never thought he had a case. Redlin had been drinking at a backyard barbecue when he borrowed a friend's motorcycle. The accident happened when he looked down to switch his headlight to the high-beam setting. And, most important, Redlin didn't even have a license to drive the motorcycle.

But that last fact was kept from the jury, which in 1995 awarded him \$6.75 million, with more than \$5 million of that considered noneconomic damages for the pain and suffering both Redlin and his wife had incurred. Had tort reform been in effect in 1994, when the suit was filed, those damages would have been capped at \$500,000.

"I think juries can be sympathetic to victims, and the results are multimillion-dollar awards that can directly impact taxpayers," says Marc G. Hummel, the village manager of Hanover Park. As a result of the verdict, the village hiked property taxes 5 percent in 1996.

Proponents of tort reform, including caps on damage awards, insist that higher taxes are just one of the ways the current legal system hurts consumers. In addition, Governor George Ryan says, lack of reform in Illinois has kept jobs from the state. Doctors say they are afraid to try risky medical procedures and often order excessive numbers of tests, driving up medical expenses. "[A cap on damages] lowers the cost of living to consumers and taxpayers," says Ed Murnane, president of the Illinois Civil Justice League. "It has a direct impact on insurance costs, [lowering the price of] consumer goods from bicycle helmets to stepladders, and it lowers taxes."

On the other side, opponents say caps on damage awards unfairly punish those people who have suffered the most catastrophic injuries or losses. They cite incidents such as the 1995 Fox River Grove train-school bus crash and say the injured and the families of those who were killed would never have been fairly compensated under tort reform.

"Tort reform in my opinion was an attempt by the big money interests in this state—by that I mean the insurance industry, the HMOs, the medical society, and the manufacturer associations—to insulate themselves from accepting responsibility for any wrongs they inflict on society," says Roger K. O'Reilly, the Wheaton attorney representing the Ryan family. "Without a willingness to accept responsibility or being forced to accept responsibility by our legal system, doctors and hospitals will not change their practice of making decisions based on cost containment or other factors rather than what is best for the patient. Nor will product manufacturers spend any time and money to eliminate a safety hazard from their products."

According to the Association of Trial Lawyers of America, 23 states have no caps on damages, 14 states have caps ranging from \$200,000 to \$750,000 in all cases and 13 states restrict damages only in medical malpractice suits.

The kinds of constraints range from those in Indiana, which has an absolute cap of \$750,000 on all damages, to Wisconsin, which has a \$350,000 cap on noneconomic damages for medical malpractice and a cap of \$350,000 (\$500,000 for children) for loss of companionship in cases of wrongful death.

—J. K.

for President have taken the same position as their Illinois counterparts. Meanwhile, the large sum recently awarded to Rachel Barton has renewed calls for change.

Thus, the stage is set for what may be a supreme irony. Jim Ryan's office could wind up arguing before the Illinois Supreme Court that prohibiting

excessive awards for people unfairly injured is good public policy at the same time his own lawyer is trying to persuade a jury that awarding Ryan's family a large sum of money is the only way to punish a doctor and a hospital for the wrongdoing that led to the death of his daughter.