

Amended Complaint and Jury Demand

Carlson, Wendler & Sanderson, [Jon G. Carlson](#), IL Bar #00392812, 90 Eawardsville Professional Park, P.O. Box 527, Edwardsville, IL 62025, 618/656-0066, Attorney for Plaintiff.

Law Offices of Charles R. Abele, [Charles R. Abele](#), IL Bar #00002100, 1015 Locust, Suite 1024, St. Louis, MO 63101-1323, 314/241-3123, Attorney for Plaintiff.

Pitts, Dugan & Diaz, P.C., [Theodore R. Diaz](#), IL Bar #06181960, 200 N. Wood River Drive, Wood River, IL 62095.

Plaintiff demands trial by Jury of twelve.

Count I

(Strict Products Liability - Taylor and Allied)

NOW COMES the Plaintiff, Vernon Best, by and through his attorneys, CARLSON, WENDLER & SANDERSON, THE LAW OFFICES OF CHARLES R. ABELE, and PITTS, DUGAN & DIAZ, and in support of his cause of action against the Defendant Taylor Machine Works, Inc. and Allied Industrial Equipment Corporation states as follows:

1. Plaintiff Vernon Best, ("Vernon Best") is a resident of Staunton, Macoupin County, State of Illinois.
2. Defendant Taylor Machine Works, Inc., ("Taylor") is a corporation organized and existing under the laws of the State of Mississippi, with its principle place of business located in the City of Louisville, Mississippi, while doing business in the State of Illinois.
3. Defendant Allied Industrial Equipment Corporation, ("Allied") is a corporation organized and existing under the laws of the State of Missouri, with its principle place of business located in the City of St. Louis, and doing business in the State of Illinois.
4. On or about July 24, 1995, Vernon Best was performing his normal work duties as a forklift truck operator for his employer Laclede Steel Company, ("Laclede") in the City of Alton, Madison County, Illinois.
5. At said time and place, Vernon Best was operating an industrial forklift truck Model No. TY-520M designed, built, manufactured, and/or modified by Taylor and/or sold, distributed, and/or modified by Allied, (the "Taylor forklift") which eventually came into the possession of Laclede.
6. That at all times relevant herein, the Taylor forklift was in substantially the same condition as when it left the control of Taylor and Allied.
7. Taylor and Allied placed the Taylor forklift into the stream of commerce as part of their regular business activity in the State of Illinois.
8. As a part of his duties for Laclede, Vernon Best was required to move a number of heavy slabs of very hot steel castings from one location on Laclede property to another.
9. The design, manufacture, and/or modification, sale, and distribution of the Taylor forklift made it defective and not reasonably safe in one or more of the following respects:
 - a) The design and/or construction of the support assembly for the mast of the machinery was weak, insubstantial and defective causing the mast to fail and the load to drop.

b) The location of the hydraulic fitting at the bottom of the lift cylinder was unreasonably dangerous and the design of this machine thereby defective, because it allowed the collapsing mast assembly to shear this fitting from the cylinder thereby causing a rapid release of high pressure hydraulic fluid which subsequently ignited.

c) The design, and/or construction of this machine, together with the manual of instructions supplied with it allowed and suggested the use of hydraulic fluid that was too flammable and therefore unreasonably dangerous for use in the environment in which this machine was known to operate.

10. These defects existed at the time the Taylor forklift left the Taylor manufacturing facility. With regard to the distributor Allied they existed at the time the Taylor forklift left its facility for distribution and sale to Laclede.

11. While operating the Taylor forklift and moving hot heavy slabs of steel, the steel parts and the weldments of the mast and support assembly of the Taylor machine fractured causing the mast to fall shearing off an hydraulic fitting causing flammable hydraulic fluid to ignite resulting in an explosion of flame.

12. Vernon Best sustained severe and permanent injury while attempting to perform his normal work activities in an intended and foreseeable fashion, to-wit:

As a direct and proximate result of the defects described in Paragraph 9, Vernon Best was engulfed in a fireball and had to jump from the cab of the Taylor forklift onto the ground thereby sustaining second and third burns over approximately 50% of his body including his face, upper torso, and both arms and hands resulting in serious scarring of a permanent nature with resulting skin grafts and other attempts at treatment of his burns. In addition Vernon Best sustained bilateral comminuted fractures of both heels with operative reduction and internal fixation in addition to other serious and severe injuries.

Vernon Best has suffered and will continue to suffer grievous pain and anguish; his injuries are disfiguring and permanent in nature; he has been required to expend large sums of money in excess of Three Hundred Thousand Dollars (\$300,000) to date in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; he has sustained substantial wage loss and has been damaged in his capacity to earn wages in the future; his condition is such that he will be forced to expend money for vocational rehabilitation and/or convalescent care.

WHEREFORE, Plaintiff Vernon Best prays for judgment against the Defendants Taylor and Allied for a sum in excess of jurisdictional limits of Fifteen Thousand Dollars (\$15,000) and PLAINTIFF PRAYS FOR TRIAL BY JURY OF TWELVE.

COUNT II

(Negligence - Defendants Taylor and Allied)

NOW COMES the Plaintiff, Vernon Best, by and through his attorneys, CARLSON, WENDLER & SANDERSON, THE LAW OFFICES OF CHARLES R. ABELE, and PITTS, DUGAN & DIAZ and in support of his cause of action against the Defendants Taylor and Allied states as follows:

1. Plaintiff Vernon Best realleges and incorporates by reference each and every allegation contained in paragraphs 1 - 8 and 10-11 contained in Count I of this Petition as if fully pleaded herein.
2. Taylor and Allied committed one or more of the following negligent acts and/or omissions in the design, manufacture, and /or modification of said Taylor forklift.
 - a) Negligently and carelessly designed and/or constructed the support assembly for the mast of the machinery so that it was weak, insubstantial and defective causing the mast to fail and the load to drop.
 - b) Negligently and carelessly located the hydraulic fitting at the bottom of the lift cylinder so that it was unreasonably dangerous and negligently designed this machine so that it allowed the collapsing mast assembly to shear this fitting from the cylinder causing a rapid release of high pressure hydraulic fluid which subsequently ignited.
 - c) Negligently and carelessly designed and/or constructed this machine so that it allowed and permitted the use of hydraulic fluid that was too flammable and therefore unsafe for use in the environment in which this machine was known to operate.
 - d) Negligently and carelessly failed to warn the Plaintiff of the dangerous conditions then and there existing when the Defendants knew or in the exercise of ordinary care should have known that said warning was necessary to prevent injury to the Plaintiff.
 - e) Negligently and carelessly instructed the Plaintiff and others that the use of the hydraulic fluid mentioned in the Defendants manual instructions and negligently allowed, permitted, and suggested the use of hydraulic fluid that was too flammable and therefore unsafe and inappropriate for use in the environment in which this machine was known to operate.
3. These defects existed at the time the Taylor forklift left the Taylor manufacturing facility. With regard to the distributor Allied they existed at the time the Taylor forklift left its facility for distribution and sale to Laclede.
4. Vernon Best sustained severe and permanent injury while attempting to perform his normal work activities in an intended and foreseeable fashion, to-wit:

As a direct and proximate result of the negligent act, and each of them, described in Paragraph 2, Vernon Best was engulfed in a fireball and had to jump from the cab of the Taylor forklift onto the ground thereby sustaining second and third burns over approximately 50% of his body including his face, upper torso, and both arms and hands resulting in serious scarring of a permanent nature with resulting skin grafts and other attempts at treatment of his burns. In addition Vernon Best sustained bilateral comminuted fractures of both heels with operative reduction and internal fixation in addition to other serious and severe injuries.

Vernon Best has suffered and will continue to suffer grievous pain and anguish; his injuries are disfiguring and permanent in nature; he has been required to expend large sums of money in excess of Three Hundred Thousand Dollars (\$300,000) to date in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; he has sustained substantial wage loss and has been damaged in his capacity to earn

wages in the future; his condition is such that he will be forced to expend money for vocational rehabilitation and/or convalescent care.

WHEREFORE, Plaintiff Vernon Best prays for judgment against the Defendants for a sum in excess of jurisdictional limits of Fifteen Thousand Dollars (\$15,000) and PLAINTIFF PRAYS FOR TRIAL BY JURY OF TWELVE.

COUNT III

(Implied Warranty - Defendant Taylor and Allied)

NOW COMES the Plaintiff, Vernon Best, by and through his attorneys, CARLSON, WENDLER & SANDERSON, THE LAW OFFICES OF CHARLES R. ABELE, and PITTS, DUGAN & DIAZ and in support of his cause of action against the Defendants Taylor and Allied states as follows:

1. Plaintiff Vernon Best realleges and incorporates by reference each and every allegation contained in paragraphs 1- 8 and 10-11 contained in Count I of this Petition as if fully pleaded herein.
2. That at all times relevant hereto, Taylor and Allied, pursuant to [810 ILCS 5/2-314](#), impliedly warranted that the Taylor forklift was merchantable.
3. That in breach of the warranty, Taylor and Allied placed into the stream of commerce a Taylor forklift that was unmerchantable in the following manners:
 - a) The design and/or construction of the support assembly for the mast of the machinery was weak, insubstantial and defective causing the mast to fail and the load to drop.
 - b) The location of the hydraulic fitting at the bottom of the lift cylinder was unreasonably dangerous and the design of this machine thereby defective, because it allowed the collapsing mast assembly to shear this fitting from the cylinder thereby causing a rapid release of high pressure hydraulic fluid which subsequently ignited.
 - c) The design, and/or construction of this machine, together with the manual of instructions supplied with it allowed and suggested the use of hydraulic fluid that was too flammable and therefore unreasonably dangerous for use in the environment in which this machine was known to operate.

4. Vernon Best sustained severe and permanent injury while attempting to perform his normal work activities in an intended and foreseeable fashion, to-wit:

As a direct and proximate result of the breaches of the warranties of merchantability described in Paragraph 3, Vernon Best was engulfed in a fireball and had to jump from the cab of the Taylor forklift onto the ground thereby sustaining second and third burns over approximately 50% of his body including his face, upper torso, and both arms and hands resulting in serious scarring of a permanent nature with resulting skin grafts and other attempts at treatment of his burns. In addition Vernon Best sustained bilateral comminuted fractures of both heels with operative reduction and internal fixation in addition to other serious and severe injuries.

Vernon Best has suffered and will continue to suffer grievous pain and anguish; his injuries are disfiguring and permanent in nature; he has been required to expend large sums of money in excess of Three Hundred Thousand Dollars (\$300,000) to date in order to obtain

medical treatment for his injuries and will be required to expend additional sums in the future; he has sustained substantial wage loss and has been damaged in his capacity to earn wages in the future; his condition is such that he will be forced to expend money for vocational rehabilitation and/or convalescent care.

5. That immediately following the breach, notice was given to Taylor and Allied and/or their agents of the breach of said warranty.

WHEREFORE, the Plaintiff Vernon Best prays for judgment against the Defendants Taylor and Allied for a sum in excess of jurisdictional limits and PLAINTIFF PRAYS FOR TRIAL BY JURY OF TWELVE ON ALL COUNTS.

COUNT IV

(BREACH OF WARRANTY FOR A PARTICULAR PURPOSE - [810 ILCS 5/2-315](#) - Taylor and Allied)

NOW COMES the Plaintiff, Vernon Best, by and through his attorneys, CARLSON, WENDLER & SANDERSON, THE LAW OFFICES OF CHARLES R. ABELE and PITTS, DUGAN & DIAZ, and in support of his cause of action against the Defendants Taylor and Allied and states as follows:

1. Plaintiff Vernon Best realleges and incorporates by reference each and every allegation contained in paragraphs 1 - 8 and 10-11 contained in Count 1 of this Petition as if fully pleaded herein
2. That at all times relevant herein, Taylor and Allied had reason to know the particular purpose for which the Taylor forklift was to be put and that Laclede relied on Taylor and Allied's skill and/or judgment to select or furnish a Taylor forklift which was suitable for this purpose.
3. That pursuant to [810 ILCS 5/2-315](#), the Taylor and Allied impliedly warranted that the Taylor forklift was fit for its particular purpose, to wit: to be used to transport and carry heavy slabs of very hot steel castings from one location on the Laclede property to another and that it was suitable for that purpose under the circumstances then and there existing.
4. That in breach of the aforesaid implied warranty, Taylor and Allied placed into the stream of commerce a Taylor forklift that was not fit for its particular purpose in the following manners:
 - a) The design and/or construction of the support assembly for the mast of the machinery was weak, insubstantial and defective causing the mast to fail and the load to drop.
 - b) The location of the hydraulic fitting at the bottom of the lift cylinder was unreasonably dangerous and the design of this machine thereby defective, because it allowed the collapsing mast assembly to shear this fitting from the cylinder thereby causing a rapid release of high pressure hydraulic fluid which subsequently ignited.
 - c) The design, and/or construction of this machine, together with the manual of instructions supplied with it allowed and suggested the use of hydraulic fluid that was too flammable and therefore unreasonably dangerous for use in the environment in which this machine was known to operate.

5. Vernon Best sustained severe and permanent injury while attempting to perform his normal work activities in an intended and foreseeable fashion, to-wit:

6. As a direct and proximate result of the breaches of warranty for the purposes described in Paragraph 4, Vernon Best was engulfed in a fireball and had to jump from the cab of the Taylor forklift onto the ground thereby sustaining second and third burns over approximately 50% of his body including his face, upper torso, and both arms and hands resulting in serious scarring of a permanent nature with resulting skin grafts and other attempts at treatment of his burns. In addition Vernon Best sustained bilateral comminuted fractures of both heels with operative reduction and internal fixation in addition to other serious and severe injuries.

Vernon Best has suffered and will continue to suffer grievous pain and anguish; his injuries are disfiguring and permanent in nature; he has been required to expend large sums of money in excess of Three Hundred Thousand Dollars (\$300,000) to date in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; he has sustained substantial wage loss and has been damaged in his capacity to earn wages in the future; his condition is such that he will be forced to expend money for vocational rehabilitation and/or convalescent care.

6. That immediately following the aforesaid breach, notice was given to Taylor and Allied and/or their agents of the breach of said warranty.

WHEREFORE, the Plaintiff Vernon Best prays for judgment against the Defendants Taylor and Allied for a sum in excess of jurisdictional limits of Fifteen Thousand Dollars (\$15,000) and PLAINTIFF PRAYS FOR TRIAL BY JURY OF TWELVE ON ALL COSTS.

COUNT V

(Express Warranty - Taylor and Allied)

NOW COMES the Plaintiff, Vernon Best, by and through his attorneys, CARLSON, WENDLER & SANDERSON, THE LAW OFFICES OF CHARLES R. ABELE and PITTS, DUGAN & DIAZ, and in support of his cause of action against the Defendants Taylor and Allied states as follows:

1. Vernon Best realleges and incorporates by reference each and every allegation contained in paragraphs 1 - 8 and 10-11 contained in Count 1 of this Petition as if fully pleaded herein.

2. That as part of their marketing process, Taylor and Allied, through their literature and through their agents, represented to Vernon Best and his agents that the Taylor forklift was safe. For example, Taylor and Allied and their agents represented the following in its literature, to-wit:

a) That the suggested hydraulic fluids listed in the operation specifications for the vehicle to-wit: Taylor Model No. TY-520M by Defendant Taylor were of a flammable nature when said hydraulic fluids used in a high temperature environment and said fluids suggested for use by the manufacturer and the distributor thereof had a potential for fire and explosion which cause harm beyond that which would be objectively contemplated by the ordinary user.

3. These hydraulic fluids were installed in the vehicle at the factory and similar hydraulic fluids were utilized at the time of this accident when there were high temperature, non-

flammable type hydraulic fluids available as an alternative which were feasible and which should have been utilized in this environment and were not.

4. The representations to Vernon Best and/or Laclede by Taylor and Allied were a material factor in Laclede's purchase and/or lease of the Taylor forklift and in Vernon Best's use of it.

5. That following said purchase and/or lease, Vernon Best used the Taylor forklift for its intended and reasonable foreseeable uses.

6. That despite Taylor and Allied's representations the Taylor forklift did not meet said representations, to-wit: it was not safe for use in a high temperature environment because of its potential for fire and explosion and the representations of Taylor and Allied that the Taylor forklift was safe for use with the hydraulic fluids that were suggested and used by Vernon Best and/or Laclede did not meet said representations of safety.

7. Vernon Best, sustained severe and permanent injury while attempting to perform his normal work activities in an intended and foreseeable fashion, to-wit:

As a direct and proximate result of the breaches of these express warranties described in Paragraph 2, Vernon Best was engulfed in a fireball and had to jump from the cab of the Taylor forklift onto the ground thereby sustaining second and third burns over approximately 50% of his body including his face, upper torso, and both arms and hands resulting in serious scarring of a permanent nature with resulting skin grafts and other attempts at treatment of his burns. In addition Vernon Best sustained bilateral comminuted fractures of both heels with operative reduction and internal fixation in addition to other serious and severe injuries.

Vernon Best has suffered and will continue to suffer grievous pain and anguish; his injuries are disfiguring and permanent in nature; he has been required to expend large sums of money in excess of Three Hundred Thousand Dollars (\$300,000) to date in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; he has sustained substantial wage loss and has been damaged in his capacity to earn wages in the future; his condition is such that he will be forced to expend money for vocational rehabilitation and/or convalescent care.

8. That immediately following the breach, Vernon Best gave notice to Taylor and Allied and/or their agents of the breach of said warranty.

WHEREFORE, the Plaintiff Vernon Best prays for judgment against the Defendants Taylor and Allied for a sum in excess of jurisdictional limits of Fifteen Thousand Dollars (\$15,000) and PLAINTIFF PRAYS FOR TRIAL BY JURY OF TWELVE ON ALL COUNTS.

Count VI

(Strict Products Liability - Helms)

NOW COMES the Plaintiff, Vernon Best, by and through his attorneys, CARLSON, WENDLER & SANDERSON, THE LAW OFFICES OF CHARLES R. ABELE and PITTS, DUGAN & DIAZ, and in support of his cause of action against the Defendant Lee Helms, Inc. states:

1. Plaintiff Vernon Best ("Vernon Best") is a resident of the State of Illinois.

2. Defendant Lee Helms, Inc. (“Helms”) is a corporation organized and existing under the laws of the State of Illinois, with its principle place of business located in the City of Belleville and doing business in the State of Illinois.
3. On or about July 24, 1995, Vernon Best was performing his normal work duties as a forklift truck operator for his employer Laclede Steel Company, (Laclede) in the City of Alton, Madison County, Illinois.
4. At said time and place, Vernon Best was operating an industrial forklift truck, Model Number TY-580M, in which hydraulic fluid designated Super Select ATFD/M (“hydraulic fluid”), manufactured, sold and/or distributed by Helms was being used.
5. At all times relevant herein, the hydraulic fluid was in substantially the same condition as when it left the control of Helms.
6. Helms placed the hydraulic fluid into the stream of commerce as part of its regular business activity in the State of Illinois.
7. As part of his duties for Laclede, Vernon Best was required to move a number of heavy slabs of very hot steel castings from one location on Laclede property to another.
8. The hydraulic fluid was defective and not reasonably safe in that:
 - a) it had a flash point and an auto-ignition temperature that was flammable and inappropriate for use in the environment in which this machine operated and was known to operate; and
 - b) it was unsafe for use in this machine in its foreseeable environment because it had a potential for fire and explosion causing harm beyond that which would be objectively contemplated by the ordinary user.
9. Vernon Best sustained severe and permanent injury while attempting to perform his normal work activities in an intended and foreseeable fashion, to-wit:

As a direct and proximate result of the defects described in Paragraph 8, Vernon Best was engulfed in a fireball and had to jump from the cab of the Taylor forklift onto the ground thereby sustaining second and third burns over approximately 50% of his body including his face, upper torso, and both arms and hands resulting in serious scarring of a permanent nature with resulting skin grafts and other attempts at treatment of his burns. In addition Vernon Best sustained bilateral comminuted fractures of both heels with operative reduction and internal fixation in addition to other serious and severe injuries.

Vernon Best has suffered and will continue to suffer grievous pain and anguish; his injuries are disfiguring and permanent in nature; he has been required to expend large sums of money in excess of Three Hundred Thousand Dollars (\$300,000) to date in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; he has sustained substantial wage loss and has been damaged in his capacity to earn wages in the future; his condition is such that he will be forced to expend money for vocational rehabilitation and/or convalescent care.

WHEREFORE, Plaintiff Vernon Best prays for judgment against Defendant Helms for a sum in excess of jurisdictional limits of Fifteen Thousand Dollars (\$15,000) and PLAINTIFF PAYS FOR TRIAL BY JURY OF TWELVE.

COUNT VII

(Negligence - Defendant Helms)

NOW COMES the Plaintiff, Vernon Best, by and through his attorneys, CARLSON, WENDLER & SANDERSON, THE LAW OFFICES OF CHARLES R. ABELE and PITTS, DUGAN & DIAZ, and in support of his cause of action against the Defendant Helms, states as follows:

1. Vernon Best realleges and incorporates by reference each and every allegation contained in paragraphs 1 - 7 contained in Count VI of this Petition as if fully pleaded herein.
2. Helms committed one or more of the following negligent acts and/or omissions in the sale of the hydraulic fluid.
 - a) Negligently and carelessly manufactured, modified, sold and/or distributed the hydraulic fluid Helms knew or should have known had a flash point and an autoignition temperature that was flammable and inappropriate for use in the environment in which this machine operated and was known to operate; and
 - b) Negligently and carelessly provided hydraulic fluid that was unsafe for use in this machine in its foreseeable environment because it had a potential for fire and explosion causing harm beyond that which would be objectively contemplated by the ordinary user.
3. Vernon Best sustained severe and permanent injury while attempting to perform his normal work activities in an intended and foreseeable fashion, to-wit:

As a direct and proximate result of the negligence described in Paragraph 2 of Count I, Vernon Best was engulfed in a fireball and had to jump from the cab of the Taylor forklift onto the ground thereby sustaining second and third burns over approximately 50% of his body including his face, upper torso, and both arms and hands resulting in serious scarring of a permanent nature with resulting skin grafts and other attempts at treatment of his burns. In addition Vernon Best sustained bilateral comminuted fractures of both heels with operative reduction and internal fixation in addition to other serious and severe injuries.

Vernon Best has suffered and will continue to suffer grievous pain and anguish; his injuries are disfiguring and permanent in nature; he has been required to expend large sums of money in excess of Three Hundred Thousand Dollars (\$300,000) to date in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; he has sustained substantial wage loss and has been damaged in his capacity to earn wages in the future; his condition is such that he will be forced to expend money for vocational rehabilitation and/or convalescent care.

WHEREFORE, Plaintiff Vernon Best prays for judgment against the Defendant Helms for a sum in excess of jurisdictional limits of Fifteen Thousand Dollars (\$15,000) and PLAINTIFF PRAYS FOR TRIAL BY JURY OF TWELVE.

COUNT VIII

(Implied Warranty - Defendant Helms)

NOW COMES the Plaintiff Vernon Best, by and through his attorneys, CARLSON, WENDLER & SANDERSON, THE LAW OFFICES OF CHARLES R. ABELE, and PITTS, DUGAN & DIAZ, and in support of his cause of action against the Defendant Helms states as follows:

1. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 - 7 contained in Count VI of this Petition as if fully pleaded herein.
2. At all times relevant hereto, Helms, pursuant to [810 ILCS 5/2-314](#), impliedly warranted that the hydraulic fluid was merchantable.
3. That in breach of the aforesaid warranty, Helms placed into the stream of commerce hydraulic fluid that was unmerchantable in the following manners:
 - a) It was defective and not reasonably safe because it had a flash point and an auto-ignition temperature that was flammable and inappropriate for use in the environment in which this machine operated and was known to operate; and
 - b) it was unsafe for use in this machine in its foreseeable environment because it had a potential for fire and explosion causing harm beyond that which would be objectively contemplated by the ordinary user.

4. Vernon Best sustained severe and permanent injury while attempting to perform his normal work activities in an intended and foreseeable fashion, to-wit:

As a direct and proximate result of the implied warranties of merchantability described in Paragraph 2, Vernon Best was engulfed in a fireball and had to jump from the cab of the Taylor forklift onto the ground thereby sustaining second and third burns over approximately 50% of his body including his face, upper torso, and both arms and hands resulting in serious scarring of a permanent nature with resulting skin grafts and other attempts at treatment of his burns. In addition Vernon Best sustained bilateral comminuted fractures of both heels with operative reduction and internal fixation in addition to other serious and severe injuries.

Vernon Best has suffered and will continue to suffer grievous pain and anguish; his injuries are disfiguring and permanent in nature; he has been required to expend large sums of money in excess of Three Hundred Thousand Dollars (\$300,000) to date in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; he has sustained substantial wage loss and has been damaged in his capacity to earn wages in the future; his condition is such that he will be forced to expend money for vocational rehabilitation and/or convalescent care.

WHEREFORE, Plaintiff Vernon Best prays for judgment against the Defendant for a sum in excess of jurisdictional limits of Fifteen Thousand Dollars (\$15,000) and PLAINTIFF PRAYS FOR TRIAL BY JURY OF TWELVE ON ALL COUNTS.

COUNT IX

COMPLAINT FOR DECLARATORY RELIEF AND TO OTHERWISE ENJOIN THE CONDUCT OF VARIOUS DEFENDANTS WITH REGARD TO [SECTIONS 2-1003, 8-802, 8-2001, AND 8-2003 OF THE ILLINOIS CODE OF CIVIL PROCEDURE](#)

NOW COMES the Plaintiff, Vernon Best, by and through his attorneys, and complaining of the Defendants Taylor, Allied, and Helms, and each of them, alleges as follows:

1. The Plaintiff repeats, realleges and incorporates by reference Counts I and VIII as if fully set forth herein.

2. That the circumstances surrounding the Plaintiff's injuries give rise to a cognizable cause of action against the Defendants Taylor, Helms, and Allied, and each of them, under the common law of Illinois.

Sections 2-1003 & 8-802 Waiver of Privilege & Ex Parte Communications

3. That [735 ILCS 5/2-1003](#) provides that the plaintiff in a personal injury suit is deemed to have waived any privilege between that plaintiff and each health care provider who has furnished care to him *at any time for any illness, injury, malady or condition*.

Similarly, [Section 8-802](#) provides that filing a personal injury or wrongful death suit will constitute waiver of the physician-patient privilege and that health care providers are permitted to disclose confidential information regarding a patient when the patient brings an action on which his physical or mental condition is an issue. [Section 2-1003](#) and [8-802](#) leave the courts with no discretion whatsoever--a court must either issue an order authorizing the release of all requested records and or sanction *ex parte* communications or dismiss the Plaintiff's case pursuant to [735 ILCS 5/2-619\(a\)\(9\)](#).

4. That [Section 2-1003](#) and [8-802](#) cause the Plaintiff an immediate impending injury. Merely by filing suit, the Plaintiff has already been deemed to have completely and irrevocably waived any privilege between himself and any healthcare provider who has furnished care to the Plaintiff irrespective of any relevance to the litigation.

5. That the Plaintiff has received other medical care and treatment from other healthcare providers throughout his life that are totally unrelated to this cause of action, and thus, [Section 2-1003](#) and [8-802](#) have *already* jeopardized his right to privacy.

6. That because of the serious nature and extent of the Plaintiff's multiple injuries, it is likely that the Defendants will proffer an authorization pursuant to these sections. The Plaintiff suffers impending injury insofar as such authorizations could be proffered at any time. Even in the unlikely event that an authorization is not proffered by at least one of the Defendants, the language of [Section 2-1003](#) makes it abundantly clear that the Plaintiff's privilege has been *already* waived since the time that he filed his lawsuit.

7. That [Sections 2-1003](#) and [8-802](#) will deter many other injured persons with meritorious claims from even filing suit, for fear that private, personal information will be disclosed to third parties.

8. That, in the State of Illinois, a strong public policy exists against *ex parte* communications between defense counsel and the Plaintiff's treating healthcare provider. This policy is premised on the Plaintiff's right to privacy and the confidential fiduciary relationship between healthcare providers and the Plaintiff.

9. That [Sections 2-1003](#) and [8-802](#) of Public Act 89-7 give the defense the right to participate in *ex parte* conferences with Plaintiffs treating healthcare providers, as well as access to all of the Plaintiffs medical information, regardless of relevance. These provisions allow the defense access to confidential information that is irrelevant to the medical condition at issue without the safeguard of having either the plaintiff or his representative present.

10. That [Sections 2-1003](#) and [8-802](#) are an impermissible invasion of the right to privacy, in violation of [Art. I, Section 6 of the Illinois Constitution](#) and other provisions of Illinois law

protecting the fundamental right to privacy. [Sections 2-1003](#) and [8-802](#) declare that the Plaintiff, upon the filing of his lawsuit, is deemed to have automatically waived any privilege between himself and any healthcare provider who has furnished care to the Plaintiff irrespective of any relevance to the litigation. Sections 20-1003 and [8-802](#) leave the courts with no discretion whatsoever -- a court must either issue an order authorizing the release of all requested records and/or sanction *ex parte* communications or dismiss the Plaintiff's case pursuant to [735 ILCS 5/2-619\(a\)\(9\)](#). Thus, Plaintiffs invasion of privacy as a result of the privilege waiver cannot be mitigated or regulated by application to the court invoking the court's discretionary powers.

11. That [Sections 2-1003](#) and [8-802](#) deny injured persons their fundamental right of access to the courts by imposing an unconstitutional condition -- the waiver of fundamental rights to privacy and the due process -- in order to exercise the right of access to the courts, in violation of [Article I, Section 12 of the Illinois Constitution](#) and other provisions of Illinois law.

12. That [Sections 2-1003](#) and [8-802](#) are arbitrary and irrational, in violation of the due process clause and equal protection guarantees of the [Illinois Constitution, Article I, Section 2](#).

13. That [Section 2-1003](#) and [8-802](#) violate the Plaintiffs due process rights, in violation of [Article I, Section 2 of the Illinois Constitution](#), by denying him his right to privacy and access to the courts. Plaintiff's healthcare provider-patient privilege is automatically waived as a consequence of the filing of the lawsuit and the court has no discretion to prevent the obtaining of confidential privileged information irrelevant to Plaintiff's suit. Plaintiff's due process rights of seeking redress through the courts has been abrogated.

14. That [Sections 2-1003](#) and [8-802](#) violate the separation of powers guaranteed by Article II, Section 1 and [Article VI, Section 1 of the Illinois Constitution](#) by intruding on the province of the judiciary.

15.. That [Sections 2-1003](#) and [8-802](#) are inconsistent and in direct conflict with Illinois statutes granting specific privileges and confidential status to certain information and materials. These statutes include, but are not limited to, the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et seq.*), Alcoholism and Other Drug Abuse and Dependency Act ([20 ILCS 301/30-5](#)), AIDS Confidentiality Act (410 ILCS 305/1 *et seq.*), AIDS Confidentiality and Testing Code (77 Ill. Admin. Code 697), Medical Patient Rights Act ([410 ILCS 50/3](#)), Illinois Sexually Transmissible Disease Control Act ([410 ILCS 325/8](#)), Illinois Clinical Laboratory and Blood Bank Act ([210 ILCS 25/7-115](#)), Communicable Disease Report Act (745 ILCS 45/), Confidentiality of Statements Made to Rape Crises Personnel ([735 ILCS 5/8-802.1](#)), and Confidentiality of Statements Made to Personnel Counseling Victims of Violent Crime (735 ILCS 8/8-802.2).

16. That the Illinois Supreme Court has extensively examined and reviewed discovery procedures within the Illinois civil justice system culminating in the promulgation of new Supreme Court rules regarding discovery. These new rules were considered and approved by the Supreme Court subsequent to the enactment of Public Act 89-7 and became effective January 1, 1996. The aforesaid rules are not subject to legislative review or approval.

Despite the enactment of Public Act 89-7 the Illinois Supreme Court readopted [Supreme Court Rules 201\(b\)\(1\)](#) and [201\(b\)\(2\)](#). That [Sections 2-1003](#) and [8-802](#) are inconsistent and in direct conflict with [Illinois Supreme Court Rule 201\(b\)\(1\)](#) which proves that only matter “relevant” to the subject matter involved in the pending action be discoverable.

Further, [Supreme Court Rule 201\(b\)\(2\)](#) sets forth that all privileged matters against disclosure at the trial are privileged against disclosure through discovery. Thus, these Sections constitute an invasion of the power vested in the Illinois Judiciary, in violation of [Article VI, Section 1](#) and usurp the inherent power granted to the Illinois Supreme Court as conferred in [Article VI, Section 16 of the Illinois Constitution](#).

17. That in, (a) automatically waiving any privileges upon the filing of the Plaintiffs lawsuit; (b) sanctioning *ex parte* communications between the defendant, defense counsel or their representatives and Plaintiff’s treating healthcare providers; (c) removing any discretion of the court to make any relevancy determinations; and (d) removing any discretion of the court to make any determinations regarding inconsistencies and statutory construction between these sections and conflicting statutes, including but not limited to the statutes listed in Paragraph twenty-nine (29) of this Count, [Section 2-1003](#) and [8-802](#) violate the separation of powers doctrine, set forth in [Article II, Section 1 of the Illinois Constitution](#), by usurping the role of the judiciary over matters left to the exclusive control and regulations of the judicial branch.

18. That by depriving plaintiff’s, based solely on their status as personal injury plaintiffs, of their fundamental right to privacy and the privileges and confidential status of the information and materials set forth in statutes included but not limited to the statutes listed in Paragraph twenty-nine (29) of the Count, [Section 2-1--3](#) and [8-802](#) violate the equal protection guarantees of the [Illinois Constitution, Article I, Section 2](#).

19. That [Sections 2-1003](#) and [8-802](#) violate the Illinois Constitution Preamble’s assurance of legal, social and economic justice.

[Sections 8-2001](#) and [8-2003](#)

20. That [Section 8-2001 of the Illinois Code of Civil Procedure](#) requires every private and public hospital to permit the examination and/or copying of hospital records regarding the Plaintiffs treatment by a holder of a consent pursuant to [Section 2-1003 of the Illinois Code of Civil Procedure](#).

21. That [Section 8-2003 of the Illinois Code of Civil Procedure](#) requires every physician and other healthcare practitioner (except as provided in Section 2-1004) to permit the examination and/or copying of the Plaintiffs records by a holder of a Consent pursuant to [Section 2-1003 of the Illinois Code of Civil Procedure](#) - including records that are not demonstrably material to the pending action, as previously set forth, countenancing a substantial and unwarranted invasion of the Plaintiff’s fundamental right to privacy.

22. That [Sections 8-2001](#) and [8-2003](#) are unconstitutional to the extent that they require both private and public hospitals, physicians and other healthcare practitioners to permit the examination and/or copying of the Plaintiff’s records by a holder of a Consent pursuant

to [Section 2-1003](#) as previously set forth in Paragraphs Seventeen (17) through thirty-three (33) of this Count.

The Severability Clause

23. That the severability clause of Public Act 89-7 (Section 990) is null and void in that the constitutionally invalid provisions of the Act are nonseverable from the remaining portions inasmuch as the various provisions of the Act constitute an interdependent legislative package designed to be passed in its entirety rather than as separate pieces. The provisions of the Act are so mutually connected with and dependent on each other, that the legislature-intended them as a whole, and if all could not be carried into effect the legislature would not have enacted the residual.

24. That the text of the Act provides evidence that Sections 2-1115.1 (noneconomic damages limitation), 2-1107.1 (jury instructions), 2-1116 (definition of tortfeasor), 2-1117(a) (elimination of joint liability), and 2-1117(b) (escape hatch for healing art professionals from 2-1117(a)) are mutually connected with and dependent on each other, as conditions, considerations or compensations for each other.

25. That members of the legislature were forced to adopt Public Act 89-7 as a legislative scheme against the “civil justice system” in its entirety. Members of the legislature were not given an opportunity to consider [Sections 2-1003, 8-802, 8-2001](#) and [8-2003](#) on their individual merits, but instead were presented with Public Act 89-7 as a complete and unified package made up of co-dependent parts.

26. That, inasmuch as they are not severable, the aforementioned provisions of Public Act 89-7 violate [Article IV, Section 8 of the Illinois Constitution](#) because they fail to be confined to one subject.

27. That the unconstitutionality of [Sections 2-1003](#) and/or 8-802 renders the remaining provisions null and void, as Public Act 89-7 would be void in its entirety.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

1. That the Court find that [Sections 2-1003, 8-802, 8-2001](#) and [8-2003](#) of Act and each of them, are unconstitutional, null and void;
2. That the Court find that the Act's severability clause (Section 990) is null and void; thereby rendering Public Act 89-7 in its entirety;
3. That the Defendants, Taylor, Lee Helms Inc., and Allied, and each of them, and their respective agents, servants and employees, be enjoined from soliciting from the Plaintiff any authorization for the release of medical information, as described in the 1995 amendment to [Section 2-1003](#) of the Code of Civil Procedure (735 ILCS 2-1003);
4. That the Defendants, Taylor, Lee Helms Inc., and Allied, and each of them, and their respective agents, servants and employees, be enjoined from soliciting from any healthcare practitioner, except in manners previously allowed before the passage of the Act, the disclosure of any information such practitioner(s) may have acquired in attending the Plaintiff, notwithstanding the Act's amendments to [Section 8-802](#) of the Code of Civil Procedure (735 ILCS 8-802);

5. That the Defendants, Taylor, Lee Helms Inc., and Allied, and each of them, and their respective agents, servants and employees, be enjoined from discussing with any healthcare provider, except in manners previously allowed before the passage of the Act, any information such practitioner(s) may have acquired in attending the Plaintiff, notwithstanding the Act's amendments to Section 8-802 of the Code of Civil Procedure (735 ILCS 8-802);
6. That this Court waive the necessity of the Plaintiff's filing any bond, or in the alternative, that it set a fair and reasonable cost bond for the Plaintiff; and
7. That the Plaintiff have such other and further relief as the Court shall deem necessary and proper.

COUNT X

COMPLAINT FOR DECLARATORY RELIEF AND TO OTHERWISE ENJOIN THE CONDUCT OF VARIOUS DEFENDANTS WITH REGARD TO [SECTION 2-1115.1 OF THE ILLINOIS CODE OF CIVIL PROCEDURE](#).

NOW COMES the Plaintiff, VERNON BEST, by his attorneys, and complaining of the Defendants Taylor, Allied and Helms, and each of them, alleges as follows:

1. The Plaintiff repeats, realleges and incorporates by reference Counts I - VIII as if fully set forth herein.
2. That on said date and at said location the Plaintiff suffered severe and permanent personal injuries that arose out of and in the course of his employment as a forklift truck operator.
3. That those injuries include second and third degree burns over approximately 50% of his body including his face, upper torso, and both arms and hands resulting in serious scarring of a permanent nature with resulting skin grafts and other attempts at treatment of his burns. In addition Vernon Best sustained bilateral comminuted fractures of both heels with operative reduction and internal fixation in addition to other serious and severe injuries.
4. That the circumstances surrounding the Plaintiff's injuries give rise to a cognizable cause of action against the Defendants, Taylor, Helms, and Allied, and each of them, under the common law of Illinois.

[Section 2-1115.1](#)

Limitations on Non-Economic Damages

5. That the Plaintiff has incurred, and will incur, "non-economic damages," as that term is defined in the Act's amendment ([735 ILCS 5/2-1115.2](#)), in excess of \$500,000 for that aspect of his claim.
6. That [Section 2-1115.1](#) limits recovery of non-economic damages to \$500,000 per plaintiff in "all common law, statutory or other actions that seek damages on account of death, bodily injury, or physical damage to property based on negligence, or product liability based on any theory or doctrine."
7. That [Section 2-1115.1](#) causes the Plaintiff immediate or impending injury because it deprives him of the opportunity to collect non-economic damages in excess of the \$500,000 limitation.

8. That, particularly with reference to personal injury cases, the determination of the amount of a damages award is within the province of the jury. The law in Illinois has long been that persons injured by the tortious act of another are entitled to fair and reasonable compensation of all compensatory damages, economic and non-economic. The common law tradition of correcting excessive damage awards through remittitur or the granting of a new trial has long been followed in the courts of Illinois.

9. That, pursuant to Section 2-1007.1, the court is directed to mislead the jury by withholding from it the limitation on the Plaintiff's recovery of noneconomic damages.

10. That Section 2-115.1 violates the Illinois Constitution Preamble's assurance of legal, social and economic justice.

11. That the uncertainty regarding the constitutionality of Section 2-115.1 causes the Plaintiff immediate and impending injury because the Plaintiff cannot intelligently plan his litigation strategy unless he understands whether or not the \$500,000 limitation will apply to his case. Plaintiff's choices as to the kind of witnesses to call, the legal theories to pursue, the resources to invest in his lawsuit, and settlement negotiations -- together with a host of similar litigation strategies immediately affecting his case -- all depend on the constitutionality of Section 2.115.1.

12. That Section 2.115.1 denies injured persons such as the Plaintiff a meaningful remedy, and indeed any remedy at all for non-economic damages greater than \$500,000, in violation of [Article I, Section 12 of the Illinois Constitution](#).

13. That [Section 2-115.1](#) arbitrarily limits recoveries for non-economic damages to \$500,000, and thus deprives the Plaintiff of the right of trial by jury, in violation of [Article I, Section 13 of the Illinois Constitution](#).

14. That the Plaintiff's cause of action is a form of "property" that qualifies for constitutional protection. [Section 2-115.1](#) impermissibly reduces the value of private property of some members of society in order to benefit a private group in violation of [Article I, Section 15 of the Illinois Constitution](#).

15. That [Section 2-115.1](#) violates the separation of powers doctrine embodied in [Article II, Section 1](#) and [Article VI, Section 1 of the Illinois Constitution](#) inasmuch as it constitutes a legislatively-imposed remittitur compelling the court to reach the legal conclusion that the award in a particular case is excessive regardless of the record of the case.

16. That [Section 2-115.1](#) operates on a selective and discriminatory basis, because it is linked to "non-economic" damages, in violation of equal protection principle of Illinois law, which establish that classification based on economic circumstances are highly suspect.

17. That Section 2-115.1 discriminates against the most severely injured victims, in violation of equal protection principles under Illinois law. In fact, the more severely a plaintiff is injured, the greater the limitation's distorting effect.

18. That [Section 2-115.1](#) is arbitrary and irrational, in violation of [Article I, Section 2 of the Illinois Constitution](#). For example, by definition, the limitation comes into play to reduce only awards that reviewing courts would otherwise find reasonable. Moreover, the limitation applies only to cases in which ordinary workers and consumers are likely to be plaintiffs. The

limitation does not apply, for example, to restrict non-economic damages in defamation suits and other actions involving well-to-do plaintiffs.

19. That [Section 2-1115.1](#) lacks a rational basis for any legitimate governmental purpose for one or more of the following reasons:

- a. the current civil justice system consistently and fairly compensates injury victims as determined by the facts and evidence of each case rather than the utilizing an unreasonable and arbitrary predetermination;
- b. the Illinois civil justice system, through its citizenjurors and the judicial branch with its use of its power of remittitur when necessary, fairly and accurately assures the fairness of jury awards;
- c. the available evidence shows that in recent years that there has been no significant increase in the average size of the verdicts, nor has there been any significant increase in the percentage of verdicts for injured citizens; therefore there is no plausible reason to suggest that the juries in Illinois are “out of control” or that the civil justice system is in need of drastic change;
- d. Illinois common law has always recognized that non-economic losses are no less important than out-of-pocket expenses; it has always been the public policy of the State of Illinois that an injured party is entitled to fair and complete compensation for all losses suffered by the wrongful act of another, including non-economic losses;
- e. the consistent application of existing jurisprudence provides individualized, fair and complete damage awards which are just and benefit all parties and society;
- f. there is more than a century of jurisprudence of Illinois for court to rely upon assessing and reviewing non-economic damages; non-economic damages are individualized and depend entirely on the facts in evidence presented to a trier of fact subject to trial. Appellate and Supreme Court review;
- g. the judicial branch is empowered to, and is perfectly capable of, monitoring and controlling jury verdicts which may be perceived to be excessive;
- h. the majority of states (including Iowa and Kentucky, which border Illinois) do not impose arbitrary and unreasonable limits on non-economic damages;
- i. there is no scientific basis for concluding that damages for pain, suffering, disability, disfigurement, loss of society and loss of consortium of the injured party are any more difficult for the jury to determine than those for economic loss;
- j. available evidence shows that in these states that limit non-economic damages, employment, health care costs, availability of health care and the cost of consumer do not improve;
- k. there are no objective studies to indicate that limits on non-economic damages will improve health care in rural Illinois; no state that has imposed restrictions on jury verdicts has seen an improvement in rural health care availability;
1. a limitation on non-economic damages will deny injured persons recovery for their full economic losses;

m. limiting non-economic damages will discourage settlements since the defendants will have little incentive to settle even the most catastrophic cases.

The Severability Clause

20. That the severability clause of Public Act 89-7(Section 990) is null and void in that the constitutionally invalid provisions of the Act are nonseverable from the remaining portions inasmuch as the various provisions of the Act constitute an interdependent legislative package designed to be passed in its entirety rather than as separate pieces. The provisions of the Act are so mutually connected with and dependent on each other, that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not have enacted the residual.

21. That the text of the Act provides evidence that [Sections 2-1115.1](#) (noneconomic damages limitation), 2-1117.1 (jury instructions), 2-1116 (definition of tortfeasor), 2-1117(a) (elimination of joint liability), and 2-1117(b) (escape hatch for healing art professionals from 2-1117(a)) are mutually connected with and dependent on each other, as conditions, considerations or compensations for each other.

22. That the members of the legislature were forced to adopt Public Act 89-7 as a legislative scheme against the “civil justice system” in its entirety. Members of the legislature were not given an opportunity to consider [Section 2-1115.1](#) on its individual merits, but instead were presented with Public Act 89-7 as a complete and unified package made up of co-dependent parts.

23. That, inasmuch as it is not severable, the aforementioned provisions of Public Act 89-7 violate [Article IV, Section 8 of the Illinois Constitution](#) because they fail to be confined to one subject.

24. [That] the unconstitutionality of [Section 2-1115.1](#) renders the remaining provisions null and void, as Public Act 89-7 would be void in its entirety.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

1. That the Court find that Section 1115.1 of Public Act 89-7 unconstitutional, null and void;
2. That the Court find that the limitation upon recovery for “non-economic damages” is unconstitutional, null and void;
3. That the Court find that the Act's severability clause (Section 990) is null and void, thereby rendering Public Act 89-7 void in its entirety;
4. That this Court waive the necessity of the Plaintiff's filing any bond, or in the alternative, that it set a fair and reasonable cost bond for the Plaintiff; and
5. That the Plaintiff have such other and further relief as the Court shall deem necessary and proper.

COUNT XI

COMPLAINT FOR DECLARATORY RELIEF AND TO OTHERWISE ENJOIN THE CONDUCT OF VARIOUS DEFENDANTS WITH REGARD TO [SECTION 2-1107.1 OF THE ILLINOIS CODE OF CIVIL PROCEDURE](#).

NOW COMES the Plaintiff, VERNON BEST, by his attorneys, and complaining of the Defendants, Taylor, Helms, and Allied, and each of them, alleges as follows:

1. The Plaintiff repeats, realleges and incorporates by reference Counts I-VIII as if fully set forth herein.
2. That the circumstances surrounding the Plaintiff's injuries give rise to a cognizable cause of action against Taylor, Helms, and Allied, and each of them, under the common law of Illinois.

[Section 2-1107.1](#)

Jury Instructions

3. That the Plaintiff's cause of action is predicated on common law negligence. As such, the jury will be required to assess the nature and extent of any contributory negligence attributable to the Plaintiff. Further, the Plaintiff has incurred, and will incur, "non-economic damages," as that term is defined in the Act's amendment ([735 ILCS 5/2-1115.2](#)), in excess of \$500,000 for that aspect of his claim.
4. That [Section 2-1107.1](#) requires that the court shall inform the jury that compensatory damage awards are tax-free, but, at the same time, the court must conceal from jury that the Defendant shall not be liable if the Plaintiff's contributory fault is greater than fifty percent (50%). The court must give the one instruction and must not give the other regardless of its own discretionary judgment or of the facts of the particular case before it. Further, the court must not inform the jury that the Plaintiff's verdict is limited to \$500,000 for non-economic damages pursuant to [Section 2-1115.1 of the Illinois Code of Civil Procedure](#).
5. The Act removes discretion from the court to determine whether the jury should be instructed on the subject under consideration in light of the facts of the particular case before the court. This amounts to stripping the judicial branch of a discretionary power properly belonging to it both as the prerogative of the judiciary under common law, and as codified in a Supreme Court rule adopted pursuant to the constitutional authority vested in the Supreme court by [Article VI, Section 16](#), of the Illinois Constitution. Section 2-1107.1 of the Act directly violates State of [Illinois Supreme Court Rule 239\(a\)](#). This constitutes a violation of [Article VI, Section 16, of the Constitution of the State of Illinois](#) and is violative also of [Article II, Section 1](#), the separation of powers principle.
6. That Section 2-1107.1 directs the trial court to mislead the jury by withholding from the jury (a) the law's elimination of the Plaintiff's recovery in the event his contributory fault is more than 50% of the proximate cause of his injury, and (b) the limitations on the Plaintiff's non-economic damages set forth in [Section 2-1115.1](#).
7. that the uncertainty regarding the constitutionality of Section 2-1107.1 causes the Plaintiff immediate and impending injury because the Plaintiff cannot intelligently plan his litigation strategy unless he understands whether the jury will be instructed that (a) the Defendant shall not be liable if the Plaintiff's contributory fault is greater than fifty percent (50%), (b) compensatory damages awards are tax-free, and/or (c) the verdict is limited to \$500,000 for non-economic damages. The Plaintiff's choices as to the kind of witnesses to call, the legal theories to pursue, the resources to invest in his lawsuit, and settlement negotiations --

together with a host of similar litigation strategies immediately affecting his case -- all depend on the constitutionality of Section 2-1107.1.

8. That Section 2-1107.1 violates [Article I, Section 2 of the Illinois Constitution](#), by depriving the persons of property without due process of law and denies persons the equal protection of the laws.

9. That Section 2-1107.1 violates [Article I, Section 13 of the Illinois Constitution](#), which guarantees that the right of trial by jury as heretofore enjoyed shall remain inviolate.

10. That Section 2-1107.1 violates [Article IV, Section 13 of the Illinois Constitution](#), as it constitutes a special law where a general law can be made applicable.

The Severability Clause

11. That the severability clause of Public Act 89-7 (Section 990) is null and void in that the constitutionally invalid provisions of the Act are nonseverable from the remaining portions inasmuch as the various provisions of the Act constitute an interdependent legislative package designed to be passed in its entirety rather than as separate pieces. The provisions of the Act are so mutually connected with and dependent on each other, that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not have enacted the residual.

12. That the text of the Act provides evidence that [Sections 2-1115.1](#) (noneconomic damages limitation), 2-1107.1 (jury instructions), 2-116 (definition of tortfeasor), 2-1117(a) (elimination of joint liability), and 2-1117(b) (escape for healing art professionals from 2-117(a)) are mutually connected with and dependent on each other, as conditions, considerations or compensations for each other.

13. That members of the legislature were forced to adopt Public Act 89-7 as a legislative scheme against the "civil justice system" in its entirety. Members of the legislatures were not given an opportunity to consider Section 2-1107.1 on its individual merits, but instead were presented with Public Act 89-7 as a complete and unified package made of co-dependent parts.

14. That, inasmuch as it is not severable, the aforementioned provisions of Public Act 89-7 violate [Article IV, Section 8 of the Illinois Constitution](#) because they failed to be confined to one subject.

15. That the unconstitutionality of Section 2-1107.1 renders the remaining provisions null and void, as Public Act 89-7 would be void in its entirety.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

1. That the Court find that Section 2-1107.1 of Public Act 89-7 to be unconstitutional, null and void;
2. That the Court find that the Act's prohibition upon a court instructing a jury upon the maximum recovery for "non-economic damages" is unconstitutional, null and void;
3. That the Court find that the Act's prohibition upon a court instructing a jury upon the legal effect of a finding of greater than 50% of comparative fault is unconstitutional, null and void;

4. That the Court find that instructing the jury on the lack of taxability of its verdict is unconstitutional, null and void;
5. That the Court find that the Act's severability clause (Section 990) is null and void, thereby rendering Public Act 89-7 void in its entirety;
6. That this Court waive the necessity of the Plaintiff's filing any bond, or in the alternative, that it set a fair and reasonable cost bond for the Plaintiff; and
7. That the Plaintiff have such other and further relief as the Court shall deem necessary and proper.

COUNT XII

COMPLAINT FOR DECLARATORY RELIEF AND TO OTHERWISE ENJOIN THE CONDUCT OF VARIOUS DEFENDANTS WITH REGARD TO [SECTIONS 2-1116 AND 2-1117 OF THE ILLINOIS CODE OF CIVIL PROCEDURE](#) AND SECTIONS 3.5 AND 5 OF THE ILLINOIS JOINT TORTFEASOR CONTRIBUTION ACT.

NOW COMES the Plaintiff, VERNON BEST, by his attorneys, and complaining of the Defendants, Taylor, Allied, and Helms, and each of them, alleges as follows:

1. The Plaintiff repeats, realleges and incorporates by reference Counts I - VIII as if fully set forth herein

Interrelationship of the Parties

2. That the circumstances surrounding the Plaintiff's injuries give rise to a cognizable cause of action against the Defendants, Taylor, Helms, and Allied, and each of the, under the common law of Illinois.
3. That the Plaintiff has filed a Complaint at Law against said Defendants in the Circuit Court, Third Judicial Circuit, Madison County, Illinois (Law Division), Counts I - VIII herein, alleging a cause of action arising under the common law, which will require the jury, pursuant to [Section 2-1117 of the Illinois Code of Civil Procedure](#), to make various allocations of fault in order to determine the proper share of liability of each Defendant, Plaintiff's employer, or any other person who may be deemed a "tortfeasor" as defined in Section 2-116 of the Illinois Code of Civil Procedure.
4. That notwithstanding the existence of Section 2-117 and the fact that contribution is inherently irreconcilable with several liability, under Public Act 89-7 the circumstances surrounding Plaintiff's injuries gives rise to a cognizable claim by the named Defendants and make it likely that they will claim contribution against Laclede Steel under the Illinois Joint Tortfeasor Contribution Act ([740 ILCS 100/1-5](#)).
5. That it is likely that the Plaintiffs employer, Laclede Steel, will be found to be at least one (1%) percent at fault for the injuries sustained by the Plaintiff.

Sections 2-116 and 2-117

Several Liability

6. That under [Section 2-1116](#) there is no requirement that the Court find that any duty under the law exists before a jury can find *any* person (including nonparties) to be a "tortfeasor," and thus, be liable to the Plaintiff in a manner so as to reduce the damages owed by any of the named Defendants herein.

7. That [Section 2-1117](#), by eliminating the doctrine of joint liability, prevents the Plaintiff from obtaining full recovery for even those losses not attributable to his own fault. His recovery against the Defendants is limited to their respective degrees of “several” liability; any liability of his employer -- or other unnamed tortfeasor in the personal injury action -- will further diminish the Plaintiff's recovery.
8. That principles of comparative fault do not render an indivisible injury divisible.
9. That in the absence of joint liability, the Plaintiff must bear the burden of an insolvent tortfeasor.
10. That a defendant's liability is based upon a violation of a duty toward another; a plaintiff comparative fault rests on no such violation.
11. That [Sections 2-1116](#) and [2-1117](#) have an immediate and impending effect on the Plaintiff. The abolition of joint liability deprives Plaintiff of any assurance that he will receive full compensation for his injuries. Plaintiff's choices as to the kind of witnesses to call, the legal theories to pursue, the resources to invest in his lawsuit, and settlement negotiations -- together with a host of similar litigation strategies immediately affecting his case -- all depend on the constitutionality of [Sections 2-1116](#) and [2-1117](#).
12. That [Section 2-1117](#) abrogates the well-established law in Illinois that persons injured by the tortious act of another are entitled to fair and reasonable compensation of all compensatory damages, economic and non-economic. It allows the Plaintiff's recovery to be diminished when a tortfeasor is partially to blame for the Plaintiff's injuries, but that tortfeasor is legally immune or unable to pay for its pro rata share of responsibility. The effect of [Section 2-1117](#) becomes even more ominous where there is a non-party tortfeasor, who conceivably could be anonymous.
13. That joint liability is a remedy fashioned by the courts for over a century. The legislative abrogation of that doctrine is an invasion of the judicial role to fashion such remedies in violation of the separation of powers doctrine articulated in [Article II, Section 1](#) and [Article VI, Section 1 of the Illinois Constitution](#).
14. That the elimination of joint liability would work a serious and unwarranted deleterious effect on the ability of any injured plaintiff to obtain adequate compensation for his injuries. [Section 2-1117](#) violates [Article I, Section 12 of the Illinois Constitution](#) inasmuch as it deprives the Plaintiff of the guarantee that he will find a full and complete remedy for his injuries.
15. That [Sections 2-1116](#) and [2-1117](#) are inapposite to the strong public policy articulated in the preamble of the Illinois Constitution -- that our constitution was adopted in part to provide for the “health, safety and welfare of the people...” Further, [Section 2-1117](#) violates Illinois Constitution Preamble's assurance of legal, social and economic justice.
16. That [Sections 2-1116](#) and [2-1117](#) violate the Illinois constitutional guarantee of due process, [Article I, Section 2](#), because they permit a culpable defendant to reduce its liability by shifting blame to immune, bankrupt, absent, or even anonymous parties who have no incentive to challenge the defendants' assertion that they are responsible for the plaintiff's injury and who may be beyond the plaintiff's ability to confront and cross-examine.

17. That, when taken with other provision of Public Act 89-7, [Section 2-1117](#) becomes impermissibly vague in all of its application. [Section 2-1117](#) purports to extinguish joint liability, leaving a defendant liable only for its pro rata share of responsibility. However, Section 3.5 and 5 of the Joint Tortfeasor Contribution Act ([740 ILCS 100/3.5](#) & 5), unambiguously preserve what [Section 2-1117](#) supposedly was intended to eradicate. [Section 2-1117](#) cannot be reconciled with the continued existence of the Contribution Act -- the two cannot coexist.

18. That, by itself and taken with the Joint Tortfeasor Contribution Act, [Section 2-1117](#) violates [Article I, Section 23 of the Illinois Constitution](#) inasmuch as it allows a tortfeasor to minimize its own responsibility by attributing fault to others who may not, as non-parties, be present to defend or refute the tortfeasor's allegations of fault.

19. That [Section 2-1117](#) deprives the Plaintiff of equal protection as mandated by [Article I, Section 2](#) of the Illinois Constitution. Section 2-1117(b) provides that joint liability will continue to apply to medical malpractice actions in the event that the limitation on non-economic damages under Section 2.1115 are found to be unconstitutional. Doctors, hospitals, and other medical providers have, without any cogent rationale, been contingently excluded from the remaining universe of potential tortfeasors.

20. That Section 2-1117(b) constitutes special legislation inasmuch as it confers a general privilege to healthcare practitioners to the exclusion of others similarly situated and discriminates in favor of this select group without a reasonable basis in violation of [Article IV, Section 13](#) of the Illinois Constitution. Section 2-1117(b) provides that joint liability will continue to apply to medical malpractice actions in the event that the limitations on non-economic damages under [Section 2-1115.1](#) are found to be unconstitutional. Doctors, hospitals and other medical providers have, without any cogent rationale, been contingently excluded from the remaining universe of potential tortfeasors.

21. That Section 2-1117(b), as special legislation, does not survive constitutional scrutiny as there is no reasonable basis for the differentiation.

22. That the Plaintiff's cause of action is a form of "property" that qualifies for constitutional protection. Section 2-1117 impermissibly reduces the value of private property of some members of society in order to benefit a private group in violation of [Article I, Section 15 of the Illinois Constitution](#).

23. That Section 2-1117 lacks a rational basis for any legitimate governmental purpose for one or more of the following reasons:

- a. the existing public policy in Illinois is that liability for damages shall be based on fault, and that where proven, that wrongdoers shall be held fully accountable for all harms caused;
- b. an innocent plaintiff should not be required to bear the risk of non-collection when one or more of the wrongdoers is unable to pay its proportionate share of damages; the burden of the shortfall in collection has been placed on the wrongdoers in Illinois common law for more than one century;
- c. the consistent application of existing jurisprudence provides individualized, fair and complete damage awards which are just and benefit all parties and society; and

d. the judiciary balances the rights of injured persons and legitimate protections for wrongdoers, with the goal of achieving justice in every case.

JOINT TORTFEASOR CONTRIBUTION ACT [740 ILCS 100/3.5](#) & 5

24. That the Amendments to the Joint Tortfeasors Act provide that “[t]he tortfeasor seeking contribution from the plaintiff employer ... shall receive a credit against his or her liability to the plaintiff in an amount equal to the amount of contribution, if any, for which the employer is found to be liable to that tortfeasor, even if the amount exceeds the employer's liability under the Workers' Compensation Act or the Workers' Occupational Diseases Act.” Section 3.5. Thus, under the Act, a tortfeasor can reduce a plaintiff's recovery by shifting responsibility to a plaintiff's employer -- whose liability is in any event capped workers' compensation law. Indeed, the Act could extinguish altogether the Plaintiff's right to recovery if his employer's fault is sufficient to offset the liability of the named Defendants -- any Defendant's “several” liability can be further reduced (pursuant to Section 3.5 and 5) proportionate to the fault of the Plaintiffs employer.

25. That the Act has an immediate and impending impact upon the Plaintiff by threatening to eliminate or sharply reduce his ability to recover any damages for his injuries. Plaintiff's choices as to the kind of witnesses to call, the legal theories to pursue, the resources to invest in his lawsuit, and settlement negotiations -- together with a host of similar litigation strategies immediately affecting his case -- all depend on the constitutionality of Sections 3.5 and 5.

26. That the Act fosters upon the courts and litigants sham trials with contribution cases filed against third-party defendants who have no exposure, yet whose proportionate share of liability will diminish Plaintiff's recovery pursuant to the Joint Tortfeasor Contribution Act ([740 ILCS 100/3.5](#) and 5). When the employer faces no potential liability even when joined as a third-party defendant (under Section 3.5 of the Contribution Act), the claim between the defendant and the employer does not represent a true “cases and controversy.” The employer has little or no incentive to defend the claim. At best, it would hope to recoup its workers' compensation “lien”, pursuant to Section 5 of the Worker's Compensation Act ([820 ILCS 305/5](#)).

27. That when the Plaintiffs recovery is diminished by virtue of the degree of his employer's fault, and when his employer, facing no civil liability itself, is at best only nominally a party, the Plaintiff is denied due process of the law in violation of [Article I, Section 2 of the Illinois Constitution](#).

28. That the degrees of fault attributable to “tortfeasors” other than a Defendant may be determined in an action independent of the plaintiff's claim. Section 5 of the amended Contribution Act allows contribution actions (except those for “healing art malpractice”) to proceed after the plaintiff's claim has been adjudicated. If a Defendant's liability is limited to its percent of fault (Section 2-1117), its ultimate liability to the Plaintiff might not be measured until a subsequent contribution action is resolved. There is nothing in the Contribution Act, however, that give the Plaintiff any standing in such spin-off litigation. Yet his recovery will be

jeopardized by its outcome. This offends either judicial doctrines of *res judicata* and collateral estoppel or due process itself.

29. That Sections 3.5 and 5 deprive the Plaintiff of equal protection as mandated by [Article I, Section 2](#) of the Illinois Constitution. Sections 3.5 and 5 allow the diminution of the Plaintiffs recovery when his injuries arise from work-related injuries. It effectively transfers and enhances the limited liability that an employer enjoys under the Workers' Compensation Act (see, e.g. [820 ILCS 305/5\(b\)](#)) to a Defendant. Such a Defendant bears no special relationship to the Plaintiff, but nonetheless has its liability reduced -- or eliminated -- because of the fortuity that the Plaintiff suffered his injuries in the course of his employment. The plaintiff is deprived, in whole or in part, of his right to recover from the defendant, and is graced with no recognizable *quid pro quo* that would warrant such a deprivation. Application of Section 3.5 and 5, then, would deny injured workers, like the Plaintiff herein, of their rights to equal protection of the laws under the Illinois Constitution.

30. That when a defendant's liability is potentially extinguished by virtue of a third-party's (*i.e.*, an employer's) equivalent fault, as Section 3.5 would permit (in conjunction with Section 2-1117), Public Act 89-7 peculiarly affects plaintiffs who are injured in the course of their employment. No other class of plaintiffs would suffer such a radical diminution or denial of recovery. Thus, an injured worker is affected **more** by his employer's negligence **than by his own. There is no** rational basis for this disparate treatment. Sections 3.5 and 5, therefore, violates the guarantees of equal protection established in the Illinois Constitution.

31. That Sections 3.5 and 5 deprive the Plaintiff his right to trial by jury in violation of [Article I, Section 13](#) of the Illinois Constitution. Section 5 allows a Defendant to pursue contribution from other tortfeasors in an action independent of the Plaintiffs lawsuit. [Section 2-1117 of the Illinois Code of Civil Procedure](#) limits a defendant's liability to its proportionate fault *vis a vis* all other tortfeasors. Yet the Contribution Act provides the Plaintiff no standing in a contribution claim. Thus, the Plaintiff's ultimate recovery could be determined by jurors whom he cannot address.

32. That Sections 3.5 and 5 deprive the Plaintiff of his right to a full and complete remedy in violation of [Article I, Section 12 of the Illinois Constitution](#). The operation of the Contribution Act attenuates or eliminates the Plaintiff's right to recover compensatory damages for personal injuries. By doing so, it contravenes the constitutional assurance of a full and complete remedy for such wrongs.

33. That the Plaintiff's cause of action is a form of "property" that qualifies for constitutional protection. Sections 3.5 and 5 impermissibly reduce the value of private property of some members of society in order to benefit a private group in violation of [Article I, Section 15 of the Illinois Constitution](#).

34. That Sections 3.5 and 5 violate the separation of powers doctrine articulated in [Article II, Section 1](#) and [Article VI, Section 1 of the Illinois Constitution](#). Separate trials of contribution claims will inevitably involve the repetition of issues germane to the underlying tort action. They will also involve the impaneling of a second or multiple juries (there is no specific limit to the number of contribution actions that can be brought). The legislative *carte blanche* for

such actions is incompatible with concepts of expedience, finality and conservation of already taxed judicial resources. By allowing tortfeasors license to bring independent contribution actions, and thereby saddling the courts with the waste of time and expense that attend such actions, the legislature has improperly invaded the judicial domain.

35. That Section 3.5 and 5 violate the Illinois Constitution Preamble's assurance of legal, social and economic justice.

The Severability Clause

36. That the severability clause of Public Act 89-7 (Section 990) is null and void in that the constitutionally invalid provisions of the Act are nonseverable from the remaining portions inasmuch as the various provisions of the Act constitute an interdependent legislative package designed to be passed in its entirety rather than as separate pieces. The provisions of the Act are so mutually connected with and dependent on each other, that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not have enacted the residual.

37. That the text of the Act provides evidence that [Sections 2-1115.1](#) (noneconomic damages limitation), 2-1107.1 (jury instructions), 2-1116 (definition of tortfeasor), 20-1117(a) (elimination of joint liability), and 2-1117(b) (escape hatch for healing art professionals from 2-1117(a)) are mutually connected with and dependent on each other, as conditions, considerations or compensations for each other.

38. That members of the legislature were forced to adopt Public Act 89-7 as a legislative scheme against the "civil justice system" in its entirety. Members of the legislature were not given an opportunity to consider Sections 2-1116 and 2-1117 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act on their individual merits, but instead were presented with Public Act 89-7 as a complete and unified package made up of co-dependent parts.

39. That, inasmuch as it is not severable, the aforementioned provisions of Public Act 89-7 violate [Article IV, Section 8 of the Illinois Constitution](#) because they fail to be confined to one subject.

40. That the unconstitutionality of any one of the aforementioned provisions renders the remaining provisions null and void, as Public Act 89-7 would be void in its entirety.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

1. That the Court find that Sections 2-1117 and 2-1117 of the Illinois Code of Civil Procedure and Sections 3.5 and 4 of the Joint Tortfeasor Contribution Act to be unconstitutional, null and void;
2. That the Court find that the Act's elimination of joint liability is unconstitutional, null and void;
3. That the Court find that the Act's reduction of a defendant's liability, based upon the negligence of a plaintiff's employer, is unconstitutional, null and void;
4. That the Court find that the Act's severability clause (Section 990) is null and void, thereby rendering Public Act 89-7 void in its entirety;

5. That this Court waive the necessity of the Plaintiff's filing any bond, or in the alternative, that it set a fair and reasonable cost bond for the Plaintiff; and
6. That the Plaintiff have such other and further relief as the Court shall deem necessary and proper.

COUNT XIII

**COMPLAINT FOR DECLARATORY RELIEF AND TO OTHERWISE ENJOIN THE
CONDUCT OF THE DEFENDANT**

NOW COMES the Plaintiff, VERNON BEST, by his attorneys, and complaining of the Defendant Laclede Steel Company, a Delaware Corporation...alleges as follows:

1. The Plaintiff repeats, realleges and incorporates by reference Counts I - VIII as if fully set forth herein.
2. That Laclede Steel Company ("Laclede") was the Plaintiff's employer at the date, time and place alleged above.
3. That the circumstances surrounding the Plaintiff's injuries give rise to a cognizable claim against the Defendant under the Illinois Workers' Compensation Act (820 ILCS 305/1, *et seq.*), which he has filed with the Illinois Industrial Commission. (A Copy of that claim, Case No. 95 WC 052181, is attached hereto and made a part hereof as Exhibit "A").

Statutory Inapplicability

4. That the Code of Civil Procedure has no application to workers' compensation claims pending before the Illinois Industrial Commission. However, Section 2-1003 is so broadly worded and vaguely defined as to arguably apply to Workers' Compensation claims. Thus, Section 2-1003 is unconstitutionally vague, and thus, Plaintiff seeks to enjoin its application to his workers' compensation claim.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

1. That Laclede and its respective agents, servants and employees, be enjoined from soliciting from the Plaintiff any authorization for the release of medical information, as described in the 1995 amendment to Section 2-1003 of the Code of Civil Procedure (735 ILCS 2-1003);
2. That Laclede and its respective agents, servants and employees, be enjoined from soliciting from any healthcare practitioner, except in manners previously allowed before the passage of the Act, the disclosure of any information such practitioner(s) may have acquired in attending the Plaintiff, notwithstanding the Act's amendments to Section 8-802 of the Code of Civil Procedure (735 ILCS 8-802);
3. That Laclede and its respective agents, servants and employees, be enjoined from discussing with any healthcare provider, except in manners previously allowed before the passage of the Act, any information such practitioner(s) may have acquired in attending the Plaintiff, notwithstanding the Act's amendments to Section 8-802 of the Code of Civil Procedure (735 ILCS 8-802);
4. That this Court waive the necessity of the Plaintiff's filing any bond, or in the alternative, that it set a fair and reasonable cost bond for the Plaintiff; and

5. That the Plaintiff have such other and further relief as the Court shall deem necessary and proper.

COUNT XIV

COMPLAINT FOR DECLARATORY RELIEF AND TO OTHERWISE ENJOIN THE CONDUCT OF VARIOUS DEFENDANTS WITH REGARD TO [SECTIONS 2-2103, 2-2104, 2-2106 OF THE ILLINOIS CODE OF CIVIL PROCEDURE](#)

NOW COMES the plaintiff, Vern Best by and through his attorneys and complaining of the defendants, Taylor, Helms, and Allied and each of them, alleges as follows:

1. That Plaintiff repeats and realleges incorporates by reference herein Counts I through VIII as if fully set forth herein.
2. That the circumstances surrounding the Plaintiff's injuries give rise to a cognizable cause of action against the defendants, Taylor, Helms, and Allied and each of them under the common law of Illinois.
3. That Plaintiff has brought a product liability action as that term is defined in Public Act 89-7 (735 ILGS 5/2-2101).
4. That [section 2-2103](#) mandates that a product must be presumed to be reasonably safe "if the aspect of the product or product component was specified or required ... by a Federal or State statute of regulation promulgated by an agency of the State or Federal Government responsible for the safety or use of the product before the product was distributed in the stream of commerce."
5. That [section 2-2104](#) establishes that in product liability actions "the design [of the product] shall presumed to be reasonably safe unless at the time the product left the control of manufacturer, have practical and technically feasible alternative design was available that would of prevented the harm without significantly impairing the usefulness, desirability, are marketability of the product."
7. That [section 2-2106 \(a\)](#) provides the defendant in a product liability action is shielded from liability for failure to warn about dangerous products if it provides pamphlets, booklets, or other written warnings that give adequate notice to either reasonably anticipated users or knowledgeable intermediaries of the risk associated with the product.
8. That in addition [section 2-2106 \(b\)](#) provides that warnings will be deemed adequate if they are in conformity with the general recognized standard in the industry at the time the product was distributed in the stream of commerce.
9. That [section 2-2106 \(c\)](#) provides that the defendant need not warn of material risks that are "obvious" or a "matter of common knowledge" or the knowledge of the particular risk was not "reasonably available when the product was originally introduced into the stream of commerce".
10. That these provisions violate several aspects of the Illinois Constitution, to wit:
 - a. the presumption established by [section 2-2103](#) is vague and arbitrary in that it does not give any indication as to what sort of evidence is necessary to rebutt the presumption, it specifies no particular agencies for who the actions of the presumption of safety might attach, and apparently includes agencies of *any* state. Further, there is no indication that the

agencies understood at the time they rendered their decisions that they were adjudicating their rights of tort victims.

- b. That [section 2-2103](#) is arbitrary and irrational in violation of the due process and equal protection guarantees of the [Illinois Constitution, Article I Section 2](#).
- c. That [section 2-2103](#) violates [Article 7, section 2 of the Illinois Constitution](#) by depriving person or property without due process of law and denies persons, the equal protection of the laws.
- d. That [section 2-2103](#) violates the separation of powers by delegating to unknown agencies the power to mandate the judicial standards applicable to plaintiffs cause of action in declaring the weight to be given evidence or what constitutes conclusive evidence on an issue of fact. That for similar reasons, in [section 2-2103](#) violates the due process guarantees of [Article I section 2 of the Illinois Constitution](#); the right to jury trial established in [Article I section 13](#) and the “certain remedy clause” of [Article I section 12](#) which mandates that plaintiff shall find certain remedy in the law for all injuries and wrongs and shall obtain justice by law freely, completely and promptly.
- e. That [section 2-2103](#) violates Article 7, section 13 of the Illinois Constitution which guarantees that the right of trial by jury as heretofore enjoyed shall remain inviolate.
- f. That in addition [section 2-2103](#) violates the special legislation provision of [Article 4 section 13](#) together with equal protection violations in that it confers presumption of innocence on a special class of privileged litigants, defendants in product liability litigation.
- g. That [section 2-2104](#) is vague and arbitrary and that it provides no indication of what kind of proof is necessary to overcome the presumption.
- h. That [section 2-2104](#) is arbitrary and irrational in violation of the due process clause in protection clauses of the [Illinois Constitution, Article I, section 2](#).
- i. That [section 2-2104](#) violates the separation of powers in that it vitiates carefully, reasoned common law decisions of the Illinois Judiciary acting in accordance with its power vested in it by [Article VI section 1 of the Illinois Constitution](#).
- j. That [section 2-2104](#) also violates the certain remedy provision of the [Illinois Constitution, Article I section 12](#) by arbitrarily eliminating the consumer expectation theory as a basis for liability in the design claims based on the theory that the product should not have been marketed.
- k. That [section 2-2104](#) violates [Article 7, section 2 of the Illinois Constitution](#) by depriving person or property without due process of law and denies persons, the equal protection of the laws.
- 1. That [section 2-2106](#) violates a separation of powers by requiring the courts to deem a warning adequate, thus taking the issue away from the jury.
- m. That [section 2-2106](#) also constitute an impermissible delegation of governmental power by in effect conferring the power to determine the adequacy of warnings to private individuals.
- n. That [section 2-2106](#) violates the right to trial by jury as guaranteed by [Article I section 13](#).
- o. That [section 2-2106](#) constitutes impermissible special legislation.

p. That [section 2-2106](#) denies persons injured by unreasonably dangerous product equal production on the law.

q. That [section 2-2106](#) violates Article 7, section 13 of the Illinois Constitution which guarantees that the right of trial by jury as heretofore enjoyed shall remain inviolate 11. That these sections cause the plaintiff immediate or impending injury because the uncertainty of the constitutionality of these provisions. Plaintiff cannot intelligently plan his litigation strategy unless he understands whether these provisions apply to his case. Plaintiffs choices as to legal theories to pursue, the resources to invest in this lawsuit, settlement negotiations, together with a host of similar litigation strategies immediately effecting his case all depend on the constitutionality of [section 2-2103](#), [2-2104](#) and [2-2106](#).

The Severability Clause

12. The severability clause of Public Act 89-7 (section 990) is null and void in that the constitutional invalid provisions of the act are non severable from the remaining portions inasmuch as the various provisions of the act constitute an interdependent legislative package designed to be passed in its entirety rather than as separate pieces. The provisions of the act are so mutually connected with and dependent on each other, that the legislator intended them as a whole, and if all could not be carried into effect the legislature would not have an act to the residual.

13. That the text of the act provides evidence that [sections 2-1115.1](#) (non economic damages limitation), 2-1117.1 (jury instructions), 2-1116 (definition of tort feator), 2-1117 (a) (elimination of joint liability), 2-1117 (b) (escape hatch for healing our professionals from 2-1117 (a) and [sections 2-2103](#), [2-2104](#), and [2-2106](#) are mutually connected with and dependent upon each other, as conditions, considerations or compensations for each other. That the members of the legislative were forced to adopt Public Act 89-7 as a legislative scheme against the “civil justice system” in its entirety. The members of the legislature were not given an opportunity to consider [sections 2-2103](#), [2-2104](#), and [2-2106](#) on their individual merits, but instead were presented with Public Act 89-7 as a complete and unified package made up of co-defendant parts.

That inasmuch as it is not severable, the aforementioned provisions of Public Act 89-7 violate [article IV section 8 of the Illinois Constitution](#) because they failed to confined to one subject.

14. That the constitutionality of Part 21 of Public Act 89-7 renders the remaining provisions null and void, as Public Act 89-7 would be void in its entirety.

PRAY FOR RELIEF

WHEREFORE the plaintiff prays for the judgment as follows:

1. That the Court find that [sections 2-2103](#), [2-2104](#), [2-2106](#) of Public Act 89-7 are unconstitutional, null and void;
2. That the Court find that the acts severability clause (section 990) is null and void, thereby rendering Public Act 89-7 void in its entirety.
3. That this Court waive the necessity of the plaintiff filing any bond or in the alternative, that it set a fair and reasonably cost bond for the plaintiff; and

4. That the Plaintiff have such other and further relief as the Court shall deem necessary and proper.

COUNT XV

COMPLAINT FOR DECLARATORY RELIEF AND TO OTHERWISE ENJOIN THE CONDUCT OF VARIOUS DEFENDANTS WITH REGARD TO SPECIFIC PROVISIONS OF PUBLIC ACT 89-7 AND SEPARATION OF POWERS, SPECIAL LEGISLATION, RIGHT TO TRIAL BY JURY, ACCESS TO THE COURTS, THE LACK OF RATIONAL BASIS, AND THE SEVERABILITY CLAUSE OF PUBLIC ACT 89-7.

NOW COMES the Plaintiff, VERNON BEST, by his attorneys, and complaining of the Defendants, Taylor, Allied, and Helms, and each of them, alleges as follows:

1. The Plaintiff repeats, realleges and incorporates by reference Count I - VIII as if fully set forth herein.
2. That Sections 2-1003, 2-1007.1, 2-1115.1, 2-1116, 2-1117, and 2-2103, 2-2104, 2-2106, 8-802, 8-2001 and 8-2003 of the Illinois Code of Civil Procedure, and Sections 3.5 and 5 of the Illinois Joint Tortfeasor Contribution Act are also unconstitutional insofar as they are a nonseverable part of Public Act 89-7, **which** is void as a whole under the Illinois Constitution.

Interrelationship of the Parties

3. That the circumstances surrounding the Plaintiffs injuries give rise to a cognizable cause of action against the Defendants Taylor, Helms, and Allied, and each of them, under the common law of Illinois.
4. That the Plaintiff has filed a Complaint at Law against said Defendants in the Circuit Court, Third Judicial Circuit, Madison County, Illinois (Law Division), Counts I - VIII herein, alleging a cause of action arising under the common law, which will require the jury, pursuant to [Section 2-1117](#) of the Illinois Code of Civil of Procedure, to make various allocations of fault in order to determine the proper share of liability of each Defendant, Plaintiff's employer, or any other person who may be deemed a "tortfeasor" as defined in [Section 2-1116 of the Illinois Code of Civil Procedure](#).
5. That notwithstanding the existence of [Section 2-1117](#) and the fact that contribution is inherently irreconcilable with several liability, under Public Act 89-7 the circumstances surrounding Plaintiff's injuries gives rise to a cognizable claim by the named Defendants and make it likely that they will claim contribution against Laclede Steel under the Illinois Joint Tortfeasor Contribution Act ([740 ILCS 100/1-5](#)).
6. That it is likely that the Plaintiff's employer, Laclede Steel, will be found to be at least one percent (1%) at fault of the injuries sustained by Plaintiff.

Separation of Powers

7. That Sections 2-1003, 8-802, 2-1107.1, 2-1115, 2-1116 and 2-1117, 2-2103, 2-2104, 2-2106 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act constitute a complete an systematic abrogation of the judicial powers conferred upon the Illinois judicial branch by [Article VI, Section 1 of the Constitution of the State of Illinois](#). This directly infringes upon the inviolate authority of the Supreme Court of Illinois, which is a violation of the Separation of Powers between the legislative judicial

branches of the government of the State of Illinois as articulated in [Article II, Section 1](#) and [Article IV, Section 1 of the Illinois Constitution](#), inasmuch as these provisions attempt to legislatively vitiate numerous, well-reasoned decisions of the Appellate and Supreme Courts of the State of Illinois. Indeed, the Act systematically reversed more than 70 decisions of the Illinois Supreme Court and Appellate courts.

Special Legislation

8. That Sections 2-1003, 8-02, 2-1007.1, 2-1115.1, 2-1116 and 2-1117, 2-2103, 2-2104, 2-2106 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act are special laws where a general law could instead have been made applicable in violation of [Article IV, Section 13 of the Illinois Constitution](#) against special legislation.

9. That a meaningful policing of the limitations on special legislation should be left to the courts.

10. That the special “escape hatch” for defendants in a medical malpractice cause of action found in [Section 2-1117\(b\)](#) renders the entire act void as violative of [Article IV, Section 13 of the Illinois Constitution](#). The “escape hatch” provided a *quid pro quo* so that Public Act 89-7 could be passed in its entirety.

Right to Trial by Jury

11. That Sections 20-1115.1 and 2-1107.1 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act violate [Article I, Section 13 of the Illinois Constitution](#), which guarantees that the right of trial by jury as heretofore enjoyed shall remain inviolate. These sections deny the Plaintiff the right to trial by jury inasmuch as they require the jury be given false information, require that necessary information be withheld from the jury, deny the Plaintiff full and complete compensation, and promote sham trials.

Access to the Courts

12. That, in addition to the lack of rational basis identified in Count's XII and Count XIII, Section 2-1007.1, 2-1115.1, 2-1116, 2-1117, 2-2103, 2-2104, 2-2106 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act lack a rational basis for any legitimate governmental purpose for one or more of the following reasons:

- a. tort cases comprise a small fraction of all civil cases filed in Illinois;
- b. The available objective evidence unequivocally demonstrates that the number of tort filings in Illinois has decreased in the last eight years; this reduction in filings demonstrates that there is no crises in the civil justice system relating to tort cases requiring massive restrictions in the tort system;
- c. there is no lack of available liability coverage for products and services in the present market, nor has there been such an availability problem in the last ten years; there is no evidence of vastly increased insurance premiums, and no evidence to suggest that there is any “insurance crises” in Illinois.
- d. experience has shown that where a wrongdoer calculates that the cost of defending an action and paying any settlements or awards is less than the profit to be made from

marketing an unsafe product or engaging in an unsafe practice, the wrongdoer will be more likely to engage in the unsafe practice;

e. objective studies show that the Illinois economy is growing at a faster rate than the nation as a whole; additionally, unemployment in Illinois is below the national average, construction is growing at seven times the national rate, and large employers continue to invest in Illinois;

f. the public believe strongly in preserving a civil justice system and the concept of full compensation for injuries caused by wrongdoers.

g. damage awards for injuries caused by wrongful conduct deter future wrongful conduct; the arbitrary restriction of damage awards encourages future carelessness;

h. no scientific, objective or empirical studies have shown any economic benefits that follow restrictions on the civil justice jury system; there is no objective evidence to show that the civil justice system which currently exists negatively impacts Illinois job creation, job retention, health care costs, or insurance costs;

i. when an insured plaintiff is unable to collect all of his damages through the tort system, that person will become a burden to the taxpayers of the State of Illinois.

j. there is no justification to invade and usurp powers entrusted to the citizens, jurors and judicial branch of this State because:

1. fault remains the basis of tort liability;
2. injured persons should be ensured that they will continue to be fully and fairly compensated for all of their losses legally caused by the wrongdoer;
3. the judicial system does, and will continue to, guarantee that adequate parameters exist for the review of non-economic and punitive damages;
4. Public Act 89-7 will increase the costs of the tort system because it will discourage the settlement of meritorious claims;
5. the present system strikes a fair balance between the rights of injured persons and the protections afforded to wrongdoers; and
6. the present system provides an appropriate incentive for a potential wrongdoer to act safely and reasonably for the protection for Illinois citizens from injury and death.

The Severability Clause

13. That the severability clause of Public Act 89-7 (Section 990) is null and void in that the constitutionally invalid provisions of the Act are nonseverable from remaining portions inasmuch as the various provisions of the Act constitute an interdependent legislative package designed to be passed in its entirety rather than as separate pieces. The provisions of the Act are so mutually connected with and dependent on each other, that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not have enacted the residual.

14. That the text of the Act provides evidence that [Sections 2-1115.1](#) (noneconomic damages limitation), 2-1107.1 (jury instructions), 2-1116 (definition of tortfeasor), 2-1117(a) (elimination of joint liability), and 2-1117(b) (escape hatch for healing art professionals from 2-1117 (a)) are mutually connected with and dependent on each other, as conditions, considerations or compensations for each other.

15. That members of the legislature were forced to adopt Public Act 89-7 as a legislative scheme against the “civil justice system” in its entirety. Members of the legislature were not given an opportunity to consider Sections 2-1003, 8-802, 2-1107.1, 2-1115, 2-1116 and 2-1117, 2-2103, 2-2104, 2-2106 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act on their individual merits, but instead were presented with Public Act 89-7 as a complete and unified package made up of co-dependent parts.

16. That, inasmuch as it is not severable, the aforementioned provisions of Public Act 89-7 violate [Article IV, Section 8 of the Illinois Constitution](#) because they fail to be confined to one subject.

17. That the unconstitutionality of any one of the aforementioned provisions renders the remaining provisions null and void, as Public Act 98-7 would be void in its entirety.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

1. That the Court find that Sections 2-1003, 8-802, 2-1107.1, 2-1115.1, 2-1116 and 2-1117, 2-2103, 2-2104, 2-2106 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act, and each of them, are unconstitutional, null and void;
2. That the Court find that Sections 2-1003, 8-802, 2-1107.1, 2-1115.1, 2-1116 and 2-1117, 2-2103, 2-2104, 2-2106 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act violate the Separation of Powers doctrine enumerated in [Article II, Section 1 of the Illinois Constitution](#).
3. That the Court find that Sections 2-1003, 8-802, 2-1107.1, 2-1115.1, 2-1116 and 2-1117, 2-2103, 2-2104, 2-2106 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act are special laws where a general law could have been made applicable in violation of [Article IV, Section 13 of the Illinois Constitution](#).
4. That the Court find that Sections 2-1107.1 and 2-1115.1 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act deny the Plaintiff his right to trial by jury in violation of [Article I, Section 13 of the Illinois Constitution](#);
5. That the Court find that Sections 2-1003, 8-802, 2-1107.1, 2-1115.1, 2-1116 and 2-1117, 2-2103, 2-2104, 2-2106 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act deny the Plaintiff his right to a remedy in violation of [Article I, Section 12 of the Illinois Constitution](#).
6. That the Court find that Sections 2-1003, 8-802, 2-1107.1, 2-1115.1, 2-1116 and 2-1117, 2-2103, 2-2104, 2-2106 of the Illinois Code of Civil Procedure and Sections 3.5 and 5 of the Joint Tortfeasor Contribution Act lack any rational basis to any legitimate governmental purpose;
7. That the Court find that the Act's severability clause (Section 990) is null and void;
8. That this Court waive the necessity of the Plaintiff's filing any bond, or in the alternative, that it set a fair and reasonable cost bond for the Plaintiff; and
9. That the Plaintiff have such other and further relief as the Court shall deem necessary and proper.

COUNT XVI

**COMPLAINT FOR DECLARATORY RELIEF AND TO OTHERWISE ENJOIN THE
CONDUCT OF VARIOUS DEFENDANTS WITH REGARD TO PUBLIC ACT 89-7 IN ITS
ENTIRETY.**

NOW COMES the Plaintiff, Vernon Best, by and through his attorneys, CARLSON, WENDLER & SANDERSON, THE LAW OFFICES OF CHARLES R. ABELE, and PITTS, DUGAN & DIAZ, and complaining of the Defendants, Taylor, Allied, and Helms, and each of them, alleges as follows:

1. The Plaintiff repeats and realleges and incorporates by reference Counts I through IX as if fully set forth herein.

Interrelationship of Parties

2. That the circumstances surrounding the Plaintiffs injuries give rise to a cognizable cause of action against Taylor, Allied and Helms, and each of them, under the common law of Illinois.

3. That the Plaintiff has filed a Complaint at Law against said Defendants in the Circuit Court of Madison County, Illinois, Count I herein, alleging a cause of action arising under the common law, which will require the jury, pursuant to [Section 2-1117 of the Illinois Code of Civil Procedure](#), to make various allocations of fault in order to determine the proper share of liability of each Defendant, Plaintiff's employer, or any other person who may be deemed a "tortfeasor" as defined in [Section 2-1116 of the Illinois Code of Civil Procedure](#).

4. That notwithstanding the existence of [Section 2-1117](#) and the act that contribution is inherently irreconcilable with several liability, under Public Act 89-7 the circumstances surrounding Plaintiff's injuries gives rise to a cognizable claim by the named Defendants and make it likely that they will claim contribution against Laclede under the Illinois Joint Tortfeasor Contribution Act ([740 ILCS 100/1-5](#)).

5. That it is likely that the Plaintiffs employer, Laclede, will be found to be at least one percent (1%) at fault for the injuries sustained by Best.

UNCONSTITUTIONAL CHARACTERISTICS OF PUBLIC ACT 89-7 IN ITS ENTIRETY.

6. That the severability clause of Public Act 89-7 (Section 990) is null and void in that the constitutionally invalid provisions of the act are nonseverable from the remaining portions inasmuch as the various provisions of the Act constitute an interdependent legislative package designed to be passed in its entirety rather than as separate pieces. The provisions of the Act are so mutually connected with and dependent on each other that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not have enacted the residual.

7. That the text of the Act provides evidence that [Sections 2-1115.1](#) (noneconomic damages limitation), 2-1107.1 (jury instructions), 2-1116 (definition of tortfeasor), 2-1117(a) (elimination of joint liability), and 2-1117(b) (escape hatch for healing art professionals from 2-117(a)) are mutually connected with and dependent on each other, as conditions, considerations or compensations for each other.

8. That members of the legislature were forced to adopt Public Act 89-7 as a legislative scheme against the "civil justice system" in its entirety. Members of the legislature were not

given an opportunity to consider any of the provisions on their individual merits, but instead were presented with Public Act 89-7 as a complete and unified package made up of codependent parts.

9. That, inasmuch as it is not severable, Public Act 89-7 violates [Article IV, Section 8 of the Illinois Constitution](#) because it fails to be confined to one subject.

10. Accordingly, that the unconstitutionality of any one of the provisions in the Act renders the remaining provisions null and void, and renders Public Act 89-7 void in its entirety.

Special Legislation

11. That each of the Act's provisions could have been made applicable to tort law generally. However, each provision almost exclusively applies to personal injury and property damage torts. There is no basis for this restricted scope to select types of torts.

12. That Public Act 89-7, considered in its entirety, is a special law where a general law could instead have been made applicable. The legislature only had the power to pass provisions that were generally applicable to all tort cases. Thus, Public Act 89-7 violates [Article IV, Section 13 of the Illinois Constitution](#) against special legislation.

13. That a meaningful policing of the limitations on special legislation should be left to the courts.

14. That the special “escape hatch” for defendants in a medical malpractice cause of action found in [Section 2-1117\(b\)](#) renders the entire act void as violative of [Article IV, Section 13 of the Illinois Constitution](#). The “escape hatch” provide a *quid pro quo* so that Public Act 89-7 could be passed in its entirety.

Separation of Powers

15. That Public Act 89-7, considered in its entirety, constitutes a complete and systematic abrogation of the judicial powers conferred upon the Illinois judicial branch by [Article VI, Section 1 of the Constitution of the State of Illinois](#). This directly infringes upon the inviolate authority of the Supreme Court of Illinois, which is a violation of the Separation of Powers between the legislative and judicial branches of the government of the State of Illinois as articulated in [Article II, Section 1 of the Illinois Constitution](#), inasmuch as the bill contains various provisions that attempt to legislatively vitiate numerous, well-reasoned decisions of the Appellate and Supreme Courts of the State of Illinois. Indeed, the Act systematically reversed more than 70 decisions of the Illinois Supreme Court and Appellate courts.

Lack of Rational Basis

16. That Public Act 89-7, considered in its entirety, lacks a rational basis for any legitimate governmental purpose for one or more of the following reasons:

- a. the current civil justice system consistently and fairly compensates injury victims as determined by the facts and evidence of each case rather than utilizing an unreasonable and arbitrary predetermination;
- b. the Illinois civil justice system, through its citizenjurors and the judicial branch with its use of its power of remittitur when necessary, fairly and accurately assures the fairness of jury awards;

- c. the available evidence shows that in recent years that there has been no significant increase in the average size of the verdicts, nor has there been any significant increase in the percentage of verdicts for injured citizens; therefore there is no plausible reason to suggest that the juries in Illinois are “out of control” or that the civil justice system is in need of drastic change;
- d. the existing public policy in Illinois is that liability for damages shall be based on fault, and that were proven, that wrongdoers shall be held fully accountable for all harms caused;
- e. an innocent plaintiff should not be required to bear the risk of non-collection when one or more of the wrongdoers is unable to pay its proportionate share of damages; the burden of the shortfall in collection has been placed on the wrongdoers in Illinois common law for more than one century;
- f. Illinois common law has always recognized that non-economic losses are no less important than out-of-pocket expenses; it has always been the public policy of the State of Illinois that an injured party is entitled to fair and complete compensation for all losses suffered by the wrongful act of another, including non-economic losses;
- g. the consistent application of existing jurisprudence provides individualized, fair and complete damage awards which are just and benefit all parties and society;
- h. there is more than a century of jurisprudence in Illinois for courts to rely upon in assessing and reviewing non-economic damages; non-economic damages are individualized and depend entirely on the facts in evidence presented to a trier of fact subject to trial, Appellate and Supreme Court review;
- i. the judicial branch is empowered to, and is perfectly capable of, monitoring and controlling jury verdicts which may be perceived to be excessive;
- j. the judiciary balances the rights of injured persons and legitimate protections for wrongdoers, with the goal of achieving justice in every case;
- k. the majority of states (including Iowa and Kentucky, which border Illinois) do not impose arbitrary and unreasonable limits on non-economic damages;
- l. there is no scientific basis for concluding that damages for pain, suffering, disability, disfigurement, loss of society and loss of consortium of the injured party are any more difficult for the jury to determine than those for economic loss;
- m. tort cases comprise a small fraction of all civil cases filed in Illinois;
- n. the available objective evidence unequivocally demonstrates that the number of tort filings in Illinois has decreased in the last eight years; this reduction in filings demonstrates that there is no crisis in the civil justice system relating to tort cases requiring massive restrictions in the tort system;
- o. there is no lack of available liability coverage for products and services in the present market, nor has there been such an availability problem in the last ten years; there is no evidence of vastly increased insurance premiums, and no evidence to suggest that there is any “insurance crisis” in Illinois;
- p. experience has shown that where a wrongdoer calculates that the cost of defending an action and paying any settlements or awards is less than the profit to be made from

- marketing an unsafe product or engaging in an unsafe practice, the wrongdoer will be more likely to market the unsafe product or engage in the unsafe practice;
- q. per capita health costs have grown slower in Illinois than in most states that have imposed limitations on jury verdicts;
- r. between 1980 and 1991, Illinois saw the slowest growth in aggregate health care spending of all 50 states and the District of Columbia;
- s. health care availability problems, if they exist, are due to factors unrelated to the tort system;
- t. objective studies show that the Illinois economy is growing at a faster rate than the nation as a whole; additionally, unemployment in Illinois is below the national average, construction is growing at 7 times the national rate, and large employers continue to invest in Illinois;
- u. the public believes strongly in preserving a civil justice system and the concept of full compensation for injuries caused by wrongdoers;
- v. damage awards for injuries caused by wrongful conduct deter future wrongful conduct; the arbitrary restriction of damage awards encourages future carelessness;
- w. no scientific, objective or empirical studies have shown any economic benefits that follow restrictions on the civil justice jury system; there is no objective evidence to show that the civil justice system which currently exists negatively impacts Illinois job creation, job retention, health care costs, or insurance costs;
- x. available evidence shows that in these states that limit non-economic damages, employment, health care costs, availability of health care and the costs of consumer do not improve;
- y. there are no objective studies to indicate that limits on non-economic damages will improve health care in rural Illinois; no state that has imposed restrictions on jury verdicts has seen an improvement in rural health care availability;
- z. a limitation on non-economic damages will deny injured persons recovery for their full economic losses;
- aa. limiting non-economic damages will discourage settlements since the defendants will have little incentive to settle even the most catastrophic cases;
- bb. when an injured plaintiff is unable to collect all of his damages through the tort system, that person will become a burden to the taxpayers of the State of Illinois; and
- cc. there is no justification to invade and usurp powers entrusted to the citizens, jurors and judicial branch of this State because;
1. fault remains the basis of tort liability;
 2. injured persons should be ensured that they will continue to be fully and fairly compensated for all of their losses legally caused by the wrongdoer
 3. the judicial system does, and will continue to, guarantee that adequate parameters exist for the review of non-economic and punitive damages;
 4. Public Act 89-7 will increase the costs of the tort system because it will discourage the settlement of meritorious claims;

5. the present system strikes a fair balance between the rights of injured persons and the protections afforded to wrongdoers; and
6. the present system provides an appropriate incentive for a potential wrongdoer to act safely and reasonably for the protection for Illinois citizens from injury and death.

OTHER UNCONSTITUTIONAL CHARACTERISTICS OF PUBLIC ACT 89-7 ARISING OUT OF THE ILLINOIS CONSTITUTION

17. Public Act 89-7 violates the Illinois Constitution Preamble's assurance of legal, social and economic justice.
18. Public Act 89-7 violates [Article I, Section 2](#), by depriving persons of property without due process of law and denies persons the equal protection of the laws.
19. Public Act 89-7 violates [Article I, Section 12](#), by denying persons a certain remedy in the laws for all injuries and wrongs which they receive to their person, privacy, property and reputation, and by preventing persons from obtaining justice by law freely, completely, and promptly.
20. Public Act 89-7 violates [Article I, Section 13](#), which guarantees that the right of trial by jury as heretofore enjoyed shall remain inviolate.
21. Public Act 89-7 violates [Article I, Section 18](#), by denying equal protection of the laws on account of sex by the state.
22. Public Act 89-7 violates [Article I, Section 23](#), by allowing wrongdoers to escape recognition of their corresponding individual obligations and responsibilities.
23. Public Act 89-7 violates [Article IV, Section 8](#), because it fails to be confined to one subject.
24. Public Act 89-7 violates [Article IV, Section 13](#), as it constitutes a special law where a general law can be made applicable.
25. Public Act 89-7 violates [Article VI, Section 1](#), as it represents an invasion and usurpation of the judicial power which is vested in the Supreme Court, the Appellate Court and Circuit Courts.
26. Public Act 89-7 violates [Article VI, Section 9](#), as it interferes with the Circuit Court's original jurisdiction of all justiciable matters.
27. Public Act 89-7 violates [Article VI, Section 16](#), because it invades and usurps the general administrative and supervisory authority over all courts which is vested in the Supreme Court and which shall be exercised by the Chief Justice in accordance with its rules.
28. Public Act 89-7 violates [Article I, Section 6](#), as an invasion of privacy.
29. That the Plaintiff's cause of action is a form of "property" that qualifies for constitutional protection. Public Act 89-7 impermissibly reduces the value of private property of some members of society in order to benefit a private group in violation of [Article I, Section 15 of the Illinois Constitution](#).
30. The aforementioned violations include but are not limited to the following:
 - a. The amendments to [Section 2-1003](#), [8-802](#), [8-2001](#) and [8-2003](#) of the Code of Civil Procedure ([735 ILCS 5/2-1003](#), [734 ILCS 5/8-802](#), [735 ILCS 5/8-2001](#) and [735 ILCS 5/8-2003](#)), declare that every plaintiff claiming bodily injury or disease is deemed to have waived

any privilege between the injured person and any health care provider who has furnished care to the injured person; the Act requires any such party to sign a written consent granting any other party to the action the right to obtain any and all medical records, regardless of whether the records are relevant to the action; the Act also grants to any party the right to communicate, whether verbally or in the writing, with any such health care provider, without notice to or the presence of the injured person

[Section 2-1003](#), as enacted, is a clear violation of [Article I, Section 6 of the Illinois Constitution](#) which guarantees every citizen the right to be secure from invasions of privacy. The amendments to [Sections 2-1003](#), [8-802](#), [8-2001](#) and [8-2003](#) constitute an invasion of the judicial power vested in the Illinois Judiciary, in violation of [Article VI, Section I of the Illinois Constitution](#) because these amendments, as enacted, are in conflict with a number of existing Illinois Supreme Court Rules.

The amendments to [Sections 2-1003](#), [8-802](#), [8-2001](#) and [8-2003](#), as enacted, usurp the inherent power granted to the Illinois Supreme Court as conferred in [Article VI, Section 16 of the Illinois Constitution](#). [Article I, Section 16](#) grants to the Illinois Supreme Court the general administrative and supervisory authority over all courts to be exercised by the Chief Justice in accordance with the rules promulgated by the Illinois Supreme Court.

The amendments to [Sections 2-1003](#), [8-802](#), [8-2001](#) and [8-2003](#) also fail to provide equal protection of the law to injury victims by depriving any injured party of the right to confidential medical treatment records and to confidentiality in relationships with health care providers by mandating dismissal of an action for bodily injury if the injured person refuses to waive his or her recognized physician/patient privilege as articulated in [Section 2-1003](#).

[Sections 2-1003](#), [8-802](#), [8-2001](#) and [8-2003](#) as enacted violate the Illinois Constitution by forcing any injured party to choose between the constitutional right to the access of courts which is guaranteed to every individual in [Article I, Section 12](#) and [Article I, Section 13](#) and the constitutional right to privacy guaranteed in [Article I, Section 6](#).

b. [Section 2-1007.1](#) requires the trial court to deceived the jury as to the appropriate measure of redress.

c. Section 2-1115.05 improperly directs the jury to determine punitive damage awards based on the economic status of the injured person rather than the nature of the conduct by the tortfeasor and its economic status, which serves to discriminate against children, the poor, unemployed, elderly and women.

d. [Section 2-1115.1](#) irrationally and arbitrarily denies the right to trial by jury by predetermining the limit of damages to be awarded to the victim or family members regardless of the catastrophic nature of the injuries or death incurred.

e. [Section 2-1117](#), as amended, elevates the rights of a wrongdoer over those of the victim by denying the victim his right to a full complete remedy.

f. [740 ILCS 100/3.5](#), [820 ILCS 305/5](#), as amended, and [820 ILCS 310/5](#) as amended deprive injured Illinois workers of a complete and full recovery as a result of injuries sustained at the work place.

- g. [740 ILCS 130/2](#) and [740 ILCS 130/3](#), as amended, provide arbitrary immunities to landowners for their injuries sustained by innocent persons on their property.
- h. [735 ILCS 5/2-623](#) and [735 ILCS 5/2-2104](#) deprive plaintiffs access to the courts in violation of [Article I, Section 12 of the Illinois Constitution](#) and violate the separation of powers doctrine embodied in [Article II, Section 1](#) and [Article VI, Section 1 of the Illinois Constitution](#).
- i. [735 ILCS 5/2-2106](#) provides arbitrary immunities to manufacturers for injuries sustained by their failure to warn innocent persons of the risks associated with their products.
- j. [735 ILCS 5/13-213](#), as amended, arbitrarily and unreasonably abolishes existing common law remedies in violation of [Article I, Section 12, of the Illinois Constitution](#) and constitutes impermissible special legislation in violation of [Article IV, Section 13, of the Illinois Constitution](#).
- k. [735 ILCS 5/2-622](#), as amended, arbitrarily and unreasonably abolishes existing common law remedies in violation of [Article I, Section 12 of the Illinois Constitution](#) and usurps the power vested in the Judiciary as conferred by [Article VI, Section 1](#), and [Article VI, Section 16 of the Illinois Constitution](#).
- 1. [735 ILCS 5/2-624](#) violates the separation of powers doctrine embodied in [Article II, Section 1](#) and [Article VI, Section 1 of the Illinois Constitution](#), offends equal protection guarantees set forth in [Article I, Section 2 of the Illinois Constitution](#), and constitutes impermissible special legislation in violation of [Article IV, Section 14 of the Illinois Constitution](#).
- m. [735 ILCS 5/8-2501](#), as amended, violates the separation of powers doctrine embodied in [Article II, Section 1](#) and [Article VI, Section 1 of the Illinois Constitution](#), offends equal guarantees set forth in [Article I, Section 2 of the Illinois Constitution](#), and constitutes impermissible special legislation in violation of [Article IV, Section 13 of the Illinois Constitution](#).

Unconstitutional As Applied

- 31. That the Act ([735 ILCS 5/2-1107.1](#)) directs the trial court to mislead the jury by withholding from the jury the law's elimination of the Plaintiff's recovery in the event his contributory fault is more than 50% of the proximate cause of his injury.
- 32. That the Act, by eliminating the doctrine of joint liability ([735 ILCS 5/2-1115](#) and 2-1117), prevents the Plaintiff from obtaining full recovery for even those losses not attributable to his own fault. His recovery against the Defendants is limited to their respective degrees of "several" liability; any liability of his employer -- or other unnamed tortfeasor in the personal injury action -- will further diminish the Plaintiff's recovery and violate state due process protection mandated by Article I, Section of the Illinois Constitution.
- 33. That the Act could extinguish altogether the Plaintiff's right to recovery if his employer's fault is sufficient to offset the liability of the named Defendants -- any Defendant's "several" liability can be further reduced (pursuant to 740 ILCS 100/3/5) proportionate to the fault of the Plaintiffs employer.

34. That the Act fosters upon the courts and litigants sham trials with contribution cases filed against third-party defendants who have no exposure, yet whose proportionate share of liability will diminish Plaintiff's recovery pursuant to the Joint Tortfeasor Contribution Act ([740 ILCS 100/3.5](#) and 4).

35. That the Plaintiff has incurred, and may reasonably expect to incur, "non-economic damages," as that term is defined in the Act's amendment ([735 ILCS 5/2-1115.2](#)) to such an extent that any reasonable jury would award him more than \$500,000 for that aspect of his claim.

36. That the Act ([735 ILCS 5/2-1115.1](#)) limits his recovery for such damages to \$500,000, thus depriving him of rightful recovery through a trial by jury.

37. That the Act ([735 ILCS 5/2-1107.1](#)) directs the trial court mislead the jury by withholding from it the law's limitations on the Plaintiff's recovery.

38. That the Act ([735 ILCS 5/2-1003](#), 8-802, 8-2001, 8-2003, and 8-2004) constitutes an unconstitutional invasion of privacy by declaring that the Plaintiff is deemed to have waived any privilege between himself and any health care provider who has furnished care to the Plaintiff irrespective of any relevance to the litigation. The Act ([735 ILCS 5/2-1003](#)) leaves the courts with no discretion whatsoever -- a court must either issue an order authorizing the release of all requested records or dismiss the Plaintiff's case pursuant to [735 ILCS 5/2-619\(a\)\(9\)](#).

33. That the Act ([735 ILCS 5/8-802](#)) unconstitutionally allows and permits the Defendants to solicit the disclosure of any information a health care practitioner may have acquired in attending the Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

1. That the Court find that the Public Act and the specific provisions identified in this complaint, and each of them, are unconstitutional, null and void.
2. That the Court find that the limitation upon recovery for "non-economic damages" is unconstitutional, null and void;
3. That the Court find that the Act's prohibition upon a court instructing a jury upon the maximum recovery for "non-economic damages" is unconstitutional, null and void;
4. That the Court find the Act's prohibition upon a court instructing a jury upon the legal effect of a finding of greater than 50% of comparative fault is unconstitutional, null and void;
5. That the Court find that instructing the jury on the lack of taxability of its verdict is unconstitutional, null and void;
6. That the Court find that the Act's elimination of joint liability is unconstitutional, null and void;
7. That the Court find that the Act's reduction of a defendant's liability, based upon the negligence of a plaintiff's employer, is unconstitutional, null and void;
8. That the Court find that the Act's severability clause (Section 990) is null and void;
9. That the Defendants, Taylor, Helms, and Allied, and each of them, and their respective agents, servants and employees, be enjoined from soliciting from the Plaintiff any

authorization for the release of medical information, as described in the 1995 amendment to [Section 2-1003](#) of the Code of Civil Procedure (735 ILCS 2-1003).

10. That the Defendants, Taylor, Helms, and Allied, and each of them, and their respective agents, servants and employees, be enjoined from soliciting from any healthcare practitioner, except in manners previously allowed before the passage of the Act, the disclosure of any information such practitioner(s) may have acquired in attending the Plaintiff, notwithstanding the Act's amendments to Section 8-802 of the Code of Civil Procedure (735 ILCS 8-802);

11. That the Defendants, Taylor, Helms, and Allied, and each of them, and their respective agents, servants and employees, be enjoined from discussing with any healthcare provider, except in manners previously allowed before the passage of the Act, any information such practitioner(s) may have acquired in attending the Plaintiff, notwithstanding the Act's amendments to Section 8-802 of the Code of Civil Procedure (735 ILCS 8-802);

12. That this Court waive the necessity of the Plaintiffs filing any bond, or in the alternative, that it set a fair and reasonable cost bond for the Plaintiff; and

13. That the Plaintiff have such other and further relief as the Court shall deem necessary and proper.

PLAINTIFF DEMANDS TRIAL BY JURY OF TWELVE.