

“We’re there for you when your insurance companies aren’t.”

FALL 2004

Special Election Edition!

Caps on Pain & Suffering

Is this the answer? Page 2

CHAPTER 3 OF MR. OGINSKI'S NEW BOOK, see page 4

Congratulations!

To Marsha McGlashan and S.W. for referring victims of medical negligence to this office. They have both received certificates recognizing their outstanding civic duty and profound thanks for their referrals.

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“Trial Lawyers are to blame...” according to President Bush. But when the Florida election dispute with Al Gore turned ugly, who do you think President Bush turned to? A trial lawyer. Insurance companies have legions of trial lawyers to represent their interests. Big businesses, tobacco companies, national conglomerates all have trial lawyers. But when a single individual hires a trial lawyer to represent them in a lawsuit for permanent injuries—watch out! It’s the trial lawyer who’s causing all of America’s woes. Didn’t you know that?

Caps on Pain & Suffering- Whose pain is it?

Telling a trial attorney that awards for pain and suffering are capped is similar to telling him that there's a plague upon his house.

Here's what the President has proposed:

You work hard to earn a living. Someone injured you because of their carelessness. If you bring a lawsuit to get compensated for your loss, you can recover your lost income for the time you remained out of work. If your injuries prevent you from working into the future, you can recover lost future earnings for your inability to work in the future.

Now comes the tricky part. You can recover for "pain and suffering" also known as loss of the quality of your life...BUT WAIT! How much can you recover under the President's proposal? ***The maximum that they want you to be able to recover is \$250,000!*** Now, that may sound like a lot of money to many people, but what if the injury you have is permanent? What if your leg was crushed in a car accident, and needed to be amputated? The maximum you could recover for your pain for the remainder of your lifetime would be \$250,000. *Is that fair?*

What about a woman who stays home to care for her children who is injured by someone's carelessness? Or a child, who has no earnings history? According to George Bush's proposal, since mom was raising her kids, and was not earning an income, she's not entitled to any compensation for lost earnings...and the most she could ever recover would be a maximum of \$250,000. Is this fair to a catastrophically injured woman who now needs lifetime care and help raising her children? Is this fair to the family of an injured child? What about a senior citizen who is not working? I often wonder how anyone who offers such a proposal would feel if they were the victim of a terrible injury.

Recently, I read an article by an attorney in the Midwest who was instrumental in formulating and drafting his State's cap on pain and suffering awards. He was a long-time supporter of 'tort reform' and felt that caps were the answer to the problem with the judicial system and large verdicts. Well, this person happened to be catastrophically injured, was paralyzed, and is now confined to a wheelchair for life. He wrote an article after bringing a lawsuit and seeing his damages award capped, describing how ridiculous such an attempt was to limit awards for pain and suffering. Of all people, he saw for the first time that a false, arbitrary limit of \$250,000 does absolutely nothing to compensate victims for their injuries. Obviously, no amount of money will enable this person to walk again. But, our system of justice says that the wrongdoer must pay and provide full and fair compensation. Not half justice. Not economical justice, but full justice.

IN NEW YORK, the State Legislature has tried multiple times to pass legislation that would limit pain and suffering awards, and also limit attorney's fees. In Congress, the House of Representatives has passed legislation to cap pain and suffering awards. The Senate has consistently prevented the passage of such legislation.

Remember, an attorney handling personal injury and malpractice cases only gets paid if his client receives money. The attorney's fee is contingent upon the client recovering money. If the client loses the case, then the attorney receives nothing. The lawyer has then spent many thousands of dollars and hundreds of hours of his time prosecuting a case, without any fee for his services. It has always

been my practice to only accept cases that have merit. Contrary to the President's claim that 'frivolous lawsuits' are the bane of this Country's ills, we have yet to see any specific cases cited to support his claim. While we all agree that there are cases that justifiably have no merit, or awards that are inconsistent with the level of damages, just where exactly are the 'frivolous cases' that are being talked about?

Let's take a look at what happens if pain and suffering awards are 'capped' at \$250,000.

First, anyone who does not have an earnings history is immediately prevented from bringing a lawsuit. Why? If the maximum recovery that an injured victim can obtain is \$250,000 then it will not be financially feasible for an experienced trial attorney to take the case. The lawyer's fee in a malpractice case on an award of \$250,000 is only 30% which is equal to \$75,000. Most malpractice cases cost \$25,000-\$100,000 to litigate. The expenses that an attorney lays out over the course of the litigation come off the top and are reimbursed to the law firm before any money is distributed. The attorney's fee is then paid, and the remaining amount goes to the injured victim. If there is a lien against the proceeds, say for medical care, that amount is further reduced. Financially it just doesn't make sense to take a case in this scenario without an earnings history.

So what happens then? An injured victim is then unable to get adequate compensation. If the number of lawsuits for valid injuries drops, who also suffers? *Defense attorneys*. Why? If the number of lawsuits diminishes (as they should if cases do not have merit) then the insurance companies will no longer need to hire as many defense lawyers to represent them. So, they'll be out of jobs. If the number of lawsuits decreases, the insurance companies would no longer be able to argue that they need to raise their outrageous premiums because of the increasing number of lawsuits. Therefore, they should be able to *reduce* their premiums and pass their savings on to the consumer. *Do you really believe that an insurance company will voluntarily reduce your premiums on car insurance or medical malpractice insurance? I don't think so.* They're in business to make money for their shareholders. Profit is the name of the game. The greater their profit, the greater their incentives and bonuses.

So who wins if awards are 'capped'? Not the injured victim. Not the defense attorneys. Not the consumers who purchase insurance policies for financial protection. Who then? *The insurance companies*. There are less payouts; they don't have to worry about paying more than \$250,000, even on policies where they have larger policies. So who is proposing this cockamamie scheme? The President! Plaintiff's lawyers we will only take the most catastrophically injured victim before deciding to accept a case. Does a cap hurt our fees? Yes. Does it hurt the injured victim more? Absolutely. Will the defendant's law firms dissolve and disappear? Many will. Will the insurance companies prosper? You bet.

So who are you going to vote for?

Now, for something totally unrelated to law...here's our third installment of Mr. Oginski's new hilarious thriller that he's in the process of finishing...

“At 9:00 a.m. Julie Schwartz was hit and killed by a red mustang convertible, while she was rollerblading to class.” Said Officer Schmegegee.

“Oh my God!” yelled Jacob. “I told her... er...not to rollerblade...” he said as he tried to finish the sentence. Today was the day. He forgot about it. Damn!

“Well the only reason we came by is because we told you we’d be back if anything happened to her. Now something has, and we’re back.” Said Officer Schmegegee.

“Gee, fellas. It’s so good of you to come over here and eat my doughnuts, but don’t you think you’d be better off trying to catch the person who was driving the Mustang Convertible, who hit her?” asked Jacob.

“We did already. He’s at the station. He gave us the whole story. He was totally drunk when we picked him up. He’d just come from a friend’s party and was plastered. The prick should get 20 years behind bars. Get it? Behind bars! That’s where he can drink. Hah, hah...” laughed Officer Krupke.

“I’d like to go to my room and cry now, and would prefer if you bozos weren’t here to humiliate me, so LEAVE NOW please” said Jacob.

As soon as the police left, he called his mother.

“Mom?”

“Who is this?” she asked.

“Who else do you know calls you ‘Mom’?”

“Who did you say you were calling for?”

“Mom, it’s me! Jacob. Your idiot son. The savant. Wake up! You’re not having a dream. Heloooo, mother...are you there??”

“Jacob, is that you?” asked his mother

“No, it’s the Pillsbury dough boy. Of course it’s me!” answered Jacob.

“What’s the matter, bubeleh? Shouldn’t you be in class now? Oh, don’t tell me you’re sick, or worse, you’ve dropped out, or you met a girl and eloped... Hey Herb... I think our son eloped....Did you hear what I said? Take your finger out of your ear and listen to me...”

“Mom, would you stop that! You’re driving me nuts!”

“You see Herb! Our son, the savant, says that I’m driving him nuts! Can you believe it? I raised him...I gave birth to him...I changed his diapers...I cleaned up after him...”

“Earth to Mom...its mission control calling...” said Jacob, trying to get his mother back to reality.

“Yes, mission control, go ahead, I’m listening,” replied Jacob’s mother.

“The bubble has burst. Repeat. The bubble has burst. Over.” Said Jacob.

“OH MY GOD! HERB! THE BUBBLE BURST! GET UP, GET UP! THE BUBBLE, THE BUBBLE!”

“What cockamamie stupidity are you talking about Anna?” said Herb

“Mission Control is on the line, and they told me that the Bubble Burst!” replied Anna.

“What the hell are you talking about? Who’s on the line, and what bubble are you babbling about? Here give me that phone. Hello?”

“Dad, it’s me,” said Jacob

“Who is this?”

“It’s me, your son Jacob.”

“Jacob who?”

“What is wrong with you people today? Did I just turn into the twilight zone?”

“Anna, some nut is on the phone talking about the twilight years,” said Herb

“Dad! Remember me! I’m Jacob. Your son. I go to college. I used to live with you and mom. Remember?” asked Jacob quietly.

“Mmm. You say you’re my son. How do I know if it’s really you?” asked Herb.

“Check your damned caller ID, and see if the phone I’m calling from matches to the one on your refrigerator, the one with your real son’s phone number.”

“OK, hold on...”

Five minutes later...

“Hello son. How’s school?” his dad asked

“Fine, dad. How’s the nut farm?” asked Jacob.

“You know we don’t have nuts on our farm,” said Herb.

“Never mind, dad. Can I speak to mom?”

“She’s online with mission control now. She’s downloading her orders for further deployment.”

“Dad, do you think you and mom should see a doctor?”

“Why, do you think we’re ill?”

“Oh no. Just that I’d like someone else to confirm that I’m not crazy, when I call home.”

“I’ll see you soon dad. Take care of mom. Love you. Bye.”

“Bye son.” Said Herb.

Talk about frustrating! My family is nuts! Mom’s in space. Dad’s in another world. How did I ever become so normal...well, am I normal, he asked himself? I can predict when people will die. Is this

normal? No. But what can I do with this information. How can I use it to benefit others, he thought to himself?

CHAPTER

Anyway, back to reality again. One night while Jacob was surfing the web, he came across a website titled “Near-death Experiences.” He was intrigued. He searched the site, which was run by someone who claimed that he had a near-death experience. He claimed to have been asleep at work, and when he awoke, he was rising up through the ceiling, into the sheetrock, through the cement, and out past the roof, rising into the sky. He could see the sun, but not the earth, where, moments before, he was living a ‘normal’ life. All of a sudden, a jet airplane flew right by his head, knocking him from his sky-high perch down to earth again. When he awoke, he was in a mental institution. In a straightjacket. In a room with padded walls. He was wearing a helmet.

This is ridiculous thought Jacob. He continued reading and came across someone who posted a message on the website’s message board. “Do you want to know when you’re going to die? If so, call the Psycho Hotline. We guarantee results. Do you want to know when the bully in your life will croak, or the Principal of your school, or your boss at work? Then call the Psycho Hotline.” Jacob decided to call them. He couldn’t imagine anyone else having this bizarre ability. He dialed the 800 number. “Your credit card please...” said a receptionist. “I don’t want advice, I just need to talk to the person in charge of your organization,” said Jacob. “I’m sorry, I must have your credit card to speak to one of our representatives,” answered the woman robotically. “I don’t want to speak to a representative, I want to speak to person in charge of Psycho Hotline. By the way, how much do you charge to speak to someone?” asked Jacob. “\$25 dollars for 5 minutes. \$20 dollars for an additional 5 minutes,” replied the woman. “Can I speak to your supervisor please?” Jacob asked. “In order to speak to a supervisor, you must give me your credit card,” came the same idiotic reply. Feeling frustrated, Jacob hung up the phone. He’d e-mail the company and wait for a response.

“E-mail:

To: President/ Supervisor of Psycho Hotline

From: Jacob

Re: Your psychic abilities

Dear Sir/Madam:

I write to you, not for advice or opinions, but to discuss your ability to predict the future. Interestingly, I have similar abilities, and need to discuss them with someone. As of today, I have never found anyone who can predict the future, as I can. Please call me as soon as possible.”

Jacob never expected to get a response to his e-mail. For all he knew he’d get a robot reply saying “Give us your credit card number to speak to a representative.” Two days later, he received a reply.

“E-mail:

To: Jacob

From: Chief head case

Re: Your claimed psychic abilities

Jacob, thank you for your inquiry. As you might be able to tell, I knew that you’d try to get in touch with me. I was able to predict that you would find my web site, and I was also able to predict that you would try and contact me. I have also predicted that you would claim you have the same powers as I do. Ironically, nobody has the same powers as I do. I am all-powerful. I am all seeing. I am the chief head case here in this organization. If you want to speak to me, please give my secretary your credit card. Thank you for your interest in our organization.”

Jacob couldn’t believe what an idiot this guy was. He quickly drafted a reply.

“E-mail:

To: Chief Idiot

From: Jacob

Re: Your stuck-up asshole attitude

If you can predict what my credit card number is, I’ll be happy to speak with you.”

Needless to say, he never replied.

CHAPTER:

When Jacob returned to Princeton for his Junior year, he was not only wealthier, but also more confused than ever. His schoolwork was going O.K., his social life was O.K., but he still didn’t know how to channel his special ability. Until he heard a knock on his door on September 25. It was a beautiful fall day. The leaves were turning colors, the grass was gloriously green, and the sky was baby

blue. The birds were singing, and the squirrels were hunting for food. What a magnificent day, Jacob thought. But at 3:00 p.m. there was a knock at his door. "Who is it?" he asked. "FBI, Campus Security...could you open the door please." Jacob thought that the two campus security cops were playing a joke on him, claiming to be the FBI. What the hell. Jacob opened the door, and standing there were three FBI agents dressed in black suits with black ties, and behind them, Humpty Dumpty and his sidekick, Fruit of the Loom from Campus Security. The Head Honcho from the FBI asked politely, "Can we come in and talk to you?" "Sure," said Jacob. "If it's about my term paper, I didn't do it," Jacob remarked in an offhanded manner. The three FBI men entered Jacob's apartment, and all three turned to the campus clowns and said, "Stay outside and watch our car."

Upon entering the apartment, one of the FBI men spoke into his right sleeve, "We've entered the target's premises." The other FBI lackey went to the window to see if anyone was watching them. The Head Honcho walked over to Jacob and got right to the point. "Mr. Morgan, we know who you are." "Great," said Jacob. "Who am I?"

"We know what you do," said the Head Honcho. "Great," replied Jacob. "What do I do?" "What we don't know is how you do it, or why," said the Head Honcho. Jacob had enough of this idiotic repartee, and said, "What the hell are you talking about?"

"We have learned from reliable sources that you can predict when the President of the United States will die. Is this true?" asked the Head Honcho. "No, it's not true you bumbling idiot! Who would tell you such a stupid thing anyway?" asked Jacob angrily. "The Vice President was giving a speech to the students here, and during our preliminary scope of the school, we spoke with various people, including Dean Green. The Dean was asked whether he knew of any people who were weird or might want to harm the VP or the President. Dean Green mentioned you. He was very nice and appeared to give you great praise, but nevertheless, we had to check you out." That son of a bitch. I can't believe he told these people. Even worse, he made it seem as if I had a contract on these guys! "Look fellas, I'm in therapy. I think I have this weird ability to tell when a person will die. But the only way I can tell is if I meet the person and spend some time with them. That's it. I don't know how it works, or why. I can't even tell you how it'll happen, or when on that day. But, I know I can predict it. I can guarantee it," answered Jacob. The Head Honcho handed Jacob his business card. It read "Head Honcho, FBI." "Please call me if you need us. If not, don't waste my time. Thank you." With great bravado, the three FBI men opened Jacob's door and headed off into the setting sun. The campus clowns were all excited upon seeing the FBI men, and rushed to open the car doors for them. The FBI agents promptly offered

them a one-dollar tip each. “Excellent work fellas. Keep it up. We’ll put in a good word for you,” remarked the Head Honcho. Yeah, the word was “idiots.”

Jacob thought nothing more of this bizarre episode of the FBI men, until two weeks later. What Jacob didn’t know, was that during this time, Head Honcho had drafted a report of his contact with Jacob, which went to his supervisor, which then got booted up to the senior supervisor, which then went to the Assistant Head Supervisor, and then got the boot up to *the* Head Supervisor. The Head Supervisor thought this contact was so important that he immediately beamed the report to his counterpart at the CIA (the Nation’s Central Idiot Depository) who was responsible for International Security. The CIA man felt this report required the immediate attention of the NSA (the Not so Stupid Agency, who was always listening to telephone conversations). Before the day had ended, the report ended up on the desks of the Chairman of the Joint Chiefs of Staff, the Vice President of the United States, and *the man himself, The President of the United States.*

“What is this, some kind of joke?” asked the President.

“It does not appear to be a joke, sir. Our FBI man says that the kid is entirely credible. He spoke with the Dean of Admissions at Princeton, and Dean Green was gushing like you’d never seen before. The dean admitted that this kid had special powers and he could accurately predict the future. We’re not talking about some psycho whack-job from the Psycho Hotline, but a verified, tried-and-true, honest to God predictor of the future!” answered Jimmy Vargas, the National Security Adviser.

“Do you know what this means? Hot damn! Get this boy up here now! Good golly. If my name isn’t Bill, cigar rolling, Clinton, I’m gonna have me a certified fortuneteller advising me. Hot diggity dog! HILLARY! Come in here hun. I’ve got great news dear.” “What is it Bubba? Can’t you see I’m doing my hair again? The humidity in this house just frizzes my gorgeous hair, UGH! Martha, would you please come in and do my hair again,” yelled Hillary. “Just a minute, maam,” replied the White House hairdresser.

“Hillary, the NSA has found us a gosh-darned fortune teller. He’s good. He’s very good. He’s so good, that uh, he’s gonna help you get elected to the senate,” said The President. “That’s nice Bubba. Where is this boy, and what do we know about him,” asked Hillary. “Well, he’s a student at Princeton, and according to our intelligence (Hillary’s thinking, yeah right, anyone who would fool around with that overly large Monica has very limited intelligence) he can predict the future. He can even predict when we’re going to die! Imagine that!” remarked His Holiness. “When he comes here, I want to meet him, do you understand me, Bubba?” inquired Hillary. “Yes, dear,” replied the presidential husband.

Getting back now to Jacob, we find him in his dorm room, deep in thought on a beautiful warm day, reading Shakespeare, imagining himself as Romeo in Romeo & Juliet. Ah, wherefore art thou, my sweet princess...gallivanting through the forest in stockings, and robes made of silk. His imagination was jolted when he heard knocking at his door. "Who ees eet?" squeaked Jacob. "Hark, over yonder behind my door, who beckons me at this time of morn?" Jacob bellowed. "Secret Service," came the reply. "Whose secret service? Her majesty's secret service, or our domestic, light beer, not imported, secret service?" retorted Jacob. "The domestic kind," came the sardonic reply. Jacob opened the door wearing only his shorts and his book of Shakespeare. He saw two Secret Service agents who were readily identified by the earpiece and coiled wire jutting from their head. Behind them was Head Honcho from the FBI. "Come on in fellas. Care to join me for a reading of Romeo & Juliet?" Jacob asked facetiously. Secret Agent man number one spoke into his elbow "We're in. Secure the premises. Over." Secret Agent number two stood by the door, whether to prevent anyone from leaving, Jacob couldn't really tell. "What'll it be boys? Soda, leftover Chinese food, sandwiches? Want to watch the 49ers play on TV?" asked Jacob.

"Mr. Morgan," said Secret Agent Man, "we've come here today to ask for your help. Your Country needs you. The NSA needs you, as does the CIA, the DOD, the FBI, the DOG, the ABC's, the Doo Wops, the Humfalumps, and all the other acronym agencies around. Most importantly, the President of the United States needs you!"

"With what? Math homework? Political advice? I'm only 22 years old for God's sake. What could I offer everyone you mentioned at my young age...wait just a second...no...no way. Not a chance. It's not happening. I will not. I cannot. I will not in a house, not with a mouse, not in a box, not with a fox, I will not eat green eggs and ham, I will not, will not, Sam I am," answered Jacob. (Apologies to Dr. Seuss).

"We've been asked by our Commander in Chief to come here to offer you asylum, no, no, I mean an invitation to come to the White House to have dinner with the President, his wife and daughter. Tonight. 7:00 p.m. sharp." "But my hair! I have no clothes! The emperor will see me without my clothes," giggled Jacob. Okay, what do I do?" asked Jacob. "We'll have a car here for you at 5:15 p.m., wear a suit. No weapons. No Shakespeare. No tights. No fairies, no tinkerbells, no sexually transmitted diseases...oh, never mind. Just be ready at 5:15 p.m., and remember, keep this meeting quiet," said Secret Agent #1. "You mean, whisper very quietly so that nobody can hear what I'm saying? Or do you mean, don't tell anyone where I'm going tonight?" asked Jacob. "You don't have to talk quietly at dinner, the First Family can hear just fine. Try not to tell the neighborhood about your dinner tonight,

that's all," said Agent #2. Jacob walked all three agents out the door. As they were getting in their car, Jacob yelled at the top of his voice, "I'LL SEE YOU AT THE WHITE HOUSE TONIGHT FELLAS!"

We hope you've enjoyed our Third Issue, and would greatly appreciate any comments or feedback about our newsletter. Just as important, we'd love to hear what you think about Mr. Oginski's book that he's currently finishing.

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We'd really like to hear what you have to say. Thanks again!

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