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## How Bob Clifford changed a state law

### N.Y. dinner sparked development of statute setting timetable for settlement payments

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Robert A. Clifford didn't set out to alter the Illinois legal landscape over dinner in Buffalo, N.Y., last year.

That's just what happened.

After a long day in court just before Thanksgiving, Clifford was dining at the upscale Buffalo Club with colleagues from his trial team, sharing notes and ideas in the crash case of Colgan Air Flight 3407, the Feb. 12, 2009, accident that killed 50 people just outside Buffalo. Clifford represents eight plaintiffs in the case.

He said he doesn't remember what he ate that night. Nor does he remember exactly how many people were there — about a half-dozen or so.

What he does recall is that it was too late to fly back to Chicago. And at some point, the conversation at his table centered around paying settlements.

"The business manager in me was lamenting the fact that it takes so darn long at times for these insurance companies to pay the settlements that they've agreed to pay to our clients," he said.

"And we have to fight with 'em and tussle with 'em and prod 'em and make motions against 'em. And one of them says, 'Why do you have to do that? Don't you

have a prompt-pay law?'"

On that day, the answer to that question was "no." In four months, it will be "yes."

Gov. Patrick J. Quinn on Monday signed Senate Bill 1912, a replica of the New York statute which sets a timetable for paying settlements. The new law's origins function as a case study in how ideas can become law in Springfield.

Current Illinois law gives state courts discretion to enforce settlement payments in a timely manner.

But the new law, which takes effect Jan. 1, will require a defendant to tender a release to the plaintiff within 14 days of written confirmation of the settlement. The defendant has 30 days to pay the settlement once the plaintiff has returned the release.

As soon as Clifford saw a copy of the New York statute, the legislative grunt work began.

"I remarked to myself, 'We need one of those,'" he said. "So I got back to Chicago and I called (Illinois Trial Lawyers Association Executive Director) Jim Collins. I told him the story and said, 'Let's go to work.'"

From there, Clifford and the trial lawyers group took the idea to the Legislative Reference Bureau, and in the course of enlisting sponsors, Clifford said, also took it to Senate President



Robert A. Clifford

John J. Cullerton and House Speaker Michael J. Madigan.

In the bill's earliest stages, the trial lawyers took a straw poll of sorts among members to determine if the problem was widespread enough to push for legislation. The group got feedback from opponents as well, including those who represent municipal governments.

"We took into account all the points that they made," said Gregory L. Shevlin, a partner at Cook, Ysursa, Bartholomew, Brauer & Shevlin Ltd., who was ITLA president at the time. "We added in local government because there was concern that the original verbiage didn't make that clear enough, that local government entities are not subject to the bill.

"There was a lot of back-and-forth."

By the time the plan reached the House near the end of the

General Assembly's spring session, the perception among many lawmakers, especially House Republicans, was just the opposite — they saw the bill as hasty, poorly-vetted and a display of power by Democrats in concert with ITLA.

"Oh yeah. I hated it," said Rep. Ronald L. Sandack, a Republican from Downers Grove and one of the House members who led the charge against the measure.

Among a host of his objections is that the timetable is unrealistic, and opponents didn't have enough time to negotiate it.

"I have no animus against the trial lawyers ... but it was just jammed down our throats," he said.

Shevlin said the lawmaking process involved increasing the number of days to pay the settlement — one of several compromises ITLA made while the bill was moving through the legislative process.

"One section said 21 days. Now it's 30. There were compromises like that," he said.

And Clifford said he disputes the perception that the bill is a power-grab.

"What's so novel about you wanting to be paid?" he said.

"When I became a plaintiff's lawyer, I learned there are the 3 Ds of defense — defend, delay, and don't pay. ... And that's the truth. Every lawyer involved in tort litigation knows 'defend, delay and don't pay' ... And (this) is an effort to prevent that from continuing."