

Big Business after Consumers Once Again

In 2011, the insurance, pharmaceutical, and nursing home industries worked together with an extraordinary budget to try to deceive American consumers into giving up their constitutional rights through a bill known then as HR-5. This bill would have severely harmed the rights of consumers across the country who were catastrophically injured or killed by any of those industries. The purpose of HR-5 was to allow physicians, hospitals, nursing homes, pharmaceutical companies, and insurance companies to increase their ever-burgeoning profit levels. With proponents of the bill outspending lobbying efforts of consumer rights organizations by a ratio of 10 to 1, the bill nonetheless failed when the truth came out.

At that time, the greatest opponents of the bill turned out to be defenders of *states' rights*. As noted by those activists, each state in the country has the ability through elected representatives to determine the rights of its own consumers. It was considered unconstitutional to have a central government deprive individual states of their rights of self-determination. Since 2011 (and before), each state has made legislative choices regarding the judicial system based upon the will of its citizens. Insurance, Big-pharma and the nursing home industries have nonetheless continued to make record profits. In other words, HR-5 was not needed to protect these industries from their *invented threats*.

Sadly, in their zeal to deprive consumers of the health care coverage commonly known as *ObamaCare*, these same industries have again gathered forces to attempt to pass a new bill – as part of the intended destruction of *ObamaCare*, known as HR-1215. The bill has the same propensities to rob consumers of their rights as did HR-5 – in exchange for further increasing corporate profits that have already been on the rise since 2011.

My practice is devoted solely to representing the victims of nursing home abuse and neglect. Through these cases, we have uncovered fraud committed on American taxpayers in a number of different arenas.

In the first instance, we have uncovered nursing home owners who put family members on the payroll for jobs that do not exist. The salaries of non-existent employees (related to the owners) would come straight from taxpayers through Medicare and Medicaid payments. It has allowed nursing homes to take taxpayer funds earmarked for patient care and fraudulently divert that money into the pockets of corporate owners.

The next area that we have uncovered is the overcharging of rent from entities that are under a different name, but actually backed by the same individuals who own the nursing home. Nursing homes cry to the public that the Medicare and Medicaid dollars simply aren't enough to take care of the people whose safety they are charged with. However, what is not released to the public is the fact that ***these same owners of the businesses own the property for which they are charged obscenely excessive rent.*** In one example, quite near my area of practice, we uncovered a facility that charged as much in yearly rent as the entire building was worth (according to the local tax assessor). It is a deceptive means by which these organizations hide corporate profit while still crying poverty. Once again, taxpayer funds that are earmarked for patient care are diverted into the owners' pockets through their shell corporations who own the property.

Further, these same organizations use clever names to intimate that the expensive vendors who provide supplies, cleaning services, physical therapy and the like are unrelated third parties, when in fact they have the same owners as the nursing home. The contracts never go out to bid – since the owners of the nursing homes own the vendor corporations. They then overpay excessive fees for such “outside contractors” from taxpayer funds...again diverting taxpayer money from patient care.

One of the very few protections that consumers and residents in nursing homes have is the civil justice system – which is currently under attack by HR-1215. These cases perform four laudatory functions:

1. Obtain justice for families of victims who have been catastrophically injured or killed;
2. Uncover the fraud that deprives nursing home residents of the benefits of the taxpayer dollars that they deserve and need;
3. Improve the quality of care for other nursing home residents through accountability; and,
4. Recoup wasted financial resources from the wrongdoers back to taxpayers.

The current bill, HR 1215, includes a *cap* on damages of \$250,000 – no matter what the injury, no matter what the degree of pain, no matter whether manslaughter or rape are involved and no matter what the wealth of the corporate wrongdoer is. This is precisely the same cap that not only was defeated many years ago under HR-5, but which has also been

held to be unconstitutional by a number of state supreme courts. What it does represent is an intended license to steal by the nursing home industry on the backs of the most vulnerable members of our society.

A significant component of the driving force behind HR-1215 is the hypocrisy clearly demonstrated by its backers. The vast majority of supporters of HR-1215 are business leaders who consistently avail themselves of the civil justice system when they perceive that their business was harmed by another business. This represents the vast majority and costs of all litigation. That is, commercial litigation dwarfs nursing home and malpractice litigation in our court system in terms of both quantity and expense upon the United States taxpayers. Worse yet, the original supporters of HR-5 many years ago were actually two physicians who not only were sued for catastrophically harming patients, but who themselves availed themselves of the civil justice system as plaintiffs, seeking money from other individuals for physical injuries. In short, the hypocrisy is rampant.

Finally, this bill is extraordinarily harmful to United States taxpayers. A significant portion of nursing home and malpractice litigation is the function that consumer lawyers play, serving as *private attorneys general* on behalf of Medicare and Medicaid. Little known to the public is the fact that whatever monies Medicare and Medicaid expend toward addressing injuries caused by abuse of neglectful nursing homes ultimately gets paid back by the wrongdoers out of the lawsuits. It has been estimated that over one billion dollars is provided back to these public organizations. It is likewise important to recognize that Medicare and Medicaid are fed by taxpayer dollars. When consumer attorneys help Medicare and Medicaid recoup these costs, it defrays the tax burden on every citizen in this country.

The significant challenge for tax paying citizens is that HR-1215 would dissuade countless harmed consumers from not only protecting their own rights, but additionally through their private attorneys general in recouping billions of dollars for the United States government.

There is nothing laudable, progressive or protective about HR-1215. Instead it is yet another example of big business attempting to increase its already extraordinary level of profit. A prime example of this is the fact that this industry has already demonstrated a lobbying budget of in excess of \$500,000,000 to increase its own profits, while consumer organizations have a budget closer to \$6,000,000.

However, much like its predecessor, HR-5, the truth of HR-1215 will emerge and most likely prevent its passage.