Lien on me

By Scott H.Z. Sumner

They really are out to get you.

Throughout my two and one-half decades of representing plaintiffs, the lien-recovery industry has grown more pervasive and more powerful, enabled and extended by court decisions consciously or unconsciously prioritizing business interests over consumer interests.

The "agreements" that health insurers and ERISA-providing employers impose upon consumers are unilateral, non-negotiable, and entirely unavoidable. To invoke the hoary fiction of health plan members entering contracts through arms-length transactions as parties of equal bargaining power to American insurance and corporate behemoths in order to enforce such obvious contracts of adhesion is a *cruel* fiction, entirely unmoored from the reality facing consumers.

It is especially annoying that this fiction is favored by "conservative" jurists who are all too willing to accept the insuring behemoths' claiming a right to take plaintiff litigants' personal property – by allowing these behemoths to claim a right to take plan members' general damages awards and lost income awards to pay off reimbursement claims that should extend no further than solely past medical damages actually recovered.

And so it goes. Even now, health payors are seeking to extend these reimbursement efforts to reach into our clients' own uninsured/underinsured benefits.

Combining these trends with the California Supreme Court's decision to suspend contract law in the personal injury damages setting by giving tortfeasors the discounts negotiated by a victim's health insurance, and you can see how our clients and their recoveries are being squeezed by corporate greed and dominance on both ends – damages are suppressed in favor of liability insurers and corporate defendants, then the damages that are recovered are decimated by unfair and unreasonable reimbursement standards.

So yes, they are out to get us – our clients and ourselves. So arm yourself with knowledge … read. ■

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