

Philip H. Corboy, Jr.'s Response to Gingrich on Medical Malpractice Caps Featured in Chicago Tribune

January 2009

Philip Harnett Corboy, Jr., President of the Illinois Trial Lawyers Association and a personal injury and medical malpractice lawyer at the firm of Corboy & Demetrio, wrote the following letter to the *Chicago Tribune* in response to a commentary by Newt Gingrich and Wayne Oliver. It was recently published in the *Tribune*.

Individuals' rights over corporate rights

January 20, 2009

In their Dec. 7, 2008 commentary piece, former Speaker of the House Newt Gingrich and Wayne Oliver of the Center for Health Transformation make an impassioned plea to promote corporate rights over the rights of individuals ("Which is more important, your doctor or a personal injury lawyer?").

First, it's important to reveal the agendas of the authors of that letter. Newt Gingrich led a Republican "revolution" focused on undermining government regulations and programs, including efforts to dismantle the Medicare program that has provided health care for millions of Americans. Gingrich's efforts were bankrolled by corporate PACs and their lobbyists in Washington. His revolution ended definitively with the election of Barack Obama this past November.

Mr. Oliver's Center for Health Transformation is a for-profit group founded by the biggest insurance and pharmaceutical companies in the country. The group is advocating for laws that would radically change a fundamental premise of the legal system - the right to have a jury of your peers decide upon an outcome for a case - all in the name of increased profits for insurance companies. Does anyone believe that the same big insurance companies that routinely deny health care coverage to patients really care about the well being of

Attorneys

- Philip Harnett Corboy Jr.

regular Americans?

Apparently, they are not aware or have chosen to ignore that twice before, our state's highest court has decided in favor of patients and against the insurance companies that would limit these rights to protect their own profits. The court ruled that caps are unconstitutional and would arbitrarily fall exclusively on those most deserving of compensation - the severely injured. Even those who have argued before our Supreme Court in support of caps have never claimed that these precedents were wrongly decided.

Gingrich and Oliver argue that a reduction in malpractice premiums and the return of doctors to the state have resulted from the law containing caps. Nothing could be further from the truth. A look at the statistics compiled and distributed by the American Medical Association clearly shows that the number of doctors in Illinois has been steadily increasing over the last 13 years. Furthermore, not one case has been litigated under the new cap in Illinois.

The simple fact is that the positive climate for doctors has resulted from strong, long-suppressed insurance reforms, which were included in the legislation. That law has forced malpractice insurance companies to provide greater transparency on rate-setting and payouts that has, in turn, spurred competition, motivated more companies to enter the marketplace, and lowered premiums for doctors. Important to the discussion is the additional fact that Illinois' largest malpractice insurer has reported that payouts have remained flat for the past 13 years. That same insurance carrier admitted in legislative hearings in 2005 that capping awards would not guarantee lower premiums for doctors.

The Gingrich-Oliver letter raises a cry of alarm over the pending case of Abigaile Lebron, but provides no details about it. This is for the obvious reason that they're more concerned about promoting their ideology than protecting the real-life victims of catastrophic medical errors. Abigaile is a three-year-old little girl whose life has been forever changed by the severe brain damage she suffered as a result of medical negligence. It is likely that Abigaile will have to be fed through a tube for the rest of her life. She will never develop cognitively or physically as her peers do. And she will likely never live independently. It is inarguably a very painful tragedy for Abigaile and all who know and love her.

The insurance industry and its apologists like Mr. Gingrich and Mr. Oliver have argued that Abigaile's compensation for lifelong disability; pain and suffering should be arbitrarily limited, regardless of what a jury of average citizens may decide. The question before the Illinois Supreme Court is whether the Illinois Constitution allows Abigaile's rights to be limited in this fashion.

The Illinois Constitution was put in place to ensure individual rights and freedoms. While corporations and profit-hungry executives often stack the decks against individuals in the marketplace and the halls of government, the courtroom can still provide all parties with a level playing field. The Illinois Supreme Court will now decide whether that constitutional standard remains in place for patients like Abigaile Lebron. We trust that it will hold patients' rights in higher regard than did former-Speaker Gingrich and his corporately bankrolled acolytes.

--Philip Harnett Corboy, Jr.
President, Illinois Trial Lawyers Association
Chicago