Justice Report



Summer 1999

An update from the Foundation for Taxpayer and Consumer Rights

The Foundation's Consumers For Quality Care Project Fuels the National HMO Patients' Rights Movement

hen United States Senators and President Clinton held press conferences across the nation in July 1999 to promote the Patients' Bill of Rights, they turned to the Foundation's Consumers For Quality Care (COC) for patients to stand beside them and tell personal stories of HMO abuses. Every day for five months in 1998, CQC sent 1,000 legislators and media contacts a different story and picture of HMO medicine casualties who did not have a remedy due to the Employee Retirement Income Security Act of 1974 or ERISA. CNN said of the Casualty of the Day Campaign, "Far more effective [than HMO industry ads] is this shoestring California consumer

group; no ads, just a fax a day to keep the HMO's at bay." By late 1998, President Clinton declared that a right without a remedy is not a right—noting he would not sign patients' rights legislation that did not include reform of ERISA.

In 1999, CQC has focused on educating the public about the plight of patients with no remedy and the ability of states to enact HMO liability measures that bypass ERISA. A model Texas law allows patients to sue HMOs for quality of care violations. CQC has worked with groups and legislators in 23 states who have introduced legislation based on the Texas law. That law resulted in deterrence of HMO abuses

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Auto Insurance Update

FTCR Spearheads "Lifeline" Insurance For California's Poor

or most Californians, getting to work means driving to work. Auto insurance is mandatory and can be very expensive. While a "lifeline" for the poor exists for other necessities such as telephone and electricity service, low-income consumers do not have a similar option for auto insurance.

Without an affordable auto insurance policy, millions of Californians are forced to drive uninsured. Yet, at no cost to taxpayers or other insured Californians - and a likely reduction in car insurance costs across the board - the state can enact a low-

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FTCR Study Sparks Major Insurance Industry Accountability Legislation

March 1999 report published by FTCR, "The Low-Balling of the California Insurance Claim," has become the centerpiece of an effort by consumer groups to restore civil justice protections to innocent accident victims. Californians who are injured by reckless drivers are often further victimized by unscrupulous insurers that deny, delay or undervalue payment on a claim.

The report found that since 1988, when the California Supreme Court took away innocent accident victims' right to sue at-fault drivers' insurers for bad faith

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PRESIDENT'S MESSAGE

Help Wanted: Patriots

By Harvey Rosenfield, President of the Foundation



Our democracy is swarming with mighty special interests. Lobbyists for the insurance companies, HMOs, banks, utilities and other financial titans work hard to

protect their privileges and profits. At their hands, our nation's traditional values of justice, individual prosperity and respect for the environment and human dignity are too easily undermined. Moreover, many elected officials are beholden to these interests. So who is looking out for the public's interest?

We are.

The Foundation for Taxpayer and Consumer Rights is one of the nation's largest non-profit, non-partisan consumer protection organizations. Based in California, with modest offices in New York, San Francisco, and Washington, D.C., our mission is to counter-balance the lobbyists, the interest groups and their political allies. We've challenged them in the legislature, in court, and at the ballot box. We've saved taxpayers and consumers literally billions of dollars.

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- The Oaks Project Teaches
 Citizens How to Become Leaders
- Foundation Sues Aetna For Racketeering, Kaiser for Advertising Fraud
- Foundation Announces New Project to Protect Integrity and Impartiality of the Judicial Process
- $\ensuremath{\mbox{\tiny \updownarrow}}$ and more...

Why Don't We Learn This Stuff in High School?

The Oaks Project Teaches Citizens How to Become Leaders — Over 11,000 Letters Delivered to State Capitol

he Oaks Project began two years ago with the purpose of building an organization comprised of volunteer citizen leaders who,

as Ralph Nader stated, would be "as strong and sturdy and as well rooted in communities, as the oaks that line California." The Project set out to teach the citizen "Oaks" all of the political and organizing skills that are too often withheld from the citizenry.

Last year, the Oaks Project, still in its infancy, did what most organizations will never do: they placed a statewide

initiative on the ballot. The Oaks collected over one hundred thousand signatures to sponsor Proposition 9, which would have stopped the multi-billion dollar taxpayer bailout of the giant utility companies.

The Oaks' grassroots campaign to pass Prop 9 was unprecedented. As part of a tightly organized effort, the Oaks volunteers, going door-to-door



FTCR president Harvey Rosenfield and Oaks at Bonnie Raitt concert benefit on Prop 9.

and in front of supermarkets, personally spoke to nearly 1,000,000 voters! In addition to direct voter contact, Oaks placed opinion pieces in newspapers, appeared as guests on TV and radio talk shows, debated utility company

executives, testified at public hearings and staged numerous successful press events

Historic as the Oaks' Prop 9 enter-

prise was, the utilities anti-Prop 9 campaign prevailed by outspending the grassroots team by nearly 200 to 1. The utilities hid behind paid spokespeople and fictitious "committee" names as they broadcast over eight thousand TV commercials to defeat Prop 9. The public never knew that utility companies were behind the ads.

Right after the November loss, the Oaks went back to work. They began laying the groundwork for a campaign to bring "truth in advertising" to the initiative process.

Their work turned into this year's educational campaign and legislative bill, SB 1220 (Schiff). SB 1220 requires that all ads for or against initiatives plainly disclose the real names of the sponsors. If SB 1220 passes,

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The Oaks in Action

Why the People Must Be Vigilant

aks volunteers—in Sacramento to support Foundation bills—stood open-mouthed as they watched the first Senate roll call vote on SB 1220, the Oaks' Truth in Initiative Advertising Act. They were shocked to see one prominent "No" vote, from Senator Jackie Speier, in a sea of Democratic "Ayes."

Forty Oaks volunteers quickly stormed into Senator Speier's office. They did not budge when they were told to speak to the senator's staff. They wanted to speak to her. She agreed. They asked her to change her vote.

Faced with forty informed citizens,

the senator listened as the Oaks painstakingly explained that she had her facts wrong and that her vote endangered the bill. The senator was stunned to learn that her vote was needed. "This is a 2/3 [vote of all legislators] bill?" she asked. Every Oak nodded. "Oh," was her response.

When SB 1220 came up for a second vote, the Oaks held their breath as Speier's name was called: "No to Aye" came the response — allowing the bill to pass and proving once again that citizens in the Capitol can make a difference. ¢

Teaching the Pros...

You could hear snickering under the breath of the professionals on a May day when two dozen Oaks in t-shirts declaring "Stop Insurance Low-balling" filled the corridor outside the California State Senate chamber, the province of lobbyists in \$500 suits and tassled, Gucci loafers. But the chuckles stopped minutes later when Senator Debra Bowen walked right past the pros and straight up to Oak Mytyl Glomboske, assuring Mytyl that the Oaks would have Bowen's vote on all three Foundation bills being heard that day.

OAKS - continued

corporate polluters, for example, will not be allowed to hide behind names like, "Californians for the Environment." The Oaks have turned their Prop 9 experience into a larger fight to ensure the integrity of the initiative process itself.

The Oaks organized a letter writing drive that resulted in over 6,300 personal, hand-written letters and post cards



Oaks meet with SB 1220 author, Senator Adam Schiff, after successful committee hearing.

delivered to members of the Assembly and State Senate. They lobbied scores of representatives and testified at Capitol hearings. They organized press events and had over a dozen opinion

pieces published in major papers such as the San Francisco Chronicle and the Orange County Register.

SB 1220 cleared the Senate with a two-thirds vote. In a true showing of citizen power, one California Senator changed her vote from a NO to a YES after meeting with a group of Oaks Project Volunteers. The bill now moves to the Assembly.

The Oaks have also generated over 5,600 letters and postcards on other Foundation issues, including HMO and auto insurance reform.

The Oaks, strong and sturdy, understand that citizenship and democracy are per-

manent pursuits. And they are having a great time giving the state's special interests something to worry about. Stay tuned.... ¢



Oaks don life jackets outside an Insurance Committee hearing to dramatize the need for "Lifeline" auto insurance for lowincome drivers.

Foundation Sues Aetna For Racketeering, Kaiser for Advertising Fraud

n the first federal class action lawsuit against an HMO for racketeering since the U.S. Supreme Court allowed such lawsuits earlier this year, Aetna was sued for wide-spread fraud in its advertising, marketing and membership materials. The suit was brought in conjunction with the private law firm of Milberg Weiss Bershad Hynes & Lerach, LLP.

The case was filed on behalf of patients under the Racketeer Influenced and Corrupt Organizations Act (RICO) in the United States Court for the Eastern District of Pennsylvania on April 16th. It alleges that Aetna consistently advertises and represents that all of its policies are committed to main-

taining and improving quality while, in fact, there is a systemic and coordinated effort by the company to undermine quality medical care in order to cut costs.

In March, the Foundation also filed a first-of-its-kind lawsuit on behalf of Kaiser Permanente patients alleging that a \$60 million per-year, mass-market advertising campaign by the HMO has recruited nearly one half million new members through misrepresentation.

According to the complaint, the HMO advertises that only doctors, not administrators, make decisions at the HMO and that only medical need and independent medical judgment, not financial concerns, determine a patient's

care at the company. The unfair business practices lawsuit alleges that Kaiser, contrary to its advertising claims, has implemented systemic policies and practices based on monetary and profitability concerns that interfere with the medical judgment of Kaiser doctors.

The case seeks monetary and injunctive relief, including an order to remove the television ads from the air and to implement a corrective advertising campaign.

Both cases have received national media attention, including articles published in the New York Times and Washington Post. \$\(\xi\$

Aetna CEO Attacks "Weeping Widow"

avid Goodrich, a district attorney who risked his life by prosecuting gang violence, died of stomach cancer after a two and one-half year ordeal trying to obtain Aetna's approval of cancer treatment recommended by his Aetna doctors. In January, a San Bernardino County jury issued a \$120 million rebuke of Aetna's handling of Goodrich's treatment. Aetna's CEO Richard Huber responded: "This is a travesty of justice. You had a skillful ambulance-chasing lawyer, a politically motivated judge and a weeping widow." (The Hartford Courant, January 22, 1999)

Los Angeles Times columnist Ken Reich reported that Huber, "expanded his complaints, telling me that juries are customarily not intelligent enough to consider complicated contractual issues and that this one in particular was too ill-informed, as a result of the judge's evidentiary rulings, to render a sound verdict."

Foundation president Harvey Rosenfield and advocacy director Jamie Court wrote Aetna's board of directors citing Huber's lack of remorse and seeking his resignation. "If Aetna is dedicated to making things better for its patients, Mr. Huber does not belong as

your C.E.O,"
they wrote. "The
true travesty of
justice would be
if Mr. Huber
remains at the
helm of Aetna
and company policy continues to
be indifference to
its dying patients
and to juries that
condemn such policies."



David and Teresa Goodrich

After a barrage of press, Aetna issued a very misleading statement to Congress defending its conduct toward the Goodriches to which the Foundation responded with a point-by-point refutation and these comments: "Aetna's lack of remorse and the unwillingness to accept responsibility in this case is a symptom of the company's larger defiance of civil society's mandates. Such a company should not be entitled to federal contracts."

Seizing on the Foundation's letter,

California Congressman Pete Stark, the ranking Democrat on the House of Representatives Ways and Means Sub-Committee on Health, went on the record in the February 10th Congressional record. "Is this really the kind of CEO we would want as head of the nation's largest health insurance company?" Stark stated in a section of the record headed "What Aetna Isn't Telling You About The Goodrich Case." Printed in the record also is the Foundation's letter to Aetna's Board of Directors, a letter to Congress, and the point-by-point refutation of Aetna's misstatements.

Finally, Huber was forced to apologize to Mrs. Goodrich. "I want to assure you that I did not intend for the comment to minimize in any way the devastation you feel at the loss of a loved one," Huber wrote.

While she appreciated the note, Teresa Goodrich said: "He did not apologize for what Aetna did to my husband, and that is really what I would like to have an apology for." ¢

Aetna-Prudential Merger Challenged

hen the U.S. Justice Department approved the \$1 billion Aetna-Prudential merger in June 1999, it was with one big caveat—the company was forced to divest of nearly one half million members in Texas—a recommendation of the Foundation's Consumers for Quality Care project and, no doubt, a disappointment for Aetna CEO, Huber, who had called Texas "the filet mignon" of the deal. COC had urged federal and state regulators to stop the pending merger. Before the modifications, the company was to insure one out of every ten Americans; now it will insure one of eleven. The Foundation's opposition was noted repeatedly in the New York Times, including these observations in an April 30th article:

- The "campaign for patients' rights is an empty gesture if Federal officials ignore the growing concentration of the managed-care industry."
- "The Justice Department has railed against physician unionization as a threat to free-market competition, but the Administration has failed to break up a single H.M.O. merger."
- "If Aetna is allowed to buy Prudential Health Care, the resulting company would be in a powerful position to grind its payment rates so low that physicians could not adequately care for patients."

PATIENTS' RIGHTS continued from page 1

but not cost increases or litigiousness.

In California, the Foundation is sponsoring landmark legislation, Senate Bill 21 (Figueroa), that allows injured patients to receive damages against their HMO both for quality of care violations and if the HMO does not live up to the obligations in its insurance contract. The San Francisco Chronicle editorialized for SB 21, "the remedy for the injustice of allowing the HMOs to remain unaccountable must be state law." The bill passed the California Senate in May on a vote of 21-16 and the Assembly Judiciary Committee in June with Republican support.

CQC continues to serve as a national clearinghouse of information about patient problems with HMO medicine

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The Bills Project Exposes Fraud and Errors in Consumer Billing

The Bills Project is currently producing a landmark consumer report entitled, We All Pay The Price: The Prevalence of Misbilling in America, that will be issued this year. The report documents fraudulent, erroneous and deceptive billing practices in the medical, financial, utility, retail and services sectors. It also documents the billions of dollars of overcharges paid by the U.S. government each year and will include proposed "Truth in Billing Legislation" that will offer consumers numerous protections.

The Bills Project has also actively combated billing abuses involving credit card, utility, and medical bills through

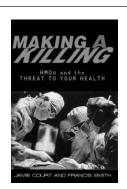
the following actions:

- Garnering national media attention, including an article in U.S. News and World report, by publicizing the illegal practices of Chevy Chase Bank and First USA in raising cardholder interest rates to levels as high as 30%, organizing consumers to file complaints with federal regulators and elected officials, and working with attorneys to file class action litigation against these companies.
- Publicizing the practice by MCI and Sprint of charging their customers so-called "casual rates," which can result in a \$2.50+ charge for a one-

- minute national long-distance call, without giving any prior notice of the higher charges. The FCC has since ruled that MCI's imposition of these charges is illegal.
- Contesting the lobbying efforts by the cable industry to institutionalize late charges of \$5.00 or greater on cable bills in Illinois and Oklahoma.
- Combating erroneous and fraudulent charges on medical patient bills and recently presenting preliminary findings from its report at the Medical Billing Advocates of America's first annual conference. ¢

PATIENTS' RIGHTS continued from previous page

and the lack of accountability for HMOs under the law. With a grant from the Civil Justice Foundation, CQC is creating a computerized directory of thousands of patients who have suffered HMO abuses and medical mishaps. Support from the Massachusetts-based Institute For A Civil Society has allowed the Foundation to complete a book about the vices of HMO medicine and possibilities for reform. *Making A Killing: HMOs and the Threat to Your Health*, written by Jamie Court and Frank Smith, will be published by Common Courage Press this fall. \$\display\$



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1-800-4973207, or on
the web at

www.commoncouragepress.com.

CCAIR Takes on Tort Deformers

he corporate-led attack on the right to trial by jury in civil cases—socalled "tort reform"—has sunk millions of dollars into hundreds of industrysponsored conservative groups, "thinktanks," polling and lobbying firms, trying to win legal immunity for companies whose practices injure and kill innocent consumers. In a major step towards countering this movement, last year Citizens for Corporate Accountability & Individual Rights (CCAIR)—a Foundation project led by Joanne Doroshow—was formed as the first national consumer organization dedicated exclusively to reversing the momentum for "tort reform" in this country. In August 1998, CCAIR opened a New York City office to, among other things, help develop a coordinated national media focus.

CCAIR is starting to steer the political debate over "tort reform" away from lawyers and lawyer-bashing (where corporations have tried to put it), and toward issues of corporate accountability and individual rights, where it belongs. One of CCAIR's first priorities has been to fulfill an immediate need to

provide organizations and individuals concerned about civil justice issues with useful and current information on a regular basis. Toward this end, CCAIR regularly sends important "alerts" and fact sheets on civil justice issues to over 300 key state-based groups, individuals and media outlets.

CCAIR has had an extremely successful first year raising public awareness about the dangers of "tort reforms" assisting in key state battles and influencing the media in its coverage of these issues. For example, the June 6, 1999 edition of the Sunday New York Times "Week in Review" section featured Joanne and CCAIR in a story about media distortions of civil justice issues. In July CCAIR released a new report entitled The Failure of "Tort Reform" to Cut Insurance Prices, the most extensive review of insurance rate activity in the wake of the liability insurance crisis ever undertaken.

For more information, contact CCAIR at its New York office: (212) 267-2801. ¢

Foundation Announces New Project to Protect Integrity and Impartiality of the Judicial Process

s keepers of the official record of legal proceedings, court reporters are essential to the integrity of our justice system. They must retain an impartial role in the adversarial process. Increasingly, however, this long-standing principle is being undermined by major litigation payors, largely insurance companies and other national corporations, that are contracting directly with some court reporting agencies to report all their depositions in all their cases.

These arrangements, at the very least, undermine laws prohibiting acts by court reporters that create an appearance of partiality, and, at worst, give preferential treatment and extra services that threaten consumer privacy. These abuses include compiling witness databases of deposition testimony for use in later cases, providing transcripts on an expedited basis, and staying after depo-

sitions to record summaries of the deposition as dictated by the insurer's counsel. The ultimate and most serious consequence of this trend is the undermining of the integrity of the judicial system in and of itself as a neutral mechanism for resolving disputes.

To reverse this growing national problem, the Foundation for Taxpayer and Consumer Rights' Fair Justice Project is being organized by a full-time staff attorney, Pam Pressley. Pressley works with court reporters, attorneys, judges, and other concerned citizens across the country to plan educational and judicial efforts to prohibit interested parties in litigation from entering into preferential agreements with members of the court reporting profession.

The Foundation will serve as a nationwide clearinghouse for documentation of problems raised by improper relationships with insurance companies and others that compromise the impartiality of officers of the court. The Foundation staff has also provided key educational materials as well as drafted model legislation and rules.

As a result of the project's efforts, there are currently over twenty states with legislation, court rules or regulations pending to prohibit court reporters from having preferential contractual relationships with interested parties in litigation. Already this year, Indiana has passed a law and the Arkansas Supreme Court has adopted a similar court rule that will preserve court reporter impartiality.

In August FTCR organized a press conference in Boston attended by court reporters from around the country to release a first-of-its kind white paper documenting the abuses posed by preferential insurer deals with court reporters. ¢

President's Message

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This year, our lawyers have challenged the HMOs' dangerous medical practices in landmark lawsuits to protect health care quality. We've sued to force insurance companies to base auto insurance premiums on a motorist's driving record, rather than zip code. And we've gone to court to protect seniors against rip-offs in long term care policies.

FTCR's legislative advocates are working to maintain the independence of the court system and protect the integrity of the initiative process. We wrote a proposal to lower premiums by ensuring that all motorists can carry insurance.

Meanwhile, our researchers are developing new protections against those incomprehensible and often incorrect bills that you receive from the hospital, credit card companies and utilities.

To fulfill our mission, however, the Foundation needs more than advocates, researchers and lawyers. That's why FTCR has undertaken an unprecedented citizen

organizing campaign.

We're recruiting 1000 people who are willing to roll up their sleeves and work hard to promote democracy at the neighborhood, city, state and federal levels. These "Oaks"—so named, because they must be strong and firmly rooted in their community—agree to

volunteer fifteen hours a month (a fraction of what the average American spends watching TV). In exchange, FTCR provides intensive training and hands-on experience in the tools of citizen advocacy.

Over two hundred Californians have become Oaks so far.

Their work has already garnered widespread national attention from the news media. Consumer advocate Ralph Nader is a frequent lecturer at Oaks events. In the long run, nothing is more crucial to the success of the Foundation's work than these citizen activists.

FTCR Offers Nation's Public Power Agencies Lessons From California Deregulation Debacle

TCR staff advocate Doug Heller spoke to representatives of the nation's public power agencies and the nation's largest bond investors about the dire impacts of "electricity deregulation" on residential and small business consumers as well as municipal power companies. At the April conference in New York City, Heller offered lessons from California's anti-consumer electric restructuring process. "Armed with billions of dollars in corporate welfare, the private utilities are poised to take full control of the utility industry," Heller warned. "An unwillingness to stand up to the private electric monopolies could mean the death of publicly-owned utilities and result in dramatically higher prices to electricity consumers." ¢

LIFELINE continued from page 1

cost automobile insurance program which will make affordable auto insurance available to millions of low-income Californians.

In 1997, FTCR testified before the Department of Insurance to the impor-

her top legislative priorities for 1999 and authored SB 171, the Lifeline Auto Insurance Plan. FTCR has developed tremendous consumer and low-income group support for this proposal, which passed the Senate on a vote of 24-12.



tance of developing a means for California's working poor to obtain auto insurance. During 1998, FTCR, working with nationally recognized actuary Allan Schwartz, developed the "Lifeline Automobile Insurance Plan." This plan requires auto insurers in the state to sell a basic liability policy to qualifying low-income drivers at a premium of \$300/year for drivers with no violation points in three years or \$400 for drivers with one point. With the state mandating the purchase of auto insurance and heavily penalizing those who drive without it, it is essential that provisions are made for those least able to afford to insure. Furthermore, under Insurance Commissioner Quackenbush's Proposition 213, uninsured motorists cannot collect pain and suffering damages when in an accident. Lifeline Auto Insurance will provide much needed relief to those motorists who are now criminalized because they cannot afford auto insurance, and it will create savings to those who already buy uninsured motorist coverage.

California State Senator Martha Escutia made low-cost insurance one of California would be the first state in the nation to enact this essential insurance reform. ¢

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and improper dealing, insurance companies have:

- increased profit margins by 300%, largely by cutting the percentage of premium returned to accident victims by 40%.
- decreased the inflation-adjusted value of a liability claim by 29.1% in California. In 1998, Californians received one quarter less for a claim than the national average;
- paid 26% fewer claims to California accident victims while accident victims nationwide saw an 8.5% increase in claims settled:

After the report's coverage in the Los Angeles Times and Sacramento Bee, California State Senator Martha Escutia introduced, SB 1237, which has passed the Senate and the Assembly. \$\diamonup\$



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d like to learn more	e about Foundation projects,	please send me information on:	
 □ Consumers for Quality Care (CQC) □ Proposition 103 Enforcement Project □ The Oaks Project 		Donations are tax-deductible (FTCR Tax 1D#95-3993720). All contributions are strictly confidential. Please make checks payable to FTCR.	
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