Ralph Nader Radio Hour Episode 525 Transcript

Steve Skrovan: It's the *Ralph Nader Radio Hour*.

[Music]

Steve Skrovan: Welcome to this special live taping of the *Ralph Nader Radio Hour*. My name is Steve Skrovan, along with my co-hosts, David Feldman and Hannah. Hello, David.

David Feldman: Hello.

Steve Skrovan: Hello, Hannah.

Hannah Feldman: Hello.

Steve Skrovan: And David, were you going to say something?

David Feldman: It's just exciting to have our listeners in our virtual studio audience. It's exciting.

Steve Skrovan: That's correct. This is a live Zoom taping. We've got people from all over the country and the world. We've got people from Pakistan. We've got people from all over the United States. And we welcome you and thank you for being here.

And we also have the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Welcome, everybody. This program will relate to some of your own experiences with insurance companies.

Steve Skrovan: That's right. Here's the deal we make with insurance companies. Every month I give you money, then if something happens to me, you pay to cover my medical bills or my car repairs or my lost wages. We sign a contract and both parties agree to the terms. And if I miss my payments, my coverage lapses. But what happens when the insurance company doesn't live up to their end of the deal? Sometimes it can seem like insurance companies are looking for excuses to avoid paying out, almost as if they were acting in bad faith.

Our guest today is the father of bad faith insurance law, attorney William Shernoff. Mr. Shernoff is a nationally recognized trailblazer in the field with decades of experience fighting for the little guy against the big bad insurance companies.

Today's show is co-sponsored by the American Museum of Tort Law, and we'll hear from the museum's director, Melissa Bird. After that, David, Hannah, and I will join the discussion, and we'll bring our virtual audience into the conversation for a live Q&A.

As always, somewhere along the line, we'll check in with our corporate crime reporter, Russell Mokhiber. But first, let's kick things off with the director of the American Museum of Tort Law, Melissa Bird,who is going to introduce our guest, Melissa?

Melissa Bird: Thanks, Steve. Welcome, everyone.

The American Museum of Tort Law is proud to co-sponsor today's discussion on the *Ralph Nader Radio Hour* live. Thank you all for joining us for a compelling discussion with our guest, consumer rights attorney, William Shernoff, who is marking 50 years as the father of bad-faith insurance law.

Mr. Shernoff's 1979 landmark case, *Egan v. Mutual of Omaha*, set tort law precedent and continues to grant policyholders protection from unfair claims practices. But before we introduce Bill, we here at the Tort Law Museum would like to take this opportunity to invite all who are listening to visit our website, www.tortmuseum.org, where you can enjoy a virtual tour. Also, please check out our online gift shop where you can pick up a revised edition of *Payment Refused* by William Shernoff [and Thelma O'Brien], which alerts us to the fact that insurance companies are rallying for tort reform only to safeguard their unregulated excessive profits.

Now, it is my pleasure to introduce our speaker for today's discussion, Bill Shernoff, who is founder of Shernoff Bidart Echeverria. Thank you for joining us today, Bill.

William Shernoff: You're welcome. It's my pleasure.

Ralph Nader: Yeah. Thank you, Bill. It's my pleasure to open up the discussion here.

Bill has pioneered this area before every kind of insurance—that's health insurance, disability insurance, long-term care insurance, life insurance, auto insurance, homeowners insurance, commercial property insurance, and business interruption insurance—which was more prominently displayed during the pandemic when so many businesses were interrupted and more than a few couldn't get business interruption insurance companies to pay what they were obligated to pay.

Bad-faith insurance, basically, is when the insurance company doesn't deliver for you after you've paid the premiums. And they develop all kinds of excuses as to why they're not going to pay, how they can delay paying you for endless amounts of time and get away with it. Well, they started not getting away with it 50 years ago when a young lawyer from California, William Shernoff, who we're going to speak with today, broke ground. Bill, tell us how it all happened.

William Shernoff: It happened with one case that started the ball rolling on insurance bad-faith, called *Michael Egan v. Mutual of Omaha.*

And what happened in that case was that Michael, who was a roofer, was working on a roof and he was climbing a ladder up to the roof and the rung broke and he fell to the ground around 12 feet, and he hurt his back very severely. He had some physical therapy for nine months, but that didn't seem to work, so he had a surgery on his back and unfortunately, the surgery was unsuccessful. And he went on disability.

Michael had a disability insurance policy that would pay him $200 a month for life, if it was caused by an accident but only for three months if it was caused by a sickness. And they started out by paying him $200 a month and classified it as an accident. But after about two months, they switched him from accident to sickness, and they were getting ready to cut him off after three months.

They had adjusters go to his house, and they accused him of malingering. They said they were only going to pay him three months, because it wasn't an accident, it was sickness, and it was just a horrible situation. They made him cry. His wife was there and his daughter was there. They all cried. And they just would not pay him anymore. They finally had another visit and offered him a small amount of money if he would surrender his whole policy.

As it turned out, the case went to trial and it was shown during the trial that they never investigated. They never talked to the doctor. They just switched him from accident to sickness to save them about $40,000 in benefits. And the jury was, you could tell, very upset that this took place. They had no grounds to switch him other than to save themselves money and cut Michael Egan off his benefits.

The jury came back with the verdict to give him his full benefits of $45,000. They gave him emotional stress damages of $75,000 and punitive damages of $5 million. Then this case was appealed to the California Supreme Court, which set the precedent for insurance bad-faith. The Supreme Court held there is the duty of an insurance company to treat their policyholders fairly. They have a duty to investigate the claim and to look for ways to support a claim, not just ways to deny a claim. the Supreme Court decision then became precedent in California, and it spread to other states. That's how it all started.

Ralph Nader: And it continues. There are lawyers now all over the country who specialize in bad-faith insurance cases.

Just to repeat, a bad-faith claim arises in a court of law when the insurance company denies or delays your claim unreasonably and without proper cause. Doing so is seen as a violation of the duty of good faith and fair dealing that's inherent in every insurance policy.

So, listeners and viewers, it doesn't matter what the fine-print tries to protect—the insurance company, in this case, tort law, overrides it, and Bill has pioneered that.

By the way, Bill Shernoff is an extraordinary lawyer. There aren't many like him. He, for example, created and funded the Consumer Law Clinic at his alma mater, University of Wisconsin Law School in Madison, to train law students in consumer law practice so they could pioneer protections as well.

You also came up against what is called the federal ERISA law (Employee Retirement Income Security Act), which was a huge, complex legislation in the '70s dealing with pensions in the United States. It blocked some kinds of bad-faith cases, and you tried to get Congress to amend that law, which unfortunately didn't succeed, because of the insurance lobby. Explain that.

William Shernoff: To explain it in simple terms, what the law called ERISA, which is a federal law, the courts, not only the courts, but the United States Supreme Court, held in a landmark case that the federal law of ERISA, which was a pension law, as you mentioned, preempts all state laws, which means that it supersedes the state laws of bad faith. And any insurance that you got through your employment, if you got group insurance through your employment, you're not governed by this ERISA law.

What that means is you don't have any remedies other than what the federal law gives you. Unfortunately, the federal law of ERISA only gives attorneys' fees at the discretion of the judge, but you cannot get general damages, you cannot get emotional distress damages, you can't get punitive damages. It basically blocked all insurance bad-faith law in every state.

So bottom line is, if you get your insurance through your employment, whether it's disability or life insurance or any kind of insurance—health insurance is a big one— unfortunately, the consumer law of insurance bad faith will not apply and you'll have to go to federal court under the ERISA law.

Ralph Nader: The other problem you had to face, that viewers and listeners would be interested in, is that in bad-faith lawsuits, you collect more than what the policy merits that you should collect in certain cases where there is really widespread denial of claims and the insurance companies engaged in a racket with thousands or tens of thousands of its policyholders. The lawyer in the courtroom for the individual plaintiff can request punitive damages, which Bill was talking about in the *Egan v. Mutual of Omaha case*.

But tell us, how has that been circumscribed by the US Supreme Court of right-wing justices?

William Shernoff: You're absolutely right. Under bad-faith law in California and in most states, you not only could get the benefits you deserved under the insurance policy, whether it be life insurance or disability insurance, property insurance, or health insurance, but you can also get damages over and above the policy limits, which includes emotional distress damages, because people get very emotionally affected by it. Let's say, their health insurance doesn't come through or their life insurance doesn't come through or their homeowners insurance, where you have floods and fires. There's all kinds of insurance claims out there, and you can imagine the emotional distress some of these people go through when their claim gets unfairly denied. So you can get emotional distress damages. You can get consequential damages. What I mean by that is let's take a health insurance policy where you are unfairly denied a claim and you don't get the surgery that you were supposed to get because your health insurance denied your claim. Well, it could be that your medical condition gets worsened by the delay or the denial, and so not only can you get the emotional distress damages, but any aggravation of your medical condition.

And punitive damages are on top of that. And attorneys' fees are on top of that. So all of these damages are coming from insurance bad faith, if the insurance bad-faith law applies. Punitive damages is designed to punish the insurance company so that they correct their wrongful conduct in the future and to deter them from unfair claims practices. Punitive damages are the biggest part of the award. Some of them run on to not only millions of dollars, but tens of millions of dollars.

We have a lot of weapons and a lot of tools in our toolbox for insurance bad faith, if it applies. But the ERISA law knocked all that out if you get insurance through your employer.

Ralph Nader: At its best, tort law is supposed to deter, as you say, Bill Shernoff. Has it deterred insurance companies, and resulted in cleaning up their act and reducing the number of frivolous or arbitrary denials or unreasonable delays?

William Shernoff: Yes, in some sense. The Egan case and the insurance bad-faith law that sprang out over the Egan decision did help clean up a lot of unfair claims practices. Back then in the '70s, the claims practices were horrible because there was no remedy at all. There was only breach of contract, which meant the only remedy you had was if you won in court, you got the benefits you were due in the first place. And that's all you could get before Egan. Now, since Egan, you can get the damages I just described. So it makes a world of difference what law applies.

Ralph Nader: One of the deterrents under tort law at its best, as we point out on the website, tortmuseum.org, Bill, is that when you disclose some of these abuses in a court of law, where testimony is under oath and there's cross-examination to verify the disclosures' validity, sometimes regulatory agencies like insurance departments of the states or Congress, or state legislatures, pick up and codify these reforms. They basically say, across the board, insurance companies, you're not going to get away with this and that. Has that occurred at all?

William Shernoff: In some states, I heard it has. In California, the insurance bad-faith law has been mainly made by the courts that set the precedent. But I've seen in many states, as you just mentioned, where the legislature gets involved and passes statutes that codify the insurance bad-faith law in some form or other.

But it's difficult, because as you mentioned, the regulators, which are the insurance commissioners in most states, are headed by somebody who usually came from the insurance industry, and after s/he serves his/her term, they go back to the insurance industry. It's like a revolving door. Hence, they're not very forceful consumer advocates. They're more advocates for the insurance industry than anything else. They're not too effective in enforcing insurance claims practices.

The same is true for the state legislatures. As you mentioned, the insurance lobby is very strong in Congress and in various state legislatures, so it's difficult to get laws passed by statute when the insurance lobby is in there fighting it tooth and nail.

Ralph Nader: Going back to my question about the Supreme Court decision on punitive damages, as I recall, they put a ceiling. They decided that in tort cases, the court shouldn't allow more than 10 times punitive damages of the compensatory damage. In other words, if people get for wage loss or medical expense X dollars, they shouldn't get more than 10 times that award for punitive damage. I always thought that was a pretty arbitrary decision because a lot of times, these practices are absolutely criminal by insurance companies, so to have an across-the-board rule like that is very arbitrary.

Has that had an effect on your practice and the practice of other bad-faith attorneys around the country?

William Shernoff: Yes, it has. You're referring to a case by the United States Supreme Court, in which they ruled, that under the US Constitution, in their view, anything above 10 times the actual damages may be unconstitutional under the due process clause of the United States Constitution.

And that has hurt a lot of insurance bad-faith cases, including some of my own, but those of other lawyers as well, because it puts a cap on punitive damages. I don't think there should be any cap on punitive damages other than a cap that the appellate courts might set if the punitive award was like 500 times actual damages.

But you're absolutely right. That put a dent in the punitive damage area, but not entirely, because you can still, if your actual damages are small, you can add onto that the emotional distress damages along with the attorneys' fees, and you can get the actual damages as high as possible. So sometimes, 10 times the actual damages could still be a very large punitive award. But it did curtail large punitive damage awards.

Ralph Nader: Listeners who follow the Tort Museum events may remember we had an event (October 26, 2023) on the underutilization of tort law. The vast number of wrongfully injured people, over 95%, never see a lawyer, much less get into a courtroom.

Bill, do you find that there are lots of people in this country who are unfairly and wrongfully denied the benefits from an insurance policy that they paid for, or whose cases are stretched out for years in battles of attrition, who don't know what their rights are, and the vast majority don't even know to go to a lawyer?

William Shernoff: That's absolutely true. I've seen a lot of that. Most people, if they get a letter from an insurance company, which they consider to be an authoritative source, and the insurance company says your claim is denied and then they cite all kinds of fine print in the insurance policy, accept that and don't do anything. They don't see a lawyer. They just accept what their insurance company told them because it sounded quite official.

The other thing is, a lot of people won't go see a lawyer because they don't have the money to pay a lawyer, and they don't realize that tort lawyers, like myself and others, take these cases on a contingency basis. They don't have to pay us anything upfront. All they have to do is show us what the facts are, and a contingency lawyer pays all the expenses and doesn't take a fee until the end of the case if there's a settlement or a jury verdict or some sort of collection of the benefits.

Ralph Nader: I think the viewers and listeners would like to know the kind of detail that's involved in bad faith. For example, a failure to defend the policyholder by the insurance company, denial of coverage, unreasonable delay in paying claims, failure to pay insurance claims, and failure to conduct a reasonable investigation before they deny the claim. Like, they don't even look at the medical records and they deny thousands of claims. That is one case that occurred recently with a big insurance company.

Wrongful refusal to settle a claim is another example of bad faith. Bill was talking about annuity scams targeting seniors in southern California. This one caught my attention. A 73-year-old man was persuaded by a dishonest insurance salesman to pay $43,000 for a life insurance annuity from Midland National Life Insurance Company. But the annuity payments don't start until his 115th birthday—until his 115th birthday. Talk about a criminal provision in a fine-print contract.

Steve?

Steve Skrovan: I wanted to ask Mr. Shernoff, say I get a letter from an insurance company and it says it's denying my claim. What should I do? What should the steps I take when I get it and I feel like, *wait a minute, that's not right, that shouldn't be denied?*

William Shernoff: Well, probably the first step would be to get back to the insurance company and ask them to explain their denial in simple terms so that you could understand why they did this, and maybe ask them to cite to you the very insurance policy provisions that they're relying on to deny the claim.

And then if they don't get back to you, in my opinion, you should see an insurance bad-faith lawyer who can investigate the denial thoroughly to see if it's a legitimate denial or it's not. Even if they get back to you with their explanation, if it doesn't make sense to you, you should see an attorney who handles these kind of cases.

Once we, for example, get involved and file a lawsuit, we have the power of subpoena, and we can subpoena their whole claims file or their underwriting file. We can take depositions of their claims staff people and even their executives. So there's a lot of things that can be done if you follow the proper channels.

Steve Skrovan: And how do you find somebody who specializes in it like you do? Do I Google bad-faith insurance? How would I even know that term? How would I find the right kind of lawyer?

William Shernoff: Nowadays with the Internet, Google would be a good starting point, because if you plug in insurance bad-faith lawyers in California, I'm sure there are a lot of lawyers and law firms that would come up, as well as in other states. Or if you don't know the insurance bad-faith terminology, you could just Google insurance claim denial and see what comes up. In today's world, with the Internet, Google and other search engines (Bing, Yahoo, DuckDuck Go, Ask, etc.), you can easily find a lawyer that handles these kind of cases.

Ralph Nader: And Steve, the answer to your question is elaborated in Bill's little book called *Payment Refused*, where he talks about exactly the steps that people need to take. Before the Internet, you might call the state bar association and ask for the names of bad-faith lawyers. But now there are other ways, as Bill and you have just pointed out.

David?

David Feldman: Thank you, Ralph. To just give us an idea of what we're up against, how profitable are insurance companies? Do they have profitable years every year?

William Shernoff: I know, they are very profitable. A lot of the insurance companies are stock companies on the New York Stock Exchange. They're huge companies like Prudential, Metropolitan Life, and Blue Cross and Blue Shield.

Health insurance, by the way, I don't want to let that go by, because one of the biggest areas we're seeing now is denials or delays of health insurance claims that is hurting a lot of people. Also, homeowners insurance has been a big area for insurance bad faith, because we have a lot of wildfires out here in California, and there's floods all over the country and there's disputes that are coming up. Like in Maui County, Hawaii where the city, Lahaina, has been devastated and all of those buildings and houses have been destroyed, those people are going to be in a world of hurt with disputes popping up all over.

Ralph Nader: And the premiums are going up fast.

William Shernoff: Premiums are going up. The insurance companies are very profitable.

Ralph Nader: David, in answer to your question, since 1920, when records started being held, the property casualty insurance industry never has lost money. They may have gone negative on premium payout ratios, but their investment income more than makes up the difference. So they know how to make money.

Hannah?

Hannah Feldman: Could you highlight a case from your career that digs into this issue?

William Shernoff: We had one recently involving health insurance, which was a very tragic situation of a young mother who needed surgery. She had a female problem, that needed an intricate surgery. The insurance company in that case delayed her surgery by sending her first to one surgeon that wasn't in the policy. Then they said they had to send her to another surgeon, and they just ping-ponged her around.

The surgery was supposed to take place within two weeks, according to the regulations. It took nine months for her to have the surgery. In the meantime, she kept begging them for the surgery, and they told her to go on pain pills. And she said she didn't want to go on pain pills, but pain got so bad that she started taking pain pills. By the time the nine months rolled around, she was addicted to opioids, and she became an addict.

By the time we got to the jury and told her story to the jury, she was a full-blown drug addict. It actually ruined her life, because they delayed the surgery, which they did in bad faith. Because it was horrible how they just took her from one place to another to another to another, and a surgery that should've taken place in two weeks took nine months, the jury awarded $14 million in punitive damages. That was just about a year ago.

Ralph Nader: Listening to you, all I can think of is, oh, Canada. This would never happen in Canada. There's not a pay or die health insurance system in Canada. It's full Medicare for all—nobody in, nobody out.

William Shernoff: The big question we're seeing in health insurance now that's come up in bad faith a lot is what we call the issue of medical necessity, where the treating doctor recommends a certain treatment. It could be a surgery, it could be a certain medication, it could be anything that the physician thinks is advisable for his/her patient. But the insurance company will say, no, we're denying this claim because we, the insurance company, don't think that what you prescribe is medically necessary. So they overrule the treating doctor and the patient gets caught in a crosswire.

Ralph Nader: I'm sure some of the cases that would answer Hannah's question are on your website. Can you give your website, Bill, before we go to our audience?

William Shernoff: Sure. It's www.shernoff.com.

Steve Skrovan: We're speaking with Bill Shernoff, the father of bad-faith insurance claims and author of *Payment Refused*. Up next, we're going to do a live Q&A with our virtual audience. But first, let's check in with our corporate crime reporter, Russell Mokhiber.

Russell Mokhiber: From the National Press Building in Washington, D.C., this is your *Corporate Crime Reporter* "Morning Minute" for Friday, March 29, 2024. I'm Russell Mokhiber.

For years, the former head of what's known as Africa's IKEA (Taellio) had avoided legal accountability after his own board blamed him for a massive corporate fraud that precipitated the collapse of the company that owned Mattress Firm. Then last Thursday, a day after receiving a record fine in South Africa for his role in the fraud, Markus Jooste died of a self-inflicted gunshot wound. That's according to a report in the *Wall Street Journal*.

Jooste was the chief executive of South Africa-based Steinhoff International until December 2017, when the company announced he had resigned amid accounting irregularities. Jooste's death came one day after South African officials labeled him the mastermind behind a yearslong effort to hide billions of dollars in financial losses at Steinhoff.

For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

Steve Skrovan: Thank you, Russell. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan, along with David Feldman, Hannah, Ralph, Melissa Bird, Bill Shernoff. And we're going to take some questions.

Hannah, why don't you start us off?

Hannah Feldman: Thank you, Steve. So let's get started.

Male: I live in California, and here and other states as well, we have a problem with insurance companies increasing their premiums by quite a bit, or just refusing to continue policies as they come to renewal. What do you think we need to do about that?

William Shernoff: Yeah. That is a big problem. In California, State Farm just announced two weeks ago that they're going to not renew 70,000 homeowner policies in California because they say they're losing business because of the wildfires. And the insurance commissioner here is just recently taking them to task for that. I don't know if he's going to be able to enforce that.

But you're talking about insurance rates and insurance cancellations or non-renewals. There's not really much you can do about that. There's an organization in California called Consumer Watchdog, which does a lot of litigation in the rate and cancellation regulation areas that you're talking about.

But sometimes, if they're canceling a policy for the wrong reason, like for a discrimination reason, like they're discriminating against somebody on race or religion or some other unfair reason, that could be a bad-faith case. But if they just are non-renewing because they say they're losing business, that's for the insurance commissioner to try to take them to task.

Ralph Nader: And Consumer Watchdog is based in Santa Monica, listener. Next.

Shehnoor Azhar: This is Shehnoor. I live in Granada, Spain. I'm a public health student here in university. So I bring an outsider's perspective, probably not too familiar with the intricacies of the insurance system in the US. But thank you first for inviting us, all the listeners, to the show.

One was the comment that I feel that it's the inefficiencies of the publicly funded and publicly delivered healthcare that compels people to switch over to the private insurers. And governments probably take advantage of it because they can still make the money and they have lesser obligations and liabilities. So if you could comment on that, and also seeing a tragic incident of probably this morning or last night here in Spain when a bridge collapsed, I was wondering if road users have a way of ensuring themselves against such an accident. Thank you.

William Shernoff: I'm not sure what the question actually is. He referenced the bridge accident. I assume he's talking about what happened in Baltimore.

Steve Skrovan: Shehnoor, you're still there. You want to answer?

Shehnoor Azhar: The first one was the comment. I mean, it seems like the government in itself is, or the governments around the world which have traditionally been tasked or which have been comfortable insuring their people, the health insurance I'm talking about, they're probably themselves giving way to the private insurers. Or maybe the inefficiency of the system is making the private health insurers take advantage of those inefficiencies.

Second was about the insurances that road users might have, such as the incident that we witnessed last night and the bridge collapse in Baltimore. Very tragic scenes from seeing the cars in the water and all of that. So first, that kind of accident or eventuality, is there a way to get the road users or the vehicle owners insured against such a catastrophe? Thank you.

William Shernoff: Well, as far as the bridge accident, I'm sure there's all kinds of insurance that are going to come into play in the near future there. There's the Chicago ship that hit the bridge that's going to have insurance. There's going to be lawsuits for the people that are injured and died in the accident against probably the people that built the bridge. It's just hard to say right now exactly what the fallout, as far as insurance goes, is going to come from that tragic accident.
But generally speaking, there will be insurance that's going to come into play in various ways as a result of that bridge collapse. As far as your first question, if I understand it correctly, if you have private insurance, at least in California, you will have the remedy of insurance bad-faith law. Unless it's through your employer, then you won't. But if you got insurance through government for wherever you live, you probably don't have that remedy.

Where is it again that you live?

Steve Skrovan: He was in Granada, Spain.

William Shernoff: Well, I would not know what the law is in Spain. I have a hard time just keeping up with the laws of California.

Noah Goodall: Hi, my name is Noah Goodall. My question is, what are your thoughts on road safety advocacy groups that partner with or are primarily funded by the insurance industry? It seems like they would have compatible objectives, but there also might be conflicts. I'm just curious of your thoughts on that.

William Shernoff: I would be suspicious of any group that's funded by the insurance industry. I don't know if they call themselves consumer advocates. It seems to me that would be inconsistent to have a consumer advocacy group funded by the insurance industry. I'd be very skeptical about it. So I guess you'd have to do your homework and make sure that whoever you're dealing with is a legitimate consumer advocacy group.

Mike Ferner: Hello. Hi. Thanks for the program. Yeah, my name's Mike Ferner. I'm with Veterans for Peace, but my question has to do with how do insurance companies get away with using the 14th Amendment for due process and equal protection?

William Shernoff: That's a really good question. I don't know how they get away with it other than in the United States—they took those cases you're referring to all the way to the United States Supreme Court, and the United States Supreme Court somehow applies the due process clause to the facts in front of them and comes out with a decision like we just spoke about, like with the ERISA decision or the decision that limits punitive damages to 10 times the actual damages.

I think both Ralph and I shake our head and say, how can the Supreme Court do this? Well, you have very conservative justices on the Supreme Court. Those opinions are written by justices that are usually pro-business and pro-insurance. So I'm sure it happens in other areas, too. We're seeing it today where the conservative Supreme Court justices are coming out with opinions that both Ralph and I and a lot of people don't agree with. There's nothing that can be done about it. The Supreme Court is the law of the land, and we have to abide by it.

Ralph Nader: Just a comment. Insurance regulation is state-controlled. The federal government has been blocked for decades, and the Congress has imposed itself on the Federal Trade Commission and said that they can't even investigate the insurance companies without being allowed to by a committee in the House or the Senate that has jurisdiction over such matters. So the privileges of the insurance lobby are quite extraordinary, even by comparison with other corporate lobbies.

Hannah Feldman: Looking at some of your past cases, I noticed a $5 billion settlement for Holocaust victims who were denied their claims. Could you tell the story behind that?

William Shernoff: Yeah, that's a very complicated situation, so I'll try to simplify it.

There were a lot of people, as everyone knows, that died in the Holocaust, and many of them had life insurance that they were sold way before they went into the concentration camps. And what happened was when the heirs of the people that died in the concentration camps put in claims on the life insurance policies, the insurance companies involved in those cases would say there is no insurance, or they don't have records of any insurance. Bottom line was, practically nobody got paid their life insurance benefits.

When we brought the lawsuits to try to collect life insurance benefits for the heirs of the people that died in the Holocaust, we were met with all kinds of defenses, like, we can't find any insurance, or even if we did, the statute of limitations ran out a long time ago, so you can't sue. And even if you could sue, you'd have to sue here in Czechoslovakia or whatever country the insurance policy was issued in. So it was a very, very difficult test to try to overcome all the legal hurdles to get the insurance companies to recognize.

In our case, they said they couldn't find an insurance policy, but eventually we found 300,000 insurance policies tucked away in a warehouse in Trieste, Italy. Fortunately, the governments got involved in this issue. The United States government, under Bill Clinton, and Israel's government, got involved. And there was a resolution where $5 billion were set aside for a government-sponsored recovery act to pay off the life insurance benefits, not the full benefits, but you could get partial payment by putting in a claim against the international claim fund, which was called the German Foundation Settlement Fund.

So bottom line is, rather than nobody getting paid their insurance policy benefits, $5 billion was paid out across United States and Europe to Holocaust survivors or heirs of the survivors.

Ralph Nader: Where did the money come from?

William Shernoff: In the German Foundation Settlement, half of the money came from the governments and half came from private insurance that underwrote the policies.

Ralph Nader: You represented hundreds of doctors in a case once. Could you explain that?

William Shernoff: Yes. That's been a long time ago. But the doctors' premiums were raised so high that a lot of doctors complained and some of them who left the state, said they couldn't afford the insurance. Some of them left their practice because the insurance rates went through the roof, and they didn't want to pay such excessive insurance rates. So, a group of doctors came to me and we filed a lawsuit, and it turned out that the reason they raised the rates was they said they were losing money. But it turned out they weren't losing money, and they were making money, and they set aside, in that case, if my memory serves me right, about $50 million to reimburse the doctors for their high premiums. As a result of that, even before I filed that lawsuit, Ralph, we got a micro law in California which put a cap on recovery damages for medical malpractice cases.

Marie Johnson: Hi, my name is Marie Johnson. I'm in San Diego. Just one quick note. In addition to contacting your public radio stations, don't forget stations that are community radio stations. I'm with community station KNSJ in San Diego. We've carried Ralph Nader for a long time.

Now my question is, how effective is HICAP (Health Insurance Counseling and Advocacy Program) in California—I think that's the right initials—if you have an issue with your HMO? I belong to a very large HMO (Health Maintenance Organization) in San Diego. Been around since the '50s, I think.

William Shernoff: I'm not familiar with that organization. All I can say is we've filed a lot of lawsuits in that area. I think the HMOs are some of the worst carriers that deal with health insurance because it's usually a managed care model, and they're the ones that deny and delay most of the health insurance claims.

Marie Johnsons: Yeah. I have friends that have experienced the delays.

William Shernoff: Yeah. Delays sometimes can be just as important as denials, because if your medical treatment is delayed, chances are your medical condition is getting worse or aggravated because of the delay and you're suffering not only the benefits that you should be getting through your doctors or your HMO, are causing you to have your condition be aggravated. And that's an additional item of damages you could get in an insurance bad-faith case.

Hannah Feldman: This next question, they asked us to ask it for them.

Donna Capdevielle, apologies for the pronunciation if I got it wrong. Donna asks, "I have an original Medicare and a Part D policy to help with prescription costs. I also have the low-income subsidy from Extra Help. This year, I've had issues with them denying my medication. I've been stable on for years as, quote, "non-formulary". This year they want me to try other medications that I'm either allergic to or my doctor has said are not appropriate. Is this something a lawyer could help with, or is there more I should do on my end before looking into an attorney?

William Shernoff: That is something definitely a lawyer can help with because they're denying you the medication that your doctor says you need. There's no other substitute or alternative medicine that would be effective. That's effectively overruling your doctor's treatment decision. And if they don't have a legitimate reason for doing that, that would be an insurance bad-faith issue. And I would see a lawyer that handles those kind of cases.

Female: Hi, guys. Is AARP (American Association of Retired Persons) a consumer advocacy group funded by an insurance company? Thanks.

Ralph Nader: Oh, yeah. AARP is very compromised because they contract out their insurance offerings to companies like UnitedHealth Group, the giant insurance company that was hacked recently and is in a mess with payments. And they contract out for a Hartford auto insurance company. And the contracts are secret. You can become a member of AARP for decades, you can't get hold of the contracts. And in return, they get royalties and commissions.

When it comes to Medicare disadvantage, which they call Medicare Advantage, they don't educate their beneficiaries by telling them that traditional Medicare is much better in terms of paying benefits, in terms of avoiding prior authorization bureaucracy, and in terms of not putting you in a narrow network of doctors and hospitals. They just put it out there as if, okay, folks, you have Medicare Advantage and you have traditional Medicare, it's up to you to choose. Well, it's up to AARP to advise consumers about the facts and the data that they have in their possession.

So any of you who are AARP members are entitled to demand disclosure of these contracts. Ask them pointed questions and put a CC to your members of Congress or your state legislators to get a copy of your question, and let them know if you get an answer.

Steve Skrovan: All right, very good. We're going to bring this to a close.

Ralph Nader: My closing comment is that more people should know about bad-faith cases rights and use them, and not take whatever is dealt to them by insurance company denials, rescission of insurance policies, refusing to renew, other delays or other crazy obstructions. Learn about your rights, and that's what this program is about with Bill Shernoff.

Bill?

William Shernoff: Well, I would echo what Ralph says. That's certainly very, very good advice. Also, one of the big areas I've seen is on life insurance, where they rescind the life insurance policy after a person dies. They do an investigation of the medical records and accuse the person of lying on the application or not putting down relevant information on the application.

So I didn't want to miss that when I talked about health insurance and fire insurance and homeowners insurance. I see a lot of people suffering when life insurance is going to a widow and the widow gets nothing because they say the husband who died misrepresented some question on the application, which usually turns out not to be the case.

But yeah, know your rights, stick up for your rights and find out the best consumer advocacy groups in your state and try to find the best lawyer you can if you have an issue or a problem with an insurance company.

Ralph Nader: And send your complaint to Consumer Federation of America in Washington or Consumers Union up near New York. They always collect data like that, and sometimes they'll answer your questions. Just go to the gift store of our Tort Museum. And Bill's little book, *Payment Denied*, is very useful today, just as it was when it came out years ago. And you can get a copy by going to tortmuseum.org.

Steve Skrovan: Well, thank you very much, Bill Shernoff, for joining us. Thanks to our live audience and the Tort Museum headed by Melissa Bird.

I just want to conclude with something I'm just picking up in the chat here from one of our listeners. Maple Osterbrink says, "Love and appreciate you all. Met Ralph at 15 outside his hotdog meat tour. Never ate one since. Happy birthday month, Ralph. We love you. Stay unreasonable."

Ralph Nader: Thank you. I haven't eaten a hotdog for decades either. My mother didn't know what was in them, so she didn't serve them.

Steve Skrovan: All right, thank you. Thank you, live audience. This was great. Thank you again, Bill. Thank you all again, live audience, for your participation and for just showing up.

William Shernoff: Thank you to everybody. It was a good program. Thanks to Ralph. Thanks to John Richard. Thanks to everybody involved. I hope we got across some good advice to consumers out there.

Steve Skrovan: I think we did, Bill.

Ralph Nader: We certainly did, Bill. And thank you very much. Bill was an early founder of the Museum of Tort Law, always looking ahead, anticipating and looking out for the common rights of people wrongfully injured. Thank you very much, Bill.

Steve Skrovan: We've been speaking with William Shernoff. We will link to his work at ralphnaderradiohour.com.

Now, to close out today's show, here's Francesco DeSantis with "In Case You Haven't Heard."

Francesco DeSantis: CNN reports the United Nations Security Council has passed a Gaza ceasefire resolution. The resolution itself is imperfect, calling only for ceasefire during the month of Ramadan, but this watered-down language paved the way for the United States to allow the resolution to pass. The US has vetoed every previous ceasefire resolution before the Security Council and disputes the extent to which this resolution is legally binding. For its part, Israel's Foreign Minister stated unequivocally that Israel "will not cease fire." per CNN.

Following the passage of the Security Council resolution, Prime Minister Netanyahu canceled a planned high-level Israeli delegation visit to Washington, per CNBC. The planned visit, which would have included an address to Congress, was staring down scathing criticism from Congressional Progressives. Axios, reports Representative Rashida Tlaib, the only Palestinian member of Congress and the most outspoken on the Israeli campaign of terror, said, "Netanyahu shouldn't come to Congress, he should be sent to The Hague."

In another sign of the rift between the Biden Administration and Netanyahu, *Haaretz* reports that Congressional Democrats are sending formal warnings to the administration stating that Israel is not in compliance with US laws governing the dispensation of military aid. Joaquin Castro, a Democrat from Texas, said, "Congress and the White House need to make clear to Israel that we will enforce US law to protect Palestinian children from starvation in Gaza."

Professor Jana Silverman, co-chair of the Democratic Socialists of America International Committee, reports, "After a totally last-minute, ad-hoc, no-budget campaign, 13.2% of voters in the Democrats abroad primary said no to genocide in Gaza and voted uncommitted." This impressive performance signals that the Uncommitted electoral protest movement isn't going anywhere. The next major test for the movement will be Pennsylvania, where Uncommitted PA is aiming for at least 40,000 votes in the state's April primary, per Lancaster Online.

In an open letter, over 100 prominent American Jews condemned AIPAC. (American Israel Public Affairs Committee) The letter reads, "We are Jewish Americans who have come together to highlight and oppose the unprecedented and damaging role of AIPAC in US elections, especially within Democratic Party primaries. We recognize the purpose of AIPAC's interventions in electoral politics is to defeat any critics of Israeli Government policy and to support candidates who vow unwavering loyalty to Israel, thereby ensuring the United States' continuing support for all that Israel does, regardless of its violence and illegality." Signatories include the *Ralph Nader Radio Hour*'s own Alan Minsky, celebrated academic Judith Butler, Postal Workers Union president Mark Dimondstein, Ben Cohen of Ben & Jerry's, and the actor Wallace Shawn, among many others. The full letter is available at usjewsopposingaipac.org.

Oscar winning director Jonathan Glazer continues to be the target of phony outrage by pro-Israel groups like the Anti-Defamation League. Coming to the defense of the filmmaker, however, are other prominent Jewish organizations like Jewish Voice for Peace and the Auschwitz Memorial, whose director said, "In his Oscar acceptance speech, Jonathan Glazer issued a universal moral warning against dehumanization" per *The Guardian*. Decorated Jewish playwright Tony Kushner, a signatory on the anti-AIPAC letter, told *Haaretz*, "There's been a concerted attempt by right-wing American Jews to sort of sell the idea that American college campuses are awash with virulent anti-Semites — professors and students and so on. And the Jewish students are walking around these campuses in terror for their lives. I think this is nonsense. I see no evidence of it."

Both the Gannett and McClatchy newspaper companies have announced they will no longer use AP journalism in their publications, AP reports. This is yet another indication of the dire financial straits the news business finds itself in. The AP notes, "Gannett's workforce shrank 47% between 2020 and 2023 because of layoffs and attrition. The company also hasn't earned a full-year profit since 2018. Since then, it has lost $1.03 billion."

In Honduras, the *Intercept* reports, "An almost-impossible-to-believe scenario. A group of libertarian investors teamed up with a former Honduran government, which was tied at the hip with narco-traffickers and came to power after US-backed military coup, in order to implement the world's most radical libertarian policy, which turned over significant portions of the country to those investors through so-called special economic zones. The Honduran public, in a backlash, ousted the narco-backed regime, and the new government repealed the libertarian legislation. The crypto investors are now using the World Bank to force Honduras to honor the narco-government's policies." While this story has certain unique angles, crypto and narco-trafficking chief among them, the key element is actually quite familiar – international free-trade regimes superseding sovereign governments. We offer Honduras solidarity against these contemporary crypto-filibusters.

On March 11th, Congressmen Jimmy Gomez and Joaquin Castro sent a letter to the heads of the CIA and FBI demanding disclosures of surveillance efforts on Latino civil rights leaders during the 1960s and '70s, citing the well-documented pattern of surveillance on Black civil rights leaders during that period and the wealth of circumstantial evidence indicating that these organs of national security did the same toward prominent Latino figures such as Cesar Chavez. The following day, in a hearing before the House Permanent Select Committee on Intelligence, Rep. Castro pressed CIA Director Bill Burns on the matter, and Burns committed to working with his office to bring someday the complete account of the CIA and FBI's domestic surveillance programs will be a matter of public record.

Finally, in Mississippi, *CBS* reports that authorities have successfully convicted all six members of a police gang calling themselves the "Goon Squad." These six white officers plead guilty to "breaking into a home without a warrant and torturing two Black men. The assault involved beatings, the repeated use of stun guns and assaults with a sex toy before one of the victims was shot in the mouth in a mock execution." Lawyers representing the criminal cops allege that, "their clients became ensnared in a culture of corruption that was not only permitted, but encouraged by leaders within the sheriff's office." If true, then a federal investigation – and likely more than a few exonerations of individuals victimized by this "Goon Squad" – are in order. Justice demands it.

This has been Francesco DeSantis with "In Case You Haven't Heard..

Steve Skrovan: Thanks, Francesco. And that's our show.

I want to thank our guest again, William Shernoff. And a special thank you to the American Museum of Tort Law, Melissa Bird, and everyone in our virtual audience. A transcript of this program will appear on the *Ralph Nader Radio Hour* Substack site soon after the episode is posted.

David Feldman: Subscribe to us on our *Ralph Nader Radio Hour* YouTube channel. And for Ralph's weekly column, it's free, go to nader.org. For more from Russell Mokhiber, go to corporatecrimereporter.com.

Steve Skrovan: And the American Museum of Tort Law, where we've just been, it's also virtual. Go to tortmuseum.org to explore the exhibits, take a virtual tour, and learn about iconic tort cases from history.

David Feldman: We have a new issue of the *Capitol Hill Citizen*. It's out now. To order your copy of the *Capitol Hill Citizen*, "Democracy Dies in Broad Daylight," go to capitolhillcitizen.com.

Steve Skrovan: And remember to continue the conversation after each show, go to the comments section at ralphnaderradiohour.com and post a comment or question on this week's episode. We might not like them all, but we read them all.

David Feldman: The producers of the *Ralph Nader Radio Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

Steve Skrovan: Our theme music, "Stand Up, Rise Up", was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is Hannah Feldman. Our social media manager is Steven Wendt.

David Feldman: Join us next week on the *Ralph Nader Radio Hour*. Thank you, Ralph.

Steve Skrovan: Thank you for everybody who makes the program possible and for everybody who listens in.