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The People vs. HMOs

You can sue your neighbor. You can sue your boss. You can even sue the President. But most Americans can't sue their health insurer. Reform is afoot to change that.

Attorney David Goodrich held an almost religious belief in playing by the rules. Certainly his deference to protocol and respect for others were plainly evident on the day in June 1992 when, in the middle of the courtroom, he toppled flat onto his back. Coughing up blood, the prosecutor from San Bernardino County, 60 miles east of Los Angeles, apologized profusely to the court for the delay.

Shortly after his courtroom fall, Goodrich was told he had stomach cancer. It was then that he found himself launched upon a three-year ordeal of battling not just the disease that would ultimately kill him but also Aetna U.S. Health Care, the nation's largest health insurer. As required, he first approached doctors in his plan. Conceding that they did not have the expertise to treat his rare form of cancer, leiomyosarcoma, they referred him to specialists outside the plan. He bounced back and forth between clinics and Aetna bureaucrats who challenged his use of out-of-plan doctors and "experimental" treatments such as the high-dose chemotherapy and cryosurgery that specialists urged. Within four months the cancer spread to his liver. He continued his maddening shuttle for two years, but his fate was sealed.

Goodrich died in March 1995. His widow Teresa hired Claremont attorney Michael J. Bidart and sued Aetna. In a decision with national resonance, a jury in San Bernardino County issued the stiffest penalty ever imposed on an HMO and awarded Goodrich's estate almost \$750,000 in compensatory damages for medical costs and \$3.8 million for "loss of companionship and support." In a separate decision last Wednesday, it topped those figures off with a breathtaking \$116 million in punitive damages, concluding that Aetna had acted with fraud and malice.

The Goodrich family found justice where few can. Under the 1974 Employee Retirement Income Security Act (ERISA), more than 125 million Americans currently covered by their employer's HMO programs cannot sue their provider for punitive damages. It doesn't matter if the HMO manager is a bumbling idiot or a devious scrooge. It doesn't matter even if the patient dies or loses a limb to negligence.