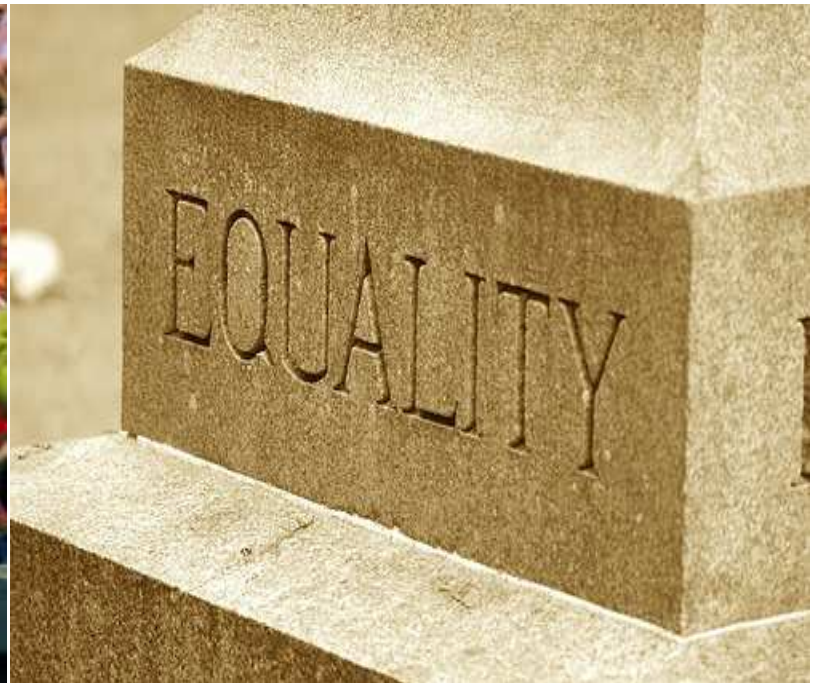


The Caste System at Work in National Healthcare Reform



**By: Jack K. Cohen, Association of BellTel Retirees, Inc.
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By Jack K. Cohen

In the current national healthcare shuffling of the deck and with aggressive lobbying, advertising and public affairs campaigns by interest groups representing the moneyed interests of corporations, trial lawyers, medical, pharmaceutical and even marketing/insurance sales groups like AARP, America's retirees and Baby Boomers are being relegated much in the fashion of the "Dalits"¹ or "Untouchables" of the Indian Caste System².

Under Caste, Dalits are assigned the lowest social status and relegated to extreme poverty. These unfortunates were not allowed temple worship with others, nor extract water from the same sources. In the current political and healthcare reform climate around Washington, D.C., American retirees 65 or older become like Bhanglis³, who within Indian society were described as "outcasts even among outcasts."

A retiree residing in New Jersey approached his Congressman several months ago after a Town Hall Meeting. The retiree, who had worked for Verizon, expressed concern about the future status of his healthcare coverage. The Congressman, patted him patronizingly on the back exclaiming that with Verizon, don't worry, "I'm sure you've got nothing to worry about."

This is not a unique response among elected officials. Lost in this whole healthcare debate replete with high-pitched emotions, misinformation, and town hall meetings that regularly make the six o'clock news, are over eighteen million retirees whose status is not even mentioned in any proposed healthcare reform legislation.

The absence of protections for this group in any future legislation that finally reaches President Obama's desk will result in a continuation of an insidious practice that has cost almost 9 million retirees their healthcare benefits subsequent to their retirement, since the early 1990's.

Understandably most of the attention has gone to the estimated 47 million people with no health insurance. Ironically, sizable chunks of that number are retirees who had been encouraged by their employers towards early retirement.

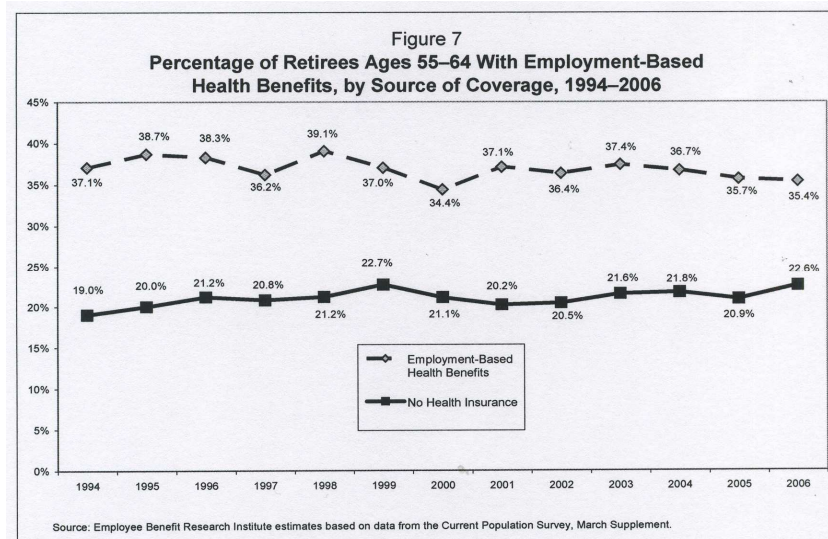
With constantly reinforced assurances of lifelong coverage these blindfolded unfortunates "walked the plank" of early retirement only to have that benefit taken away. Now, having fallen into the ocean, the blindfolds removed, they watch as their "trusted" employer sails away while they are treading water for their lives, not yet eligible for Medicare.

¹ http://www.dalitnetwork.org/go?dfn/who_are_the_dalit/C64

² Bayly, Susan. *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age*. July 1999

³ Thekaekara, Mari Marcel. *Endless Filth: The Saga of the Bhangis*. 2003

According to the **Employee Benefit Research Institute (EBRI)** report, "The percentage of retirees with coverage through a former employer was at 35.4 percent in 2006, the lowest point between 1994 and 2006 except during 2000." However, their findings conclude that the percentage



of retirees in the 55-64 age group rely on the health insurance coverage from their spouse who still receive coverage from their employer was at its highest point of 22.6% in 2006. This is essentially the highest level during 1994-2006.⁴

This is not a new problem. In a feature article in the **Wall Street Journal** writers, Ellen E. Schultz and Theo Francis describe how major corporations surgically trim retiree health benefits to benefit their bottom lines using accounting methods (e.g. FAS 106) totally independent of any increase or decrease in sales. Shultz and Francis describe how this financial form of “elder abuse” had been continuing since the early 1990’s.⁵

Skeptics may look at retiree health benefits as an “entitlement” or a “legacy cost.” Absent in all this rhetoric demonizing this ever-shrinking group of seniors who actually still receive health benefits through their prior employer, are the financial benefits enjoyed over the years by employers who paid less taxes as a result.

Companies did not agree to pay retiree benefits out of the goodness of their hearts, or social well-being, there were significant financial benefits and tax breaks for them. Employers didn’t have to pay Social Security and payroll taxes on these benefits. Funding these benefits could be deferred by companies in years when earnings were low, unlike payroll that must be paid on time. Since pensions are based on a percentage of wages, companies also saved on long term pension costs.

Conveniently forgotten is the cost savings in paying these people lower wages and offering fewer vacations over the decades during which these retirees were active employees. If these savings were added up by the eighteen million plus still receiving health benefits, and the millions who have had it taken away, multiplied by the accumulated years during which time those savings were enjoyed by employers, the amount would be trillions of dollars.

⁴ Employee Benefit Research Institute “Health Care Coverage for Workers Ages 55-64. April 11, 2008. <http://www.ebri.org/pdf/fastfact041108.pdf>.

⁵ Ellen E. Schultz and Theo Francis, Wall Street Journal- “Financial Surgery: How Cuts in Retiree Benefits Fatten Companies Bottom Lines- Trimming a Health-Care Plan Creates Accounting Gains, Under Some Arcane Rules- A Shield Against Rising Cost.” March 16, 2004.

Some seniors have recently been told they will lose their employer-provided health benefit when they reach the age of Medicare eligibility. Many do not know that Medicare is not exactly free. In 2004, according to an actuarial study done for the **Center for Medicare and Medicaid Services** (CMS) by Chief Actuary Richard Foster, the median income for persons 65 and over was \$20,481.

The report indicates that for 20 percent of the aged (households), Social Security is their only source of income. The current fee for Part B Medicare (the doctor part) is 96.40 per month. For those at the lower end of the bell curve this fee represents 11+% of their income. That is a big piece of monthly income for that group. This is without consideration of the impact of the notorious “donut hole” and other out of pocket costs.⁶ “On average, Medicare beneficiaries aged 65-74 spend \$2,920 a year in out of pocket expenses. Those aged 75-84 spend \$3,815, a year. Those 85 and above spend \$4,615 a year – an average of 30 percent of their income.”⁷

Some employers decrease health coverage to retirees rendering that coverage supplemental to Medicare coverage. To most retirees this healthcare supplement is a major lifesaver. That supplemental coverage is also rapidly becoming a thing of the past. There are subsidies available to the lower income people to help defray the cost of Medicare Part B and D. When such subsidies are available to someone who has lost their employer-provided supplemental healthcare, it is quite evident that “cost-shift” has migrated from the employer to the retiree and all taxpayers.

18.6 million retirees’ former employers cover most of these out of pocket costs by providing secondary supplemental insurance. The vast majority of retirees over age 65 have had their earned retirement benefits renege on by their employers.

In 1998, the Supreme Court ruled in **Sprague v. G.M.**⁸ that outside of collective bargaining contracts, it is perfectly legal for an employer to drop healthcare to retirees at any time they wish. The Supreme Court did not factor morality into the decision.

Prior to Sprague, in the mid-1990’s the UAW brought suit against G.M., relative to termination of retiree health benefits when G.M. dropped those benefits when they closed a plant in conjunction with the expiration of a Collective Bargaining Agreement (CBA). Essentially, the case, evolving over the years through the Sixth Circuit Court of Appeals commonly referred to as “Yard-Man,”⁹ held that a CBA must specify life-time benefits in order to be enforced as a life-time benefit. The “insinuation” of life-time benefits for a retiree was not enough to interpret that the benefit would be there for life. The language of the CBA must not be “ambiguous.”

By a 3-1 vote on April 22, 2004 the **Equal Employment Opportunity Commission** (EEOC), a commission presumably dedicated to preventing discrimination in the workplace, approved an exemption from the Federal Age Discrimination in Employment Act (ADEA). That decision

⁶ Center for Medicare and Medicaid Services – 2004 Study - <http://www.cms.hhs.gov/ActuarialStudies/>

⁷ New Retirement.com - http://www.newretirement.com/Planning101/Rising_Medical_Costs.aspx

⁸ Bureau of National Affairs - <http://lw.bna.com/lw/19980120/941896.htm>

⁹ *Implement Workers of America v. Yard-Man* -<http://www.ca6.uscourts.gov/opinions.pdf/08a0447p-06.pdf>

allowed employers to reduce health benefits for retirees who become eligible for Medicare or a comparable state benefit.

Discrimination in America was now ok as long as it was against grandma and grandpa. On appeal by AARP, on March 24, 2008 the Supreme Court refused to hear the case and once again the legal system did further damage to seniors. While all this was going on, other companies, such as Lucent and other employers were cutting healthcare benefits.¹⁰

So what does a group do when the legal system does not work for them? They attempt to change the law.

In the midst of all the political acrimony relating to the healthcare debate, retirees again find themselves the proverbial “step child” with their nose against the window. It is vogue for our elected members of Congress to maintain a posture dedicated to finding that group with the most voting power or the most money. Both parties are looking to spend enormous sums of money to come to the aid of the “uninsured.”

The nation’s 18.6 million retirees have no wish to add to the possible tax burden accompanying major legislation. Simply, they are looking for that which was promised to them over the years of their active employment and which they have “earned” from their prior employer, not the taxpayer. This remains one group not wanting to rely on government subsidies, only what they’ve earned over the decades of their careers.

The Emergency Retiree Health Benefits Act (HR 1322)¹¹ has been pending in the U.S. House of Representatives for 9 years. It is backed by **ProtectSeniors.Org**¹², an organization which represents retirees of 240 employers in the private, public and union sectors. Representative John Tierney (D-MA) introduced the bill and it has been sitting in the Health, Employment, Labor, and Pensions Subcommittee since April 28th.

The bill would make it the law that after someone retires their health benefits may no longer be dropped or eroded subsequent to that retirement date. There are hardship exclusion provisions

¹⁰ July 14, 2004 – Medicare Law is Seen Leading to Cuts in Drug Benefits for Retirees – *Wall St. Journal*

Sept 22, 2004 – Lucent Again Cuts Retiree Benefits – *Wall St. Journal* (second time benefits cut in a year).

Oct. 11, 2004 – American Jobs Act passed by the House including a last minute amendment (Section 719) added at the instigation of Lucent which gives employers greater flexibility to reduce retiree medical benefits.

Nov. 10, 2004 – Companies Sue Union Retirees To Cut Promised Health Benefits – *Wall Street Journal*

Dec. 15, 2004 – Shrinking Coverage – *Washington Post* – “Less than a generation ago, about two-thirds of large companies provided health coverage for retirees. Today, only about 36 percent do.”

Dec. 30, 2004 – Employer Actions Drive Health Costs For Retirees Higher – *Wall St. Journal*

¹¹ OpenCongress.com - <http://www.opencongress.org/bill/111-h1322/show>

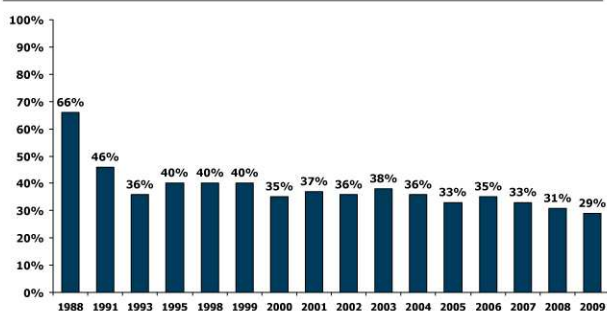
¹² Official Website of ProtectSeniors.Org – www.protectseniors.org

for employers on the verge of financial disaster. However, such an employer would hardly be on the precipice of disaster if they could afford “golden parachutes” to their own executives. HR1322 would also prevent Collective Bargaining Agreement retirees from becoming sacrificed during future union collective bargaining.

Those in favor and against HR1322 had an opportunity to make their case on September 25, 2008 in front of this committee.¹³ Those testifying before the committee included ERISA Law expert Dr. Norman Stein of the University Of Alabama School Of Law¹⁴ and Mr. C. William Jones, chairman of ProtectSeniors.Org and President of the Association of BellTel Retirees, Inc.¹⁵

“For decades employers told their employees that their reductions in pay and other perks were in exchange for their retirement health care and other benefits,” testified Jones. “Yet after they

Exhibit 11: Among All Large Firms (200 or More Workers) Offering Health Benefits to Active Workers, Percentage of Firms Offering Retiree Health Benefits, 1988-2009*



*Tests found no statistical difference from estimate for the previous year shown (p<.05). No statistical tests are conducted for years prior to 1999.
 Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 1999-2009; KPMG Survey of Employer-Sponsored Health Benefits, 1991, 1993, 1995, 1998; The Health Insurance Association of America (HIAA), 1988.



were retired, these same employers started to charge retirees for their health insurance or stopped paying for it altogether.”

So it comes down to this. Retirees who get healthcare through their former employers need to be heard from while national healthcare reform is being formulated by Congress.

The most recent Kaiser Foundation study (2009), found that of large firms (200 or more workers) that still offer health benefits to their **active** employees, only

29% are still offering to continue these benefits to retirees. *Significantly, this percentage is down from 66% in 1988.*¹⁶ Could there be any more graphic evidence of what the remaining 29% would do if health care legislation lacks appropriate protections for retirees enabling those retirees to keep those earned benefits? It should be evident to even the casual observer that large employers would drop this burden into the lap of the taxpayer so fast, skid marks would be apparent.

Retirees are tired of the door being constantly slammed in their collective faces. The protective language of HR1322 must be in any bill reaching the President’s desk. If Congress is mired and bogged down in stalemate on a major bill, at least can they agree to legislation protecting 18.6 million American retirees that will cost the taxpayer nothing?

¹³ Hearing on Safeguarding Retiree Health Benefits- <http://edlabor.house.gov/hearings/2008/09/safeguarding-retiree-health-be-1.shtml>

¹⁴ Congressional Testimony of Dr. Norman Stein - <http://edlabor.house.gov/testimony/2008-09-25-NormanStein.pdf>

¹⁵ Congressional Testimony of C. William Jones - <http://edlabor.house.gov/testimony/2008-09-25-CWilliamJones.pdf>

¹⁶ Kaiser Family Foundation- “Survey of Employer Health Benefits 2009” September 15, 2009 <http://ehbs.kff.org/pdf/2009/7981.pdf>

Has Congress and the President forgotten, in America there should be no outcasts.

About the Author:

Jack K. Cohen serves on the Board of the Association of BellTel Retirees, (www.belltelretirees.org) and is retired from Verizon Communications and its predecessor companies where he spent 26 years in various management assignments including 18 years in field operations and eight years in corporate finance. Mr. Cohen authored Verizon's training manual for expense budget personnel which is still utilized fifteen years after his retirement.