

Thomas McGarity: Beware efforts absolving companies of COVID-19 liability

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As the deadly coronavirus spread across the country, doctors, nurses, bus drivers, field workers, meat packers, janitors and other essential workers showed up for work to provide the goods and services needed by those of us able to shelter in place.

Many performed, and are still performing, their jobs in workplaces providing few if any protections against contracting the disease. For example, the employees who worked on fast-moving meat-packing lines were required to remain in close proximity to one another as they sliced, deboned and “gut-snatched” meat at such a rapid clip that they did not have time to cover their mouths when they sneezed or coughed.

Not surprisingly, hundreds of these workers tested positive for COVID-19 and at least 20 have died. State workers’ compensation laws provide modest recourse to workers who contract diseases in the workplace and to the families of workers who died as a result of diseases. In many cases, though, that compensation doesn’t go nearly far enough to replace lost wages and pay medical bills.

Despite the need to more fully compensate affected workers and hold scofflaw employers accountable, Senate Majority Leader Mitch McConnell has announced there will *not* be a fourth stimulus bill without a provision granting broad immunity to the meat-packing plants and all other companies

https://www.wacotrib.com/opinion/columns/guest_columns/thomas-mcgarity-beware-efforts-absolving-companies-of-covid-19-liability/article_08cd6447-9534-54c3-b2bc-262ee54c4603.html

from liability for any COVID-19 infections that they cause to their workers, their customers, or anyone else. And Republican Sen. John Cornyn of Texas is working on legislation to do just that. The White House is considering promoting similar legislation and, absent that, an executive order intended to relieve negligent companies of liability related to COVID-19.

The real forces behind this initiative are the U.S. Chamber of Commerce, a longstanding opponent of imposing liability on negligent companies, and the insurance industry, which has an obvious economic interest in quashing COVID-19 lawsuits. They claim that liability waivers are necessary to protect doctors and nurses from liability for choices made under emergency conditions, but that's a Trojan horse argument. State tort law already applies a standard of care that takes into account emergencies. Cases in which medical professionals are held liable for judgments made in emergencies are virtually nonexistent.

The kind of liability protection that McConnell and the White House are advocating is much broader. They want to erect a wall against all lawsuits by workers, consumers and members of their families who contract COVID-19 as a result of corporate negligence. The Chamber argues there ought to be regular liability protection for folks who are taking reasonable, common-sense steps” to protect consumers. But state tort law already provides that protection with its requirement that plaintiffs shoulder the burden of proving that defendants were not taking reasonable steps to protect them.

In addition, workers and customers must prove that the defendants' negligence caused their diseases. This will be a hard row to hoe for plaintiffs who might also have been exposed to the coronavirus at home, at the grocery store, at the doctor's office or at a bowling alley.

As states begin to loosen restrictions on non-essential businesses, companies will be requiring their workers to return to their jobs. The last thing we need is a federal law relieving these companies of liability.

In any event, a broad liability shield is wholly inconsistent with the principles of federalism that conservatives purport to hold so dear. President Trump has repeatedly taken the position that the response to the coronavirus pandemic is primarily the responsibility of the states. But now he and his allies in Congress want to deprive state courts and juries of their traditional role of requiring irresponsible companies to compensate the victims of their negligent acts and omissions.

Given the Trump administration's demonstrated reluctance to promulgate and enforce standards to protect workers and consumers, state common law litigation may be the only way to hold companies accountable for the sickness and death that they cause. Taking away the threat of liability will destroy a powerful incentive for companies to protect their workers, their consumers and their neighbors from this invisible killer.

McConnell's threat to hold further relief to suffering states hostage to a law granting a free pass to companies to ignore COVID-19 risks is an insult to courageous workers and a powerful message to consumers that they shop at their own risk.

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