

Transcript: Can They Freaking DO that?! (2023 Edition)

Hey there--

I have to start with a big THANK YOU to everybody who supports this show. It's January, we wrapped up our big fund-raising campaign at New Year's, and more than six hundred of you came through for us. We hit all our targets, including our stretch goal. It's huge.

I'll have a LOT of people to thank at the end of this episode, and I want to think about how to celebrate. Thanks to you, this year is off to an amazing start.

And for this first episode of 2023, I'm going back to a story we first put out more than three years ago, in 2019.

Because: this story changed my whole conception of what this show can aim to do.

When I meet people today and tell them about An Arm and a Leg for the first time, this is the story I tell them about.

Because this is a story about legal rights I never suspected we had-- and how we can sometimes use them to fight back.

I learned a lot of other stuff while reporting this story -- about surprise bills, and the role of private equity. It was early days for the show.

We're leaving out those parts out this time-- we've gone deeper on them in other episodes, and some of the underlying facts have changed.

Some things have gone out of date in good ways, thanks to the federal No Surprises Act, which took effect last year.

But the part about fighting back? Standing up for our legal rights? That holds up. And it's ready for some follow-up.

OK, here it is:

Dan: Miriam visited a fertility clinic a couple years ago in Washington and DC where she lives, and she got some tests done. She was lucky. Her insurance actually covered fertility stuff, so she got the bill and her share was like 30 bucks. She paid it. Then this other envelope arrives from someplace she never heard of.

Not the fertility clinic or anyplace else she's ever been, and it's hot pink. She thinks it looks fake. It says it's a bill and they want 35 bucks for some lab work and perhaps unwisely, Miriam ignores it.

Okay. Uh, definitely unwisely and there are a couple of follow ups also in hot pink envelopes. And on the one hand, Miriam looks more closely and they are connected to her visit to the fertility clinic on the other. The follow ups say this other thing. They say, Hey, pay up now, or This thing's going up, way up, up to about 1300 bucks from 35, which

Miriam: was so outrageous that I thought, this is definitely bullshit.

Bullshit. . Sorry, can I say that?

Dan: Yes, absolutely. Yeah. So Miriam does a dumb thing and ignores it and a follow up, and then in September she gets a note from a collections agency. They want that \$1,300. And can they freaking do that? Can some lab send you a bill for 35 bucks outta nowhere and then be like, Hey, better pay now while we're in a good mood.

Otherwise it's gonna be \$1,300. Is that even legal?

This is An Arm and a Leg, a show about why health care costs so freaking much, and what we can maybe do about it. I'm Dan Weissmann. I'm a reporter, and I like a challenge. So our job on this show is to take one of the most enraging, terrifying, depressing parts of American life, and bring you something entertaining, empowering and useful.

And what's more useful than knowing what our rights are?

Because as consumers. No idea. I mean, I get a bill from the electric company. Well, for one thing, it's not a surprise. I've been running the lights and it's the same rates as last month, and everybody's paying basically the same rates as me, like whatever I owe this, but a hot pink envelope from some ancillary lab.

And then a follow-up saying they're gonna take you for 1300, you'd. Well, maybe they can freaking do that.

I mean, how would you even know? Who would you even ask? Well, now you can ask me and I'll go find out. This whole thing happened to Miriam a couple years ago. She ended up settling with the collections agency for like \$217, which was a sixth of what they were asking for, but it was also six times that original \$35 charge.

It still bugs her. Like was that even legal? What happened there? It is so messed up. So she wrote to me and I was. I really want to figure this out.

When I talked to Miriam, she actually had a theory about what I might find.

Miriam: It might just be illegal to have such a, a big jump from, um, what the original copay was to what it ended up being after I was late.

Dan: Yeah! I was off-- ready to test that theory out.

So, I made some calls. And I FOUND OUT SOME STUFF.

It took a minute. I started out calling national legal experts and policy nerds, and they were like, "I don't really know. The law is complicated, it varies from state to state, blah blah blah"

So then I started calling folks who help consumers challenge wild medical bills -- like, for a fee, that's how they make a living. One of them was Braden Pan, his company's called Resolve Medical bills.

I described Miriam's story to him, the pink envelope, the fine print that was like....

...is for a charge of \$1,287 for which you get a great discount and will take \$35 from you if you pay by date.

Wow. . Okay.

It's like he was kind of impressed by how brazen this was.

And even though he didn't know the answer, he had some smart thoughts about what questions to start asking.

Braeden Pan: I'm gonna tell you right now that I'm not a lawyer. Yeah. Um, now I can tell you that the, the idea of what hospitals or clinics can charge for services that hasn't been settled.

Dan: In other words, he thought you'd need a lawyer if you wanted to fight it, and you don't know how it's gonna come out.

Braeden Pan: What might actually be going on with this company is they know this, they know that there's confusion out there about this, uh, that you need a lawyer to actually figure it out, whether or. Someone can can do this and for a thousand bucks it's not worth it to hire a lawyer to tell you because they're gonna charge you 1200 bucks just to tell you whether or not they can do this

Dan: Right, right.

So himself, Braden Pan wasn't so sure they were good answers here, but he pointed me to a couple of other people and they actually had some very hopeful answers. Some serious self-defense tools. You might wanna grab a pen. We'll have that right after.

This season of an Arm and a Leg is a co-production of Public Road Productions and Kaiser Health News.

That's a nonprofit newsroom that covers healthcare in America. Kaiser Health News is not affiliated with the giant healthcare provider, Kaiser Permanente. We'll have a little more on Kaiser Health News at the end of this episode.

Sir, here's where we meet the folks who are going to give us our big strong weapons for fighting off totally unreasonable bills.

Lisa Berry Blackstock: My name is Lisa Berry Blackstock, and I have been a patient advocate since 1990.

Dan: That's like almost 30 years. And I asked her, is there anything you can do in a situation like this when you're getting hit up for 1300 bucks for some stupid lab test? And she was like, well, You could take 'em to small claims court and you don't have to be a lawyer to do that.

I was like, wait, you've done this?

Lisa Berry Blackstock: Oh, I, I've lost count. I can't tell you how many times I've done it and in how many different, uh, counties.

Dan: Huh? So it works.

Lisa Berry Blackstock: Oh, it works. It's worked for me.

Dan: She says it works every single time. And here's something I learned in this conversation that I absolutely had not known.

When you go to court, it does not have to be to make somebody else give you. You can go to court and say, judge, this lab says I owe them 1300 bucks, but I have researched it and 35 bucks is fair. I'm offering them 35. Would you please order them to take 35?

It takes a plan to do this and it takes work.

Lisa Berry Blackstock: You have to demonstrate in writing that you have made a good faith effort to resolve this to your best ability and that you've been unable to, and that's why you're asking the court to intervene.

Dan: And so you're asking the court basically to approve. A settlement offer that you're making. Correct?

Lisa Berry Blackstock: Correct.

Dan: That's what Lisa Berry Blackstock says she does. There's some serious homework involved. If you grabbed a pen earlier, here's where you start taking notes first. Lisa says, you call whoever's sending the bill and make them give you the billing codes for everything on the bill.

itemized. Each one has a five digit code called a C P T Code, C P T. And honestly, this sounds like it could be the hardest part. You gotta get them to cough up this information. You have a right to it, but getting it, once you've got that, you figure out what a fair price is in your area, and there are a couple of websites that actually can help you do this.

Lisa uses one from a group called Fair Health. The site is fair health consumer.org. You put in your zip code and that five digit medical billing code, they will tell you what the going rates are in your area.

And that's my basis of my offer. It's fair I, I mean, I have independently verified information.

Lisa Berry Blackstock: It's not a number that I've made up and it's not like you're trying to rip people off .

Dan: Then you write to whoever's billing, you use certified mail. So you get a signed receipt, you can prove they got it, and you say, here's what I'm offering. Here is how I determine this number. I want to hear from you by date X, that you will accept it.

Otherwise

Lisa Berry Blackstock: I will be filing in small claims, you know, against you, and you can expect to receive a notice.

Dan: And you're saying generally if they get that, they'll be like, okay, I'll take it. Is that right?

Lisa Berry Blackstock: Yes. I mean, general, they, they look, they don't understand anything with billing other than raking people over the coals because that's what. is generally allowed across the country.

Dan: She says a lot of the time just sending the letter is enough, but sometimes she actually has to file Now, once I've filed Yeah. And they've been served. Yeah. Oh, then they're, they're falling all over themselves to make it go away. Because look, they're used to sitting in an office sending out pieces of paper saying, send us 1300 bucks, or We'll ruin your.

and getting 1300 bucks, or maybe getting a phone call and allowing themselves to be talked down to 200 without leaving their desk, they gotta send somebody to court. That person who would go to court could make more money by just accepting this offer and moving on to the next sucker,

Especially because, according to Lisa Berry Blackstock, they'd probably lose in court anyway.

Now, this was cool, but I didn't just wanna take one person's word for it. I found somebody else who had actually tried this thing. Somebody with a pretty good credential.

Christopher Robertson: My name's Christopher Robertson. I'm a professor and associate dean at the James E. Rogers College of Law

Dan: That was his job when we talked in 2019. Now he's a professor and associate Dean at the Boston University School of Law.

Anyway, I asked him, you can make these people accept a fair offer, and he's like,

Christopher Robertson: Yeah. Duh. You know, basic contract law, you know, the stuff we teach to first year law students every day purports to just make this a non-pro. Of course you don't have to pay a number that the other side just invented, um, , you know, this is, this is shooting fish in a barrel from a, from a contract law perspective.

Dan: Whoa, baby. The deal is you see a doc anywhere. You sign something in the business, they call it consent to treat. It says, yeah, examine me, poke, prod, whatever, and it says, I'm gonna give you my insurance info and whatever the insurance doesn't pay, I'll pay. The thing I'm signing doesn't say how much I'll pay because nobody knows exactly what's gonna happen at the doctor's office or the er, wherever.

Anyway. I got a stomach ache. Maybe I ate something weird. Maybe I have an ulcer. So Robertson says, what I'm signing is what lawyers call an open price contract. You know, normally a

Christopher Robertson: contract has a price in it, right? So if you want to go buy a car, your contract to buy the car has a price that's true of a washing machine or a, or a house.

But when there is no price in the contract, it's called an open price contract.

Dan: The courts do not treat an open price contract as a blank check.

Christopher Robertson: If the court is gonna be called upon to enforce the contract to force someone to pay something, then the court has to figure out, well, what, what amount should I force them to pay?

It can't be just what one side says later.

Dan: In other words, courts would. An open price contract like your agreement with a medical provider does not mean the other side just gets to bill you for whatever they want, and Miriam's case is special. It's got this other wrinkle, which is basically the lab said the price was 35 bucks, but if you're late, it's 1300.

That's why I was so interested in this case. And Robertson says, Miriam has the law on her side there too. He says, this involves something else. They teach first year law students

Christopher Robertson: literally on the very first day of contract law

Dan: When you breach a contract, courts don't treat that like a blank check either, and a late fee, it's like a penalty for breaching a contract. The contract says you pay on date X. Miriam breached her contract by not paying on time. But Chris Robertson says there's a limit to what that penalty can be, and it's gotta have some relationship to what the breach actually cost. The. .

Christopher Robertson: So that's a second reason. This strategy is completely legally frivolous to take a \$35 charge and convert it into a thousand dollars plus.

Right. So yeah, they didn't get their \$35 check in June when they wanted it. They might get it in July. Well, that doesn't cost them a thousand dollars. So the penalty can't be a thousand dollars. Even if they don't get it, it's now September and they haven't gotten it. It's still not costing him a thousand dollars.

Christopher Robertson: Exactly.

Dan: So he's like, yeah, line it up. Small claims court, that sort of thing can work. I can barely believe it's this easy.

I'm like, wait, why don't we do this more often??

Christopher Robertson: I mean, frankly, we shouldn't have to. We need a systematic solution to this. Uh, you know, we are all have day jobs, you know.

Frankly, a lot of people who are dealing with medical bills surprise, surprise, are sick, right? Yeah. Um, so, they're busy trying to get well, uh, you know, they're trying to fight their own battles and so, you know, waging their own legal battle is, is, is a huge distraction and requires a level of attention to detail that not everyone has or should be expected to have.

So that's why I really need more systematic solutions.

Dan: So Miriam might have had some options, but small claims court, it's not exactly a blanket solution, especially cuz there's also the problem of scale. I mean, it's one thing if you've got a lab hawking you for a thousand bucks. What if you've got a whole system of hospitals trying to rake untold numbers of patients over the coals for crazy amounts? Then you're not in small claims court anymore. Christopher Robertson has been there, like he's gotten involved in lawsuits trying to stop hospitals from doing that sort of thing, and he. It is not pretty.

Christopher Robertson: It's, it's the utter, utter breakdown of law. I mean, when we tried to challenge these practices by hospitals, um, we bumped up into courts insisting that for every single charge, we affirmatively prove that the amount they made up is unreasonable. But proving that. Requires, you know, experts and accounting and economics, you could spend tens of thousands of dollars litigating every single one of these thousand dollars charges. And so that's why you really do need either class action or a more affirmative, you know, regulatory system to police this, this bad behavior.

Dan: But in an individual situation like Miriam's, where she's actually healthy, she's only got one charge to fight off. You can fight back. Get your evidence together, find out the itemized billing codes, and use a website like Fair health consumer.org to figure out what a reasonable price would be. Make an offer, put it in writing. Send it certified mail. Give 'em a deadline to accept your offer or else tell 'em you'll file in small claims court. . And if that doesn't make 'em play ball, actually do it. I ran all this down from Miriam and she was like,

Miriam: I wish I had known. That's my main thing. I wish I had known that I had these other options. I would've totally gotten a letter, like if, even if I needed to notarize a letter, get it sent certified mail. I'm gonna take you to a small claims court. Okay. Maybe I'll, I'll give you 50 bucks. That's my, that's my offer. Yeah. I wish I had done that.

Dan: YEP! That's where we left things, a little more than three years ago.

I mean, we've followed up a little here and there:

We talked with a guy named Jeffrey Fox, who has made it... kind of a hobby to use small claims courts to stand up for his rights. So when UCLA overbilled him, he was ready.

I mean, maybe we could all use a little of his readiness to fight. Here's how he describes conversations with their billing department.

Jeffrey Fox: One thing they always do is they always try to make it seem like their policies apply to you. They're like, well, no, our policy is blah, blah, blah. I'm like, I don't care. Contract law, the concepts of contract law and what I actually owe you, what a court would say, I owe you is what applies. I remember saying, okay. Well, my policy is you pay me a hundred dollars every time you say something stupid. So does that apply to you? If it does you only about 400 bucks already. Wanna keep going?

Dan: Jeffrey didn't get paid on that improvised policy of his... but he did get a judge to make UCLA give him a refund of more than two thousand dollars. That episode was called David vs Goliath, and we'll include a link to it wherever you're listening.

So we've come back to this approach to fighting back. But I've been starting to think we haven't come back to it nearly enough.

Especially since I got a note from a listener named Lauren with the heading: "I sued a hospital in small claims court and lost"

... which ended, "I feel like I won." She wrote, "the hospital spent way more money on lawyer's fees than the total amount of my bill." They sent three lawyers to a preliminary hearing -- and her bill wasn't even that high.

We talked -- we'll have lots of details in our next episode -- about what she had learned, and how she wanted to spread it around.

Lauren: I walked out of that thinking, do I, like, just put together a list of tips and leave it on people's windshields that are parked outside of the er. how do I help other people do this?

If everybody that they screw stands up, they can't afford to pay a lawyer to defend against all of those.

Dan: I mean, it's an INTERESTING idea. Not for everybody. But maybe a few more people than have tried it so far...

We'll pick up that idea next time.

Till then, take care of yourself.

This episode of An Arm and a Leg was produced by me, Dan Weissmann, with help from Emily Pisacreta. Ann Heppermann edited the original story.

Marian Wang edited this version-- and it looks like Marian's parental leave from this show, coming up any minute now, will be permanent.

Marian, I cannot believe how much I am going to miss working with you. It has been such an honor and such a joy.

Daisy Rosario is our consulting managing producer. Adam Raymonda is our audio wizard. Our music is by Dave Winer and Blue Dot Sessions.

Gabrielle Healy is our managing editor for audience. She edits the First Aid Kit Newsletter.

Bea Bosco is our consulting director of operations. Sarah Ballema is our operations manager.

This season of an arm and a leg is a co production with Kaiser health news. That's a nonprofit news service about healthcare in America, an editorially-independent program of the Kaiser family foundation.

KHN is not affiliated with Kaiser Permanente, the big healthcare outfit. They share an ancestor: The 20th century industrialist Henry J Kaiser. When he died, he left half his money to the foundation that later created Kaiser health news.

You can learn more about him and Kaiser health news at [arm and a leg show dot com slash Kaiser](http://armandalegshow.com/slash/Kaiser).

Zach Dyer is senior audio producer and Tarena Lofton is audience engagement producer at KHN-- they are editorial liaisons to this show.

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