



INSURANCE

Coverage — Motor Vehicle — Underinsured Motorist

Insured claimed coverage applied to his family

VERDICT	\$907,009 (with prejudgment interest)
CASE	Alice Villegas, Keith Villegas, Melissa Villegas, Individually and a/n/f of Kiva Hewson, a minor child vs. Nationwide Mutual Insurance Company and Wayne Kirven, No. 98-07056
COURT	Travis County, 53rd District Court
JUDGE	Ernest Garcia
DATE	02/08/1999
PLAINTIFF	
ATTORNEY	Joe B. Stephens, Stephens & Stephens, Houston, TX
DEFENSE	
ATTORNEY	Ross Pringle, Wright & Greenhill, P.C., Austin, TX

FACTS & ALLEGATIONS This case arose out of a coverage dispute over an underinsured motorist policy. Nationwide Insurance Company, for a premium, promised to pay benefits to the occupants of covered automobiles under its policy. The coverage questions arose after a rental car they were riding in became involved in an collision on July 12, 1997.

On that day, plaintiff Keith Villegas, a Nationwide policyholder, was driving an Enterprise Rent-A-Car southbound on I-35 outside San Marcos. An automobile driven by Nita Crober pulled from the shoulder directly across his lane of traffic. His mother Alice, 63, and his sister Margaret, 37, were seriously injured. Margaret's two-year-old daughter, Kiva Hewson, sustained minor injuries.

Margaret Kiva and Alice Villegas were not named insureds on the policy. They were rear-seat passengers who alleged they were entitled to coverage because Keith Villegas' insured automobile was out of its normal use due to breakdown.

They claimed that the Nissan rental car he was driving was a temporary substitute for his broken-down Mazda. The defense denied coverage disputing that his car was broken down. It contended the vehicle was still operational and therefore was not a temporary substitute. Nationwide further contended Keith Villegas' sister paid the rental charges and he was driving only as an additional named family member on the rental contract. The parties stipulated to negligence, liability, and proximate cause. The question was whether the vehicle was covered.

INJURIES/DAMAGES Margaret Villegas sustained a broken left thigh bone resulting in surgery. Additional surgery was required to remove a rod and to correct rotational deformity. She argued for \$5,300 in lost wages. Alice Villegas sustained a fractured right thigh and reconstruction of the knee. Additional surgery was required for hardware removal and knee replacement. She argued for \$37,500 in past and future lost wages. Kiva Hewson sustained only minor injuries but claimed that the occurrence caused emotional distress.

RESULT The jury found insurance coverage should be afforded the plaintiffs and awarded \$892,822, which was increased to \$907,009 with prejudgment interest.

ALICE VILLEGAS \$50,000 past physical pain,
 mental anguish
 \$100,000 future physical pain,
 mental anguish
 \$15,000 past loss of earnings
 \$60,000 future loss of earnings
 \$3,000 past disfigurement
 \$3,000 future disfigurement
 \$5,000 past physical impairment
 \$50,000 future physical impairment
 \$44,167 past medical care
\$35,000 future medical care
 \$365,167

MARGARET VILLEGAS \$50,000 past physical pain,
 mental anguish
 \$200,000 future physical pain,
 mental anguish
 \$10,000 past loss of earnings
 \$30,000 future loss of earnings
 \$3,000 past disfigurement
 \$50,000 future disfigurement
 \$5,000 past physical impairment
 \$100,000 future physical impairment
 \$33,810 past medical care
\$30,000 future medical care
 \$511,810

KIVA HEWSON \$15,000past physical pain,
 mental anguish
\$844 past medicals
 \$15,844

TRIAL DETAILS Trial Length: 4 days
 Jury Vote: 10-2

DEMAND \$200,000
OFFER \$60,000

INSURER **Nationwide Insurance Company**
 (limits \$100,000 per person/\$300,000 per
 accident)

PLAINTIFF
EXPERT(S) **David Savage, M.D.**, orthopedic surgery,
 Austin, TX (video deposition)

DEFENSE
EXPERT(S) None reported

POST TRIAL Motion for JNOV granted on March 23, 1999.