Winter 2019

DEWHIRST & DOLVEN LLC
Attorneys at Law

LEGAL UPDATE

Utah • Wyoming • Colorado • Texas

IN BRIEF

UTAH

- In a personal injury action, the Utah Court of Appeals reversed a $2.9 million verdict because the jury was incorrectly permitted to hear non-disclosed expert opinions.

.....Page 1

COLORADO

- In a lawsuit concerning the scope of evidence that can be considered for bad faith claims against an insurer, the Colorado Supreme Court held: "the reasonableness of an insurance company's decision to deny benefits is to be evaluated based on the information before the insurer at the time it made its decision."

.....Page 3

WYOMING

- In an insurance dispute involving a third-party, the Wyoming Supreme Court held that the insurer did not have a duty to conform to a specific standard of care: "An insurer owes no duty of good faith and fair dealing to a third-party claimant."

.....Page 4

TEXAS

- The Texas Supreme Court reversed evidentiary findings of the lower court in a pedestrian-truck wrongful death action. In doing so, the Court found evidence of the decedent's mental illness and toxicology results relevant as to how the accident may have happened.

.....Page 5

UTAH

$2.9 MILLION PERSONAL INJURY VERDICT REVERSED DUE TO UNDISCLOSED EXPERT OPINIONS HAVING INCORRECTLY BEEN ADMITTED AT TRIAL

Utah Court of Appeals: The accident in this case occurred when a construction worker was installing a road sign while construction was going on for a new highway corridor. The Utah Department of Transportation contracted with Defendant Hadco Construction to build the corridor. Hadco was responsible for implementing a traffic control plan to protect the construction workers, but failed to do so. Hadco employed Highway Striping & Signs (HSS) to install road signs along the corridor.

Plaintiff was an employee of HSS. He was atop a ladder installing a sign when a vehicle veered off course, drove into the construction site, and crashed into Plaintiff's ladder. Plaintiff fell from the ladder and sustained significant injuries. He sued Hadco.

During litigation, Plaintiff disclosed a traffic engineering expert who opined that Hadco violated engineering practices. Hadco's counsel elected to take that expert's deposition instead of receiving a report from the expert. At trial, Plaintiff asked the expert if Hadco's failures caused the accident. Hadco's counsel objected, arguing that the expert never provided any opinion as to causation for the accident. The trial judge permitted the testimony on causation to proceed, and the expert testified that if a traffic control plan had been implemented then Plaintiff's injury would not have occurred.

The jury rendered a verdict in excess of $2.9 million in Plaintiff's favor, with Hadco being 40% at fault. Hadco appealed, arguing that it was error for the expert's undisclosed opinions on causation to be admitted at trial.

On appeal, Plaintiff argued that any limitation on the scope of an expert's opinions is evaporated because the expert was deposed instead of having produced a report. The Utah Court of Appeals disagreed: "when a party locks in an expert's opinions in a deposition, the same limitations on the scope of expert testimony attach." The Court determined that the expert's opinions on causation were not previously disclosed or provided at his deposition. As such, the Court reversed the trial court's ruling and remanded the case for a new trial.

Arreguin-Leon v. Hadco Construction, LLC, 2018 UT App. 225 (Utah Court of Appeals, decided December 13, 2018, not yet released for publication in the permanent law reports)

IN THIS ISSUE

DEFENSE SUMMARY JUDGMENT AFFIRMED IN ICE-RELATED SLIP AND FALL CASE

Utah Court of Appeals: In January, during subfreezing temperatures, Plaintiff Curtis Warrick cut across Defendant Property Reserve Inc.'s (PRI) parking lot on his way to work. Before he could complete his sojourn, he slipped and fell on a patch of ice.

The accident occurred around 8:00 a.m. The weather was below freezing with light snowfall. Once Plaintiff reached PRI's parking lot, he noticed a skiff of snow on the lot and piles of plowed snow, roughly two feet high, around the perimeter of the lot. While crossing the lot, he slipped and fell, breaking his leg. After the fall, he found that he slipped on "crystal clear" ice, which he described as "just water under that thin layer of snow."

Warrick sued PRI for negligence. However, the trial court dismissed his claims on summary judgment on the basis that Plaintiff did not provide any evidence as to how long the temporary condition existed. Plaintiff appealed.

On appeal, Plaintiff asserted that sufficient facts existed for the trial court to infer how long the ice had existed. Though Plaintiff asserted that the ice was one-inch thick, the Utah Court of Appeals refused to consider this fact because Plaintiff had not provided any evidentiary support for it. Instead, the Court of Appeals considered that "the ice was clear and under a thin layer of snow."

Plaintiff argued that PRI had constructive notice of the ice because it had been on the ground for a sufficient amount of time and the surrounding sidewalks had been salted. The Court of Appeals disagreed, stating: "The mere presence of a slippery spot on a floor does not in and of itself establish negligence." The presence of ice and salt in the area would require speculation to reach a conclusion as to the duration that the ice existed on the area that Plaintiff slipped on. Because there was no evidence that demonstrated approximately when the ice formed, the Utah Court of Appeals found that PRI did not have constructive knowledge of the condition. As such, it affirmed the grant of summary judgment in PRI's favor.

Warrick v. Property Reserve, Inc., 2018 UT App. 197 (Utah Court of Appeals, decided October 12, 2018, not yet released for publication in the permanent law reports).

UTAH'S HOSPITAL LIEN STATUTE IS INTERPRETED SUCH THAT HOSPITALS ARE NOT RESPONSIBLE FOR ATTORNEY FEES IN PERSONAL INJURY ACTIONS

Utah Supreme Court: The question before the Utah Supreme Court in this action was the correct interpretation of Utah's Hospital Lien Statute, U.C.A. § 38-7-1.

Plaintiffs argued that the statute "requires a hospital to pay its proportional share of an injured person's attorney fees and costs when a hospital lien is paid due to the efforts of the injured person or his attorney." Defendants countered that the statute does not contain any such language, and that the statute operates instead "to establish a priority system as to entitlement to settlement funds to allow hospitals to get paid."

The action involved multiple Plaintiffs who were injured in car accidents that filed personal injury claims against the third parties at fault. All Plaintiffs had hospital liens placed on any potential recovery from those claims, and all reached settlement agreements, paying their attorneys by way of a contingent fee on the recovery. Plaintiffs used the settlement proceeds to pay attorney fees and then the entirety of the asserted hospital lien, then retained any remaining balance. Plaintiffs contended that the hospitals failed to pay their "fair share" of attorney fees that the patients incurred in generating the settlement proceeds.

The Hospital Lien Statute authorizes hospitals that treat persons injured in accidents to file liens on the personal injury claims arising out of those accidents. The Utah Supreme Court found that the statute was unambiguous and only Defendants' interpretation of its plain language was plausible. "Read as a whole, U.C.A. § 38-7-1(1) creates a prior for the distribution of the judgment, settlement, or compromise going or belonging to the patient." The judgment first is used to pay attorney fees, court costs, and other necessary expenses accrued in obtaining the judgment. The statute then permits a hospital to assert a lien on the remaining amount to obtain payment for medical expenses. The hospital is deemed to have priority over any other creditor.

The Court found that nothing in the statute allows for assessing the hospitals with a proportional share of attorney fees, as argued by Plaintiffs. The Plaintiffs' argument was thus rejected by the Utah Supreme Court.

Bryner v. Cardon Outreach, LLC, 428 P.3d 1096, 2018 UT 52 (Utah Supreme Court, decided September 24, 2018).

DEFENSE VERDICT IN RETAIL STORE TRIP AND FALL CASE

U.S. District Court, D. Utah: Plaintiff Daryl Jean Decker was shopping in the seasonal area of Defendant Target's store during the morning-after-Christmas clearance sale when she tripped and fell over a flat-bed stocking cart. Plaintiff contended that Defendant was negligent in failing to train and supervise its employees in the proper use of the stocking cart; in using the cart in a high traffic area of the store; in failing to warn customers; and in creating the dangerous condition. Security footage showed Plaintiff approaching the cart while looking over her shoulder when she fell. Defendant contended that Plaintiff was at fault because she was not watching where she was going when she tripped over the cart. Defendant also asserted that Plaintiff was at fault for not seeing the open and obvious condition of the cart.

Plaintiff alleged to have sustained the following injuries from the fall: right arm injury, shoulder injury, complete fracture of the upper humerus, and a fracture of the shoulder joint requiring surgery with hardware. She claimed ongoing and permanent deficiencies due to the injuries. At the time of her injuries, her husband was treating for leukemia. Plaintiff asserted that she was unable to care for her husband due to her injuries. This allegedly resulted in her husband being placed in a care center for three weeks. As such, her husband also asserted a claim for loss of consortium.

The lawsuit went to trial and a verdict in Defendant's favor was rendered.

Decker v. Target Corp., Case No. 1:16-cv-0171.

More on Page 3

Colorado

Colorado Supreme Court Interprets the Scope of Evidence to be Considered for Bad Faith Claims Against an Insurer

Colorado Supreme Court: Plaintiff Charissa Schultz was in a car accident when another driver did not stop at a stop sign. The accident resulted in Schultz undergoing multiple knee replacement surgeries. She settled with the other driver's insurance company for its policy limits and then made a demand on her own underinsured (UIM) policy with Defendant GEICO Casualty Company. Along with her demand, Schultz provided GEICO with medical authorizations to allow it to obtain her medical records.

GEICO offered to settle with Schultz for the full UIM policy limit, and did so without requesting that Schultz undergo an independent medical examination (IME). Schultz subsequently filed a lawsuit against GEICO asserting claims for bad faith breach of an insurance contract, and unreasonable delay in the payment of covered benefits. GEICO denied liability, asserting that causation for the knee surgeries was fairly debatable because she had preexisting arthritis, which may have independently required the surgeries.

During the lawsuit, GEICO requested that Schultz undergo an IME, and Schultz objected on the ground that her physical condition was no longer in controversy because she was not previously required to undergo an IME during GEICO's claim evaluation. GEICO asserted that causation of the knee surgeries was a live issue again because of the lawsuit.

The Colorado Supreme Court stated: "the reasonableness of an insurance company's decision to deny benefits is to be evaluated based on the information before the insurer at the time it made its decision." GEICO's request for an IME would be with the intention of introducing such post-coverage-decision evidence to establish the reasonableness of its earlier coverage decision. As such, the Court held that Schultz was not required to under an IME.

Schultz v. GEICO Casualty Company, 429 P.3d 844, 2018 CO 87

(Colorado Supreme Court, decided November 5, 2018).

Colorado's MedPay Statute Interpreted

U.S. Court of Appeals, 10th Cir: Plaintiff Jeffrey Allen was injured in a car accident in May 2013. His car insurance policy from Defendant USAA included coverage for medical expenses arising from car accidents. However, this coverage had a one year limitation period such that he could not obtain reimbursement for medical expenses that accrued a year or more after an accident. Allen still sought reimbursement for his medical expenses accruing more than a year after the accident. In doing so, he argued that the one year limitation period was invalid for two reasons.

First, Allen argued that a 2012 disclosure form that USAA sent him stated that his policy covers reasonable medical expenses arising from a car accident. Allen thus argued that Colorado's reasonable-expectations doctrine renders the limitation period unenforceable. That doctrine renders exclusionary language in a policy unenforceable if it is established that the insurer deceived the insured into believing there was coverage when the insured is not. The Tenth Circuit Court of Appeals was not persuaded by this argument, because the 2012 disclosure form also stated that the original policy should be read because the form was only a summary. The form thus did not create a reasonable expectation as to the specifics of the medical expenses coverage.

Second, Allen argued that Colorado's MedPay statute, which requires a car insurance company to offer at least $5,000 of coverage for medical expenses, prohibits placing a year time limit on coverage. The Tenth Circuit Court of Appeals found this argument without merit. The Court ruled that nothing in the plain text of the MedPay statute prohibited insurance companies from including a time limit on medical-payments coverage.

Allen v. United Services Automobile Association, 907 F.3d 1230

(United State Court of Appeals, Tenth Circuit, decided October 29, 2018).

Tenth Circuit Interprets Strict Liability Products Claim Under the Federal Locomotive Inspection Act

U.S. Court of Appeals, 10th Cir.: Plaintiff George Straub was an employee of Defendant BNSF Railway Company who was injured when he attempted to adjust the engineer's chair on a locomotive. Straub was in the course and scope of his duties when the accident occurred. Straub brought suit against BNSF, arguing strict liability under the Federal Locomotive Inspection Act (LIA).

BNSF moved to dismiss the action, arguing that the accident did not trigger the LIA. The district court agreed, finding that the engineer's seat was not an integral or essential part of a completed locomotive. Straub appealed.

The Tenth Circuit Court of Appeals discussed that the LIA is an amendment to the Federal Employers' Liability Act (FELA). The FELA was enacted to provide liberal recovery for injured workers in the railroad industry. The LIA makes it unlawful for a carrier to use any locomotive on its railway lines unless the locomotive, and its parts and appurtenances, are safe to operate. Like FELA, the LIA must be construed liberally.

The Court found that the accident happened due to a failure with the adjustment mechanism on the engineer's chair. It determined that the seat and the adjustment mechanism was one unit that was an essential and integral part of the locomotive. The seat is to provide a safe and comfortable position for the engineer to operate the locomotive. As such, once BNSF installed an engineer's chair with a seat adjustment system, the LIA required BNSF to maintain the chair so that the seat adjustment device would be in a proper condition to allow for safe operation of the locomotive. The district court's ruling was therefore reversed.

Straub v. BNSF Railway Company, 909 F.3d 1280

(United States Court of Appeals, Tenth Circuit, decided December 3, 2018).

Defense Verdict in House Construction Dispute Seeking Up to $1.5 Million in Damages

Larimer County: Plaintiff Ian Siemplenski alleged that he entered into a contract with Defendant Matthew Glascott for Glascott to act as general contractor to build Plaintiff's home. The home wasn't completed to Plaintiff's satisfaction and Plaintiff eventually ordered Glascott to stop working on the home. Plaintiff said that the contract between the party was for almost $500,000. Plaintiff alleged that Glascott absconded with funds that he controlled and that Glascott used Plaintiff's credit without permission.

Defendant Glascott admitted that he worked for many months on the home's construction. But he alleged that he was a consultant and not the general contractor. He also asserted that Plaintiff never signed the contract, and that Plaintiff presented a modified contract after the lawsuit was filed. Glascott counterclaimed against Plaintiff, alleging that Plaintiff owed him for unpaid bills. Each party claimed unjust enrichment.

Plaintiff alleged damages between $850,000 and $1.5 million. Glascott's counter-claim alleged $5,600 in unpaid invoices. Upon trial to the bench, a verdict was rendered for Defendant Glascott as to Plaintiff's claims. As to Glascott's counter-claim, a verdict was rendered in favor of Plaintiff. The judge found that the parties did not enter into a contract.

Siemplenski v. Glascott, Case No. 17CV221.

Wyoming

Tenth Circuit Affirms Findings in Favor of Insurance Carrier in Action Seeking Underinsured Motorist Benefits

U.S. Court of Appeals, 10th Cir.: Luke Smith was a passenger in a pickup truck being driven in southern Wyoming by Miles Sumner. Miles fell asleep at the wheel, woke suddenly and overcorrected, causing the pickup to veer off the highway and roll over. Luke was ejected and sustained severe injuries. Due to Luke's comatose state, Sheryl Baize was appointed as Luke's guardian.

Plaintiff Viking Insurance Company of Wisconsin issued an automobile insurance policy to Miles. Viking attempted to offer Luke, via Sheryl as guardian, the policy's limits of $25,000 for his bodily injuries. Sheryl asserted that she was entitled to an additional $25,000 pursuant to the policy's provision for underinsured-motorist coverage. Viking disagreed and filed a declaratory action against Sheryl and Luke in federal court. Defendants filed a counter-claim against Viking, asserting multiple claims stemming from Viking's denial of the claim.

Viking then filed an amended petition, in seeking to correct the lawsuit's caption. Defendants Sheryl and Luke failed to file a timely response to that amended petition, so the court clerk entered a default against them. Defendants then sought to set aside the default. The district court refused to do so, and ruled that Viking was to only pay Defendants $25,000 under the policy rather than $50,000 total. The court also entered summary judgment against Defendants on their counter-claim. Defendants appealed.

On appeal, Defendants argued that the federal court did not have jurisdiction over the lawsuit because the amount in controversy did not meet the $75,000 minimum threshold for federal actions. But the Tenth Circuit Court of Appeals found that statements made in Defendants' counter-claim satisfied that jurisdictional requirement. In addition, the Court affirmed the entry of default due to the procedural history of the action, including Viking's counsel having notified Defendants' counsel of the need to file an answer after its deadline expired.

Furthermore, the Court determined that the express language of the policy did not extend underinsured motorist coverage to Luke. The policy's terms expressly stated that it is not applicable to a vehicle owned by Miles Sumner.

As to Defendant's counter-claim against Viking, the Court of Appeals affirmed entry of summary judgment in Viking's favor. Defendants had asserted negligence against Viking because Viking harassed them in order to get them to settle. The Court of Appeals held that Viking did not have a duty to conform to a specific standard of care: "An insurer owes no duty of good faith and fair dealing to a third-party claimant." As such, the district court's rulings were affirmed.

Viking Insurance Company of Wisconsin v. Baize et al., 2018 WL 4154774 (Tenth Circuit Court of Appeals, D. Wyo., decided August 29, 2018, not yet released for publication in the permanent law reports).

Defense Verdict in Fall Accident Alleging Negligent Design and Manufacture of a Ladder

U.S. District Court, D. Wyoming: Plaintiff Brent Walker allegedly lost his footing and fell through a stairway while climbing to inspect a storage tank using a steel stairway constructed by Defendant JTM Equipment. Plaintiff hit the ground from the fall. He filed suit against JTM.

Plaintiff claimed that the stairway lacked a barrier between the top rail and bottom runners that left an unguarded opening which he fell through. His causes of action thus alleged that JTM negligently: (1) failed to comply with OSHA regulations, (2) failed to warn him about the risks of using the stairs when they were missing a mid-rail, and (3) failed to properly design, produce, manufacture, and assemble the stairs for use on a storage tank. He also asserted strict liability claims for manufacturing and design defects.

Defendant denied liability and argued that it did not design or manufacture the stairway that Plaintiff was using at the time of the fall. Defendant alternatively argued that if it did design or manufacture the stairway, then Plaintiff's employer had significantly altered it without providing JTM notice. Defendant also denied that Plaintiff even fell, and argued that his long history of pre-existing back conditions caused his alleged injuries and damages.

Plaintiff asserted the following injuries from the fall: exacerbation of a pre-existing L5-S1 disc protrusion and bilateral radiculopathy, treated with an L5-S1 decompression, posterior laminectomy, and instrumented fusion.

Upon trial to a jury, a verdict in favor of Defendant JTM was rendered.

Walker v. JTM Equipment, Inc., Case No. 15CV00060 (U.S. District Court, D. Wyo., issued March 30, 2018).

More on Page 5

Texas

VERDICT IN WRONGFUL DEATH TRUCKING ACCIDENT IS REVERSED

Texas Supreme Court: This case involves a pedestrian-truck collision that resulted in the pedestrian's death. The decedent's family (Plaintiffs) contended that the truck driver was negligent in operating the truck. Plaintiffs also contended that Defendant JBS Carriers, who was the driver's employer and the truck owner, was negligent in training the driver.

The jury found that the driver, JBS, and decedent were all causes of the accident. The driver was determined 50% at fault, JBS was 30% at fault, and decedent was 20% at fault.

The issues on appeal are: (1) whether the trial court erred in excluding evidence of the pedestrian's mental illness and the fact she had alcohol and drugs in her system at the time of the collision; and (2) whether the employer could be held directly liable for the death based on a negligent training theory.

As to the first issue, an autopsy of the decedent revealed that she had alcohol, cocaine, and oxycodone in her body at the time of the accident. Medical records revealed that she had a history of crack cocaine abuse, and that she had been diagnosed as having paranoid schizophrenia and bipolar disorder. An expert opined that the decedent had walked right into the side of the tractor-trailer without breaking stride, speeding up, or slowing down. The expert also opined that this was consistent with someone on medications or having an exacerbation of schizophrenia or bipolar disorder. The decedent was in a blind spot to the truck's driver when the accident occurred. The trial court had excluded the evidence of the decedent's toxicology and mental disorders, finding that any relevance was outweighed by prejudice toward Plaintiffs.

On appeal of the first issue, the Texas Supreme Court stated: "Testimony is not inadmissible on the sole ground that it is prejudicial … rather, unfair prejudice is the proper inquiry, and unfair prejudice within its context means an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." The Court determined that the probative value of this evidence was substantial as it could have explained how or why the accident occurred. As such, the evidence should have been admitted.

As to the second issue, JBS argued that it could not be held directly liable because there was no evidence that it negligently trained its driver. The Texas Supreme Court agreed: "even if a cause of action for negligent training exists, the family presented no evidence that the lack of training regarding a blind spot in front of the truck was a proximate cause of Turner's injuries." As such, the verdict and judgment was reversed and remanded.

JBS Carriers, Inc. v. Washington et al., 62 Tex. Sup. Ct. J. 270 (Texas Supreme Court, decided September 19, 2018, not yet released for publication in the permanent law reports).

DEFENSE VERDICT IN UNDERINSURED MOTORIST COVERAGE CASE IS AFFIRMED

Texas Court of Appeals: Plaintiff William Blevins was involved in a car accident when two separate cars struck his vehicle. The drivers of those vehicles both settled with him, and Blevins then sought underinsured motorist (UIM) benefits from Defendant State Farm Mutual Automobile Insurance Company. State Farm was thus the only defendant to go to trial.

As to the UIM case, Blevins needed to establish liability on the part of either driver and to quantify his damages. Only then could State Farm potentially own him money under the UIM policy. At trial, Blevins did not put into evidence or seek to recover any out of pocket medical bills or repair costs, nor did he seek lost wages or diminished earning capacity. Rather, his primary trial strategy was to establish that the wreck caused a traumatic brain injury which permanently diminished his capacity. The jury was thus only asked about his non-economic damages. The jury was not convinced that he sustained a traumatic brain injury, and therefore did not award him any damages.

More on Back Page

About Our Firm

Dewhirst & Dolven, LLC is pleased to serve our clients throughout the intermountain west and Texas from the following offices:

- Salt Lake City, Utah
- Denver, Colorado
- Colorado Springs, Colorado
- Grand Junction, Colorado
- Casper, Wyoming
- Dallas, Texas
- and South Padre Island, Texas.

Please see our website at DewhirstDolven.com for specific contact information.

Dewhirst & Dolven, LLC has been published in the A.M. Best's Directory of Recommended Insurance Attorneys and is rated an "AV" law firm by Martindale Hubbell. Our attorneys have extensive experience and are committed to providing clients throughout Utah, Wyoming, Colorado and Texas with superior legal representation while remaining sensitive to the economic interests of each case.

Dewhirst & Dolven's Legal Update
is published quarterly by
Rick N. Haderlie, Esq and
Kyle L. Shoop, Esq
of
Dewhirst & Dolven, LLC

For more information regarding legal developments, assistance with any Utah, Wyoming, Colorado or Texas matter, or to receive this publication via email, contact Rick Haderlie at
rhaderlie@dewhirstdolven.com
4179 Riverboat Road
Suite 206
Salt Lake City, UT 84123
(801) 274-2717
www.DewhirstDolven.com

DEWHIRST & DOLVEN
Attorneys at Law
www.DewhirstDolven.com

SALT LAKE CITY
4179 Riverboat Road,
Ste 206
Salt Lake City, UT 84123
(801) 274-2717

GRAND JUNCTION
2695 Patterson Road
Ste 2, #288
Grand Junction, CO 81506
(970) 241-1855

DENVER
650 So. Cherry St.,
Ste 600
Denver, CO 80246
(303) 757-0003

DALLAS
5430 LBJ Freeway
Ste 1200
Dallas, TX 75240
(972) 789-9344

COLORADO SPRINGS
405 S. Cascade Ave., Suite 301
Colorado Springs, CO 80903
(719) 520-1421

SOUTH PADRE ISLAND
2216 Padre Boulevard, Suite B605
South Padre Island, TX 78597
(956) 433-7166

FORT COLLINS
2580 East Harmony Rd.
Ste 201
Fort Collins, CO 80528
(970) 214-9698

CASPER
123 West 1st Street
Ste 675
Casper, WY 82601
(307) 439-6100

CLM

Continued from Page 5

On appeal, Blevins challenged the verdict on the basis that there was evidence that he sustained some injuries, even if the jury was not convinced that the accidents caused a traumatic brain injury. But the Texas Court of Appeals noted that Blevins never asked the jury to award any economic damages for any other injury. He also never introduced any evidence concerning the amount of his medical bills.

In addition, the Court of Appeals held that the jury was not permitted to hear the amount of UIM coverage under the State Farm policy, as only the existence of UIM coverage needs proved. Blevins also asserted that a State Farm representative should have been permitted to testify at trial. The Court of Appeals disagreed, ruling that such a representative would not have provided testimony relevant to the sole issues at trial: (1) liability for the accident, and (2) Blevins' damages. As such, the jury's verdict was affirmed.

Blevins v. State Farm Mutual Automobile Insurance Company, 2018 WL 5993445 (Texas Court of Appeals, Fort Worth, decided November 15, 2018, not yet released for publication in the permanent law reports).