

American  
Association  
for Justice

www.justice.org

# Trial

February 2019

# DANGER ON THE ROAD

Ride-Share  
Litigation Curveballs

The Emergence of  
E-Scooters

**BUS CASES  
101**

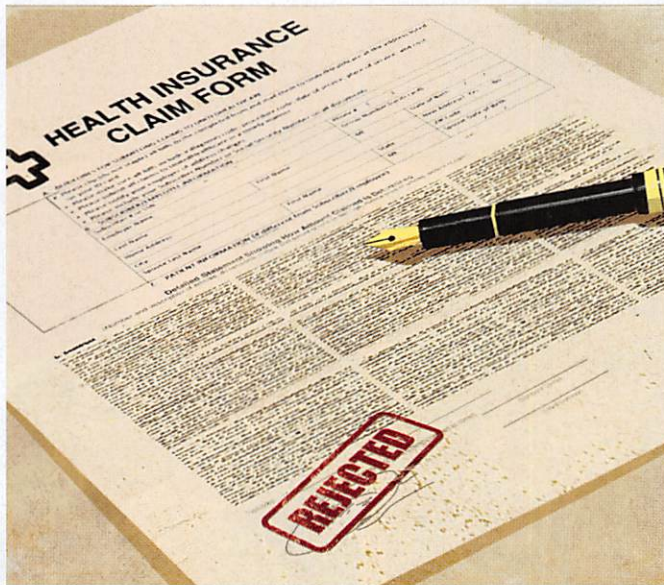
PREVENTING  
**Side Underride  
Collisions**

ALSO  
INSIDE

Protect  
Your  
Verdict on  
Appeal



# Verdicts & SETTLEMENTS



## INSURANCE

### Bad faith denial of coverage for cancer patient's proton beam therapy

Orrana Cunningham, 53, was diagnosed as having Stage IV nasopharyngeal carcinoma. She sought treatment out of state at MD Anderson Cancer Center, where providers suggested she undergo proton beam therapy. The treatment, Cunningham learned, would provide the best chance of survival and avoidance of the catastrophic side effects associated with traditional radiation, such as damage to critical structures near her tumor, including her brain stem.

MD Anderson submitted a request for coverage to Aetna Health, Inc., which issued Cunningham's health policy. Aetna denied Cunningham's claim for treatment as experimental or investigational. Her appeal was unsuccessful, and an independent review organization upheld the denial of coverage.

Cunningham proceeded with the proton beam therapy using more than \$92,000 in borrowed funds. However, after the treatment she developed herpetic encephalitis and brain swelling, which led to a brain stem herniation and her death. She is survived by her husband.

Cunningham's husband, individually and on behalf of her estate, sued Aetna, alleging breach of the insurance contract and reckless disregard of the duty of good faith and fair dealing. The plaintiffs asserted that the defendant's reviewing doctors and nurses were medically unqualified to decide Cunningham's claim, were overworked, and had a financial incentive to increase the insurer's profits by denying claims. Additionally, the plaintiffs argued that the defendant's medical directors had not read Cunningham's insurance contract before denying her claim, relying instead on a clinical policy bulletin that was meant to serve only as a resource and not a replacement for the contract itself.

The jury awarded approximately \$25.6 million, including \$10 million in punitive damages.

**CITATION:** *Cunningham v. Aetna Health, Inc.*, No. CJ-2015-2826

(Okla. Dist. Ct. Okla. Cnty. Nov. 6, 2018). **PLAINTIFF COUNSEL:**

AAJ member Douglas Terry, Edmond, Okla.; and Justin Meek and Thomas Paruolo, both of Oklahoma City. **PLAINTIFF EXPERTS:**

Stephen Prater, insurance practices, San Jose, Calif.; and Andrew Chang, radiation oncology, Oklahoma City.

## GOVERNMENT LIABILITY

### Failure to notify parent of deceased child's impending cremation

Yvette Diaz's newborn daughter died unexpectedly a day after she was born. The child's body was transferred to the Los Angeles County coroner's office, which later called Diaz to obtain her contact information and additional details about the events preceding her

child's death. Just over a month later, Diaz received a voicemail from the coroner's office, asking her to contact them at her convenience. The coroner sent Diaz a letter the following month and informed her that her child's remains had been cremated.

Diaz suffered emotional distress resulting from her inability to bury her child in accordance with her religion.

She sued the county, alleging violation of California Health & Safety Code

§7104.1, which requires timely notification before the coroner may cremate a person's remains. The plaintiff charged that the defendant failed to notify her of the impending cremation in writing and that a general voicemail was insufficient notice.

The defense asserted that Diaz had failed to make funeral arrangements for her child.

The jury awarded \$1.1 million, finding Diaz 45 percent liable.