

# Jury Verdict Reporter of Colorado

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JURY VERDICT REPORTER OF COLORADO

## ARAPAHOE COUNTY DISTRICT COURT

**Megan Jones v. American Medical Security, Inc.;  
United Wisconsin Life Insurance Company and  
Gary Cushner**

**Case No:** 94-CV-1137

**Judge:** Timothy Fasing

**Trial Dates:** December 11 - 19, 1995

**Plaintiff's Attorneys:** Richard Ruh (Ruh & Associates)  
and Daniel J. Schendzielos (Schendzielos & Deel, LLC)

**Defendants' Attorneys:**

**American Medical Security, Inc. and United  
Wisconsin Life Insurance Co.:** James E. Gigax  
**Gary Cushner:** Tracey M. Porter

**Type of Claim:** Breach of insurance contract, bad faith breach of contract, outrageous conduct, exemplary damages and fraud. September 16, 1994, The plaintiff Megan Jones applied for health insurance with the defendant insurance companies. The defendant, Gary Cushner, is an insurance agent for American Medical Security (AMS). October 1, 1994, Ms. Jones was issued health insurance coverage with the defendant insurance companies and on November 3, 1994, Ms. Jones had a double mastectomy. The plaintiff received notification on March 1, 1995, that her claims for insurance coverage were being denied due to her pre-existing condition. The defendants maintained that the plaintiff had failed to disclose her consultations of various physicians for lumps and other breast symptomology. In April 1994, the plaintiff saw Linda Williams, MD, complaining of dimpling in her left breast. Ms. Jones was diagnosed as having fibrocystic breast disease and a left breast mass. Dr. Williams referred the plaintiff to her surgeon Atsuke Okabe, MD, for further evaluation. Dr. Okabe saw the plaintiff on April 14, 1994, and directed her to return within six weeks. The plaintiff waited six months and returned to Dr. Williams on September 13, 1994. Dr. Williams noted concern of an abnormality in the plaintiff's left breast. It was at this visit that the plaintiff said that she learned that her current health insurance did not cover office visits. The plaintiff applied for AMS cov-

**WEEKLY SUMMARIES OF COLORADO JURY VERDICTS**  
Including verdicts from the district courts in Adams,  
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Larimer, Mesa, Pueblo and Weld Counties and the U.S.  
District Court for the District of Colorado

erage through agent Gary Cushner. The plaintiff said that Mr. Cushner was a family friend and filled out the health insurance application for her. The plaintiff also said that Mr. Cushner told her that her surgery would be covered. The defendants claimed that the plaintiff's insurance application omitted material medical history which pre-dated the application date and that the plaintiff failed to disclose that she had a medical condition which required attention. AMS denied the plaintiff's claims as pre-existing and later rescinded the plaintiff's policy.

**Note:** At the beginning of the trial, the Court ruled that the health insurance policy did not contain an enforceable exclusion for pre-existing conditions thereby leaving the defendants with a counterclaim for rescision only.

**Damages Alleged:** \$30,000 for unpaid medical bills. \$150,000 for future bone marrow transplant surgery. \$500,000 for emotional distress and \$500,000 for exemplary damages.

**Counterclaim:** Rescission of policy.

**Final Demand Before Trial:** Health insurance coverage plus \$440,000, or \$940,000 with no health insurance coverage.

**Final Offer Before Trial:** Health insurance coverage plus \$25,000 or no health insurance coverage plus \$100,000.

**Plaintiff's Expert Witnesses:**

Raul Alvarez, MD (treating internist/oncologist)  
Thomas L. Roberts, Esquire (regarding bad faith insurance)

**Defendants' Expert Witness:**

Professor Douglas Rovira, MD (oncologist)

**Verdict:** For the defendants American Medical Security, Inc. and United Wisconsin Life Insurance and against Megan Jones on claims for breach of insurance contract, bad faith breach of contract, outrageous conduct and fraud.

For the defendant Gary Cushner and against Megan Jones on fraud.

**Kittie L. Hook v. Karen Hawkins**

**Case No:** 93-CV-1115

**Judge:** Timothy Fasing

**Trial Dates:** June 12 - 16, 1995