



YOU'RE IN BAD HANDS

Jennifer Latham survived a devastating crash. But her health insurance company had its own death panel.

BY ALAN PRENDERGAST

Standing in a Boulder courtroom on a blustery Friday evening, waiting for the jury to return with its verdict, Jennifer Latham feels a knot twisting in her stomach. She thinks she might throw up.

She takes a few deep breaths. The nausea passes just as the jury starts filing in. Where this sick, anxious feeling came from, she has no idea. But it has nothing to do with doubt. She knows she is right, knows she is going to win.

She has known it all along.

It's been a long haul to get to this moment. Four years of acrid legal wrangling with Time Insurance, the Milwaukee-based health insurance company Latham sued for breach of contract and bad faith. Countless

hours of hearings and depositions. Two weeks of a hard-fought trial, riddled with objections and bench conferences and relentless scrutiny of her medical records. At times she found it almost impossible to sit still, fidgeting in her chair or retreating from the plaintiff's table to sit with her parents in the back of the courtroom.

But none of that matters now. She's right. She's going to win. She has known it since — well, since she first realized what the insurance company had done.

The knowledge didn't come all at once. She has no memories of the accident and only fragmentary images of the next few weeks, as she struggled to learn to walk and read again and deal with the effects of a

traumatic brain injury. But once she figured out what had happened, she knew it was up to her to do something. She had, she says now, a *calling*.

In 2005, Latham and her husband, Alex, were severely injured when a meth dealer fleeing police ran a stop sign in Longmont and broadsided their car. The couple suffered broken limbs, head trauma and a host of other injuries. Both spent weeks in the hospital.

At the time, Alex Latham had no health insurance. Jennifer did — or so she thought.

She'd signed up for health insurance with Time, also known as Assurant Health, five months before the accident. But as the hospital bills began to roll in, the company

launched a review of her application and prior medical records, a process known as "post-claim underwriting." A Time employee then wrote a letter that Latham's attorney, Marc Levy, describes as "a sucker punch to the gut," informing her that the company was rescinding her policy — not just canceling it, but obliterating it, as if it never existed — because she had failed to disclose information about her health history on the application she'd submitted.

For people unable to obtain group health insurance through their employer, rescission of an individual policy can be a kind of death sentence. Once you've been rejected for alleged fraud on your application, it's almost impossible to obtain **continued on page 16**

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health insurance elsewhere. Lawyers for Time, the nation's oldest individual medical-policy provider, say that rescission is a rare remedy, affecting only half of 1 percent of its clients.

"It's a way to keep this kind of insurance as affordable as possible," defense attorney Ellis Mayer told the jury. "The fact that certain people are rejected for insurance is part of the business."

But Time's use of rescission to avoid paying pending claims has come under fire across the country. The company has run afoul of Colorado regulators over its rescission process and was fined \$2.1 million in Connecticut for improperly denying hundreds of claims. The practice has also triggered a barrage of lawsuits — most of them settled out of court. Last summer, Time's CEO was grilled before Congress about the fact that his company had saved \$150 million in five years by rescinding 8,500 policies, sometimes over vague symptoms or notations in medical records that the patient was never told about. For some pundits, the company has become the poster child for avaricious, weasel-word insurance companies in the debate over health care reform (see story, page 20).

Latham's attorney told the jury that Time's application process was confusing, that the insurance agent asked his client summary questions and then filled out the convoluted form for her, and that the "investigation" in search of fraud was cursory at best. "They've never produced a scintilla of evidence that she had any intention to mislead," Levy said. "This is a game of gotcha. They can take away anybody's insurance policy."

Jennifer Latham's medical bills to date total close to \$200,000. Unable to work, she and Alex lost their home in Longmont to foreclosure in 2006; they are now getting divorced. Jennifer lives on disability checks and walks with a rod in her leg. She and the two youngest of her four children have had no private health insurance since Time rescinded their policy.

People who have known her a long time — her mother, her thirteen-year-old daughter — say that Latham is a different person than she was before the accident. She was once a voracious reader, a take-charge mom, a teacher with the patience of Job. Now she's sensitive to bright light and noise, has trouble focusing, is forgetful, impulsive, gets upset easily. Yet there's one thing, they say, that the brain injury didn't alter: her sense of right and wrong.

"She's a remarkable woman," says Levy. "She has never described herself as a victim. But she does have a high sense of integrity, and to be called a liar for four years bothered her a great deal."

As the jury hands over its verdict, Jennifer Latham already knows that vindication is at hand. She knows she's right. She's going to win.

And Time Insurance is about to discover just how badly it has miscalculated: about the routine business of taking away people's health insurance, about this Boulder jury, about its own by-the-numbers defense —

and, most of all, about Jennifer Latham.

Five years ago, everything seemed to be falling in place for Latham. She was changing careers, raising four kids and living in a five-bedroom house in Longmont that her second husband, a savvy and successful real-estate agent, had found at a bargain price. At 35, she



MARK MANGER

No doubt: Jennifer Latham says that Assurant Health's decision to revoke her health coverage for alleged misrepresentation "insults who I am."

felt she was finally on the right track.

Raised in rural Michigan, Jennifer had earned an honors degree in elementary education and married the boy next door. Inspired by the writings of Jack Kerouac, the couple moved to Colorado in 1997. Jennifer found a job at a preschool in Broomfield that

Lopez. "I was in the best shape of my life," she says now.

It all came apart in a heartbeat, a block from home, during a trip to the grocery store.

On Sunday, October 23, she was preparing for a visit from her parents, who were going to watch the kids while she and Alex headed

Eight days later, police tracked Todaro's cell phone to a house in Fort Collins. He surrendered after a five-hour standoff. He pleaded guilty to vehicular assault and several related charges; Boulder District Judge Lael Montgomery gave him thirty years.

The Lathams had already received their sentence: shattered legs, lacerations, head trauma, internal injuries. If two emergency rescue workers hadn't lived yards from the crash and responded immediately with their equipment, the couple might not have survived at all.

Jennifer's parents, Jim and Sheila Shields, learned of the accident while on their way to Colorado from Michigan. They drove through the night and went straight to the hospital. Sheila could scarcely believe that the battered figure in the ICU was her daughter.

"She was so swollen," she recalls. "Cuts and bruises all over her. She was in and out of consciousness. She was talking about toilet-paper people. She didn't realize she was married to her second husband. She was all over the place."

Jennifer's own recollections of those first few weeks of rehabilitation are hazy. Her first post-accident memory is of being wheeled into a shower, realizing that she couldn't walk or bathe herself. She didn't recognize her own sister. She drifted off from conversations.

"I had to relearn everything," she says. "Who I was. That I had kids. I had to learn how to walk. Then they had to put braces on my ankles because I wanted to escape."

She returned home in December, with her father appointed as a temporary legal guardian. One of the challenges facing her parents — along with taking care of toddlers who barely knew them, driving Jennifer to medical appointments, getting the older kids to and from school, visiting Alex at another hospital — was figuring out why the insurance company wasn't paying her bills.

When she left her job at Children's World, Jennifer had relinquished her group insurance, too. Her two older daughters were covered by her first husband's insurance, but she kept bugging Alex to get health insurance for them and the two youngest. Tired of waiting, she'd called an insurance agent named Jennifer Smith in May, five months before the accident, and had arranged a short-term policy for the family through Assurant Health, one of Time Insurance's entities.

Assurant advertises short-term policies — with numerous exclusions and high deductibles — as gap coverage for people between jobs, using the slogan "because anything can happen." But those policies expire after six months, and Smith contacted Latham in August to urge her to replace the policy with a long-term one that would offer more benefits. Just how and when the application got done remains a matter of some dispute, but a policy was soon issued for Jennifer, Eden and Jackson Latham. (Alex Latham was excluded from the long-term policy, for reasons never clarified at trial.)

Yet it soon became apparent to the Shields that Assurant was refusing to process Jennifer's medical bills, submitted by providers in the wake of the crash. Shortly before Christmas, a letter **continued on page 18**

for the Vegoose music festival in Las Vegas, featuring Dave Matthews and Widespread Panic; a friend had backstage passes. She and Alex got in their Hyundai and headed to King Soopers for supplies.

A few blocks away, Shawn Todaro checked the mirrors on his rented Silverado

"THE FACT THAT CERTAIN PEOPLE ARE REJECTED FOR INSURANCE IS PART OF THE BUSINESS."

offered free daycare for their two daughters. Over the next four years she moved to Boulder, then Lafayette, divorced her first husband, became a director for Children's World Learning Centers and married Alex Latham.

The Lathams soon had two more children, Eden and Jackson. Alex's business was taking off, and Jennifer decided to quit her job to stay at home with the children while studying for her own real-estate license. By the fall of 2005, she was putting in eighteen miles a day on a stationary bike, doing yoga and working on having a body like Jennifer

and saw a state trooper quietly tailing him. A parolee with a record of drug, weapon and theft charges stretching back to 1992, Todaro wasn't planning to get stopped. Not with 87 grams of methamphetamine, worth about \$13,000, hidden in the floor of his truck.

Todaro took off. He blasted through a stop sign at 23rd and Collyer and T-boned the Hyundai, pushing it through a fence and into a tree, crumpling it like a soda can. The trooper arrived moments later. Todaro struggled with the officer, pulled a gun and fled on foot, leaving behind his meth and the screams of the people in the other vehicle.

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arrived from Assurant underwriter Kathy Sellers, stating that a review of Jennifer's medical records had revealed several pertinent items she hadn't disclosed in her application, including a "uterine prolapse with surgical resolution discussed," incontinence, an ER visit for shortness of breath and some "abnormal" diagnostic tests. The letter stated that Latham had fifteen days to return a consent form, removing herself from coverage, or the company would revoke her children's health insurance, too.

The letter didn't make much of an impression on Jennifer at the time; still deep in the fog of her head injury, she was pleased at the idea that she'd be getting a check when the company refunded her premiums. But the doctors had urged her parents to push Jennifer a bit, get her involved in "adult" decisions about her care. On December 28, she called Sellers to demand an explanation. The call was recorded by Time.

"I have been turned down for being covered, and I don't understand why," she said.

Sellers started reading off the answers given on Latham's application.

"I didn't fill that out," Latham responded.

Sellers mentioned the uterine prolapse — a slipping or sagging of the uterus, a condition that's not uncommon among women who've had vaginal delivery of several children.

"It doesn't say anything about that in the application," Latham said. "My question to you is, is every single thing that ever happened to me in my life, I'm supposed to record?"

It was a short, awkward conversation, interrupted by howling kids and Jennifer shouting at someone, "Get away from that!" Sellers promised to send Latham a copy of her application.

The Shieldses showed the rescission letter to Marc Levy, the lawyer whom they and Alex's parents had hired to try to deal with auto insurance issues surrounding the accident. A veteran of insurance defense work, Levy was astounded. He calls Sellers's missive the "stupid, stupid, stupid letter," a reference to a fatally callous insurance document in John Grisham's *The Rainmaker*.

"I defend insurance companies for a living, and I was offended," he says. "Shocked, really, that any company would treat an insured that way. My clients don't do that."

As Levy saw it, the letter offered his client something akin to Sophie's Choice: Relinquish your contract or we'll cut off

your kids, too. In Colorado, there are only two ways for a company like Time to legally rescind an insurance policy: Obtain a court order or the consent of your policyholder. This looked like an attempt to bully Latham into consent. And what were the stated reasons? An episode of incontinence? Shortness of breath? Were these conditions asked about on the application? Had she been diagnosed with some specific disorder? Even if she had, Colorado is an "intent" state, meaning that the company has to show the applicant intended to deceive the company rather than innocently omitted something.

A member of Levy's firm wrote back to Sellers, asking for more information and more time to respond, given the holiday



October 23, 2005: Fleeing police in a rented truck, parolee Shawn Todaro broadsided the Lathams' car a block from their house.

and Latham's condition. A response was promptly received, stating that the company is "currently conducting a review based on your appeal."

A few days later, one of Latham's medical providers called Time to find out if the company was going to reimburse a \$70,000 bill that had been submitted. That conver-

A New York native raised in Oklahoma, Marc Levy comes across as a born litigator, with an appetite for the contentiousness of the courtroom. But as Jennifer Latham's dispute with Time Insurance crept toward trial, her attorney recognized that the case was spiraling into a rarefied — and costly — level of conflict. Levy had never seen a bad-faith case he considered quite as blatant as this one, or an opponent more doggedly determined to deny any wrongdoing.

"I think there's a business model here," Levy says. "The insurance company knows that if they deny a hundred claims, 95 of those people are going to go away. They know that five of them might consult with a lawyer, and that two or three of them might get a lawyer to take their case. And they

know they're going to make it very expensive and protracted for those people to pursue their case."

The two sides battled over records, venues and deposition schedules, resulting in numerous delays. Time tried three times to get the case shifted from Boulder to federal court in Denver. The last attempt came only a month before the trial was sched-

circumstances, supporting four children on a monthly Social Security income of less than \$1,700. Another attorney, having fronted umpteen hours and upwards of \$80,000 in costs in a contingency case, would have twisted his client's arm to take it.

But not Levy. And not Latham. She turned down the deal.

It was a lot of money in her world, all right, but so little for a company like this one. She wanted people to know what Time Insurance had done. How many people less fortunate than her had taken the money and been silenced?

"You're going to think I'm a crazy girl," she says now. "But I feel I had a calling. Be the change you want to see in the world — that's what I am trying to do."

Like a lot of trials, Latham v. Assurant was largely about documents and experts. Time had based its decision to rescind the policy on three instances of medical care that the company's post-claim review had uncovered. In 2004 Latham had been seen at a local clinic for pelvic discomfort and told a physician's assistant that

"it feels like something is falling out." Six months later, she'd gone back to the clinic complaining of shortness of breath; she was referred to a hospital emergency room, which performed an EKG and other tests and released her.

Time's attorneys contended that such information was exactly what its application requested when it asked whether "any proposed insured had any diagnosis of, received treatment for, or consulted with a physician concerning" a broad spectrum of medical conditions. The clinic and hospital visits hadn't been noted on the application, even though having an EKG "is not something you easily forget," as defense attorney Ellis Mayer put it.

But Levy's expert witnesses characterized the medical records as ambiguous, requiring more investigation than Time bothered to do. John Grund, an attorney who's co-authored textbooks on insurance law and usually testifies on behalf of insurance companies, told the jury that it wasn't clear from the record that Latham had been diagnosed with uterine prolapse, let alone told that she needed surgery; in any event, Time had excluded the condition from the policy even before the accident.

As for the ER visit, the record reported a "negative workup." Latham had been told she was having a panic attack and sent home; small wonder that she would deny having any respira- **continued on page 20**

"THE INSURANCE COMPANY KNOWS THAT IF THEY DENY A HUNDRED CLAIMS, 95 OF THOSE PEOPLE ARE GOING TO GO AWAY."

sation was also recorded by the insurance company.

"The claim is here," Time's customer service rep said. "There is a pre-existing investigation that has been opened."

The rep hinted darkly about the patient's "undisclosed medical history." When the provider asked if the bill was going to be paid, the rep let her know just how seriously the company was considering Latham's appeal.

"It's not going to be paid," he snapped. "I can guarantee you that."

uled to begin and was rebuffed by Judge Richard Matsch, who drily observed that "the defendant's motivation appears to be avoidance of unfavorable rulings and the trial date."

The company's strategy seemed to be to test how much the plaintiff was willing to spend to see her day in court. But then, practically on the eve of trial, the defense made a surprising settlement offer. It was a nice round number: one million dollars.

Another person would have jumped at the offer — particularly one in Latham's lean

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tory problems on the application form five months later. Defense witnesses made much of a notation about an “abnormal” EKG, but there was no indication a doctor had reviewed that finding or that anyone had told Latham about it.

In some details, Time’s interpretation was just wrong. In referring her case to the company’s rescission panel, the underwriter claimed that the ER records showed that Latham had responded to treatment with albuterol, a drug used for asthma. Latham’s chart stated *no* response to albuterol, suggesting that her shortness of breath wasn’t a respiratory issue.

In Grund’s opinion, Time’s review of the records was skewed toward rescission, and its appeal process was a “sham.” The phone call from Latham to Sellers, which was played for the jury, should have triggered a more careful review of her health history.

“If you’re taking the position that she intentionally misrepresented material facts,” Grund said, “this [call] suggests something to the contrary. You’ve got to investigate it. They did nothing.”

Yet documents and experts could only take the case so far. In the end, the case hinged on whether Latham was more credible than the witnesses from Time. Levy did

his best to introduce the jury to the impassive, bean-counting corporate culture he’d been battling for four years.

He played the phone call from the customer service rep who “guaranteed” Latham’s bills wouldn’t be paid. He played excerpts of Assurant president Don Hamm’s stumble before Congress. He introduced evidence that company officials had done so many rescissions the week Latham lost her insurance — 109 in two hours, about 68 seconds apiece — that they had to schedule three cases, including Latham’s, for the following day and had no specific memory of her situation at all.

Insurance agent Jennifer Smith testified that she read the questions on the application verbatim to Latham. Latham insisted that Smith asked very general questions, without all the detail found in the application, and filled out the form for her. Uterine prolapse was never mentioned.

“She asked if I had reproductive problems,” Latham said. “We laughed because I had all these kids.”

In a deposition taken in another lawsuit, a Time employee said that the application

fair amount of delay and up-front cost to the company; at the Latham trial, Time officials testified that post-claim underwriting was a more efficient process. Since most states allow a one- or two-year contestability period after a policy is issued, the company can simply wait until a big claim is submitted, then conduct an investigation in search of “material misrepresentations” that would warrant claim denial or policy rescission.

Still, post-claim underwriting has its own risks. It can turn up not just fraud but inadvertent omissions. Time rescinded coverage for Otto Raddatz of Illinois in the middle of chemotherapy treatments because prior records showed he had gallstones; the decision was reversed only after the state attorney general got involved and Raddatz’s physician admitted that he’d never told him about the gallstones. The case received mention in a speech last fall by President Barack Obama, pushing for health care reform.

Another Time customer, diagnosed with Hodgkin’s lymphoma a month after getting her policy, was told she wouldn’t be covered because she once told a doctor she’d experienced shortness of breath after exercising. The company claimed the episode should have prompted her to seek treatment for a possibly more serious illness. Two years ago, that case and dozens of others led to a \$2.1 million fine against Time and scorn from Connecticut Attorney General Richard Blumenthal, who declared that the company’s post-claim underwriting “is designed to enrich itself by denying legitimate claims.”

In Colorado, Time Insurance and its subsidiaries have been fined twice in six years by state regulators. A 2003 audit by the Colorado Division of Insurance found 44 alleged violations of state law, including failure to adequately disclose its rescission appeal procedures, and



Sending a message: Latham attorneys Marc Levy (seated) and Joshua Proctor asked the jury for \$7 million in damages — and won one of the largest bad-faith verdicts ever awarded in Colorado.

questions usually aren’t asked verbatim but in “a little more customer-friendly” manner. A transcript of an application interview

could almost smell the magnolias bursting into bloom.

But Walker’s cross had its missteps, too.

produced in that same case shows the question about “reproductive problems” being posed the same way that Latham says she was asked about it.

Tugging on a canary-yellow sweater and straining to focus on Levy’s questions, Latham insisted she didn’t knowingly mislead anyone. “I may be silly, I may be stupid, I may be naive, but I’m not a liar,” she said from the witness stand. “I try to live my life in a certain way.... I was a teacher of little kids.”

“What’s life like without health insurance?” Levy asked.

“Life is hard. I cry a lot. A lot of specialists don’t take Medicaid. If they do, they say they don’t have any space available. It’s the first thing they ask about: insurance.”

Time’s legal team was led by Robert Walker and Walter Wilson, two attorneys from a prominent Mississippi defense firm. Walker aspired to a certain Southern delicacy in his cross-examination of Latham, but the performance seemed lost on a Boulder jury. He asked if a doctor had examined her “female regions” during her 2004 clinic visit, and you

It all sounded peachy, but the committee wasn’t satisfied. How, Oregon representative Greg Walden wondered, does Assurant know that the applicant is even aware of what’s in the medical records?

“We have a very fair and thorough process,” Hamm replied. “We would not rescind a policy if the applicant was not aware of the condition.”

Hamm was asked about the Raddatz case; he said he couldn’t talk about it. Committee chairman Bart Stupak, a Democrat from Michigan, pressed him about the thousands of conditions that can trigger a post-claim review, including cancer. Hamm replied that there’s a “high probability” that cancer is a pre-existing condition.

Stupak took out one of Assurant’s applications and asked Hamm to answer one of his own company’s straightforward questions: “Within the last ten years, has any proposed insured had any diagnosis of, received treatment for, or consulted with a physician concerning phlebitis, TIA, cystitis, lymphadenopathy, or glandular disorder?” So tell me, what is TIA?

“I am not aware,” Hamm said.

“If you don’t know what it is, how would anyone filling out your application know what it is? How about phlebitis or lymphadenopathy?”

“I don’t know the answer to those questions,” Hamm said.

“Do you sincerely believe an average applicant would know what these words mean if you don’t know and I don’t know?”

With the C-SPAN cameras rolling, Stupak asked Hamm and the chiefs of two other health insurance companies if they would publicly commit to not rescinding people’s policies except in cases of “intentional fraud.”

All three refused. — Prendergast

He asked Latham to read aloud a passage from her deposition. As she began to stumble over the words, he hastily retrieved the document — but not before the incident brought home to the jury how the accident had made reading an arduous chore.

Walker seemed puzzled that she'd managed to maintain auto insurance — for a van with bald tires donated by a local charity — while having no health insurance. He established that her medical bills had eventually been paid out of funds extracted from insurance on the rented truck that hit her and her own auto coverage, as if that made up for any alleged breach of contract by his company.

But if Latham emerged unscathed in cross-examination, the same could not be said of Time's highest-ranking witness, Darinka Sever. An eighteen-year veteran of the company, the manager who oversees the rescission process, Sever was the embodiment of Time's corporate spirit: bland but unyielding, fond of razor-thin distinctions of language rarely found outside an underwriting manual, and utterly fixated on the bottom line.

Sever defended the rescission of Latham's policy to the bitter end. There was no need to call Latham or her insurance agent or even her doctor before revoking her insurance, she testified. "The records were pretty clear." Had Time known about the ER visit for shortness of breath, the policy would never have been issued, she said.

Levy asked her if the company had ever bothered to process Latham's appeal. The policyholder never appealed the decision, Sever insisted. Incredulous, Levy asked about the letters he'd received stating that the company was "conducting a review based on your appeal."

Form letters, Sever said. There was no appeal.

What about Jennifer Latham's phone call? Wasn't that a request for an appeal? What about the letter from Levy's office asking for more time?

"The letter from your office is a request for information, not an appeal," Sever said.

The company had done nothing wrong. Not when it started telling medical providers the policy was no longer in effect, a day after notifying Latham of its intent to rescind. Not when it sent Latham a form letter asking for details of the accident six months after rescinding the policy. Not even when it sent her the stupid, stupid, stupid letter, offering to keep her children insured if she would immediately consent to what was, in effect, financial ruin.

"We gave them the opportunity to at least keep the kids on the plan," Sever said. "It's not a process to trick anyone."

When not on the stand, Sever sat at the defense table, consulting with Time's attorneys. By the time the trial was over, jurors had come up with their own nickname for the unemotional, all-business, gray-haired manager. They called her Cruella.

This is a big day for Jennifer Latham," Levy told the jurors at the start of his closing argument. "This is, in fact, her appeal. After four years, we finally got here."

He called Time's rescission panel a "star

chamber" and wondered how any process so relentless — more than a hundred rescissions in *two hours* — could be described as a "fair and thorough" review. Since "the only regard Time has is for numbers," he had a few numbers of his own. By his calculations, the company had saved \$116,000 per work day over five years by taking away customers' health insurance. He asked for \$2 million in economic damages and \$5 million in punitive damages against the company.

"We think health insurance should be about the people they promise to insure, the people they promise to take care of," he said. "You people are the last hope.... Please process our appeal."

Defense attorney Walter Wilson said that the application asked questions "in plain English" that required Latham to disclose the ER visit and list her uterine prolapse under "disorder of the reproductive organs." He denied that his client was calling Jennifer Latham a liar. "Time is saying Ms. Latham knowingly misrepresented her health information," he said — a distinction that seemed to elude everyone but the defense team.

Wilson played for the jury once more the phone call Latham had made two months

"MAYBE THIS WILL CHANGE THE WAY THEY DO BUSINESS."

after the accident, asking why she was being refused coverage. He apparently was trying to persuade the group that "Time was never told that Ms. Latham wanted a review of her claim." But the sound of a frustrated, badly injured woman pleading with a blasé underwriter seemed to have the opposite effect on the jury.

"I'm glad they played that the last day," juror Denise Kaatz told *Westword* the day after the verdict. "Hearing that again made me even more confident that she wasn't trying to deceive or lie."

As for the \$150 million Time supposedly saved through rescissions, the sum was a "nebulous concept," Wilson argued. So was Latham's "alleged emotional distress" from losing her health insurance. The evidence that his company had anything to do with the suffering inflicted on her and her children was "scant at best, non-existent in reality."

That was too much for Latham's father, Jim Shields, who abruptly stood up in the back row. "You can go to hell on that, mister," he said, and stormed out of the courtroom.

After the jury departed for deliberations, Wilson asked for a mistrial. Shields's outburst had "visibly upset" two female jurors, he claimed, and since four of the six were women, he didn't see how his company could get a fair shake. But Judge Roxanne Bailin had polled the jurors about Shields's expression of concern for the fate of the defense attorney's soul, and all had said that it wouldn't influence their decision. The judge denied the motion.

Levy had urged the jurors to send a message loud enough "so that Milwaukee can hear you." Six hours later, they came back

with a verdict that was much, much louder than he had anticipated.

The jury decided that Time had breached its contract with Latham and owed her \$183,551 for her medical bills. And \$7.3 million for emotional distress. And \$2 million for economic damages resulting from bad faith, plus additional sums for her children's future medical expenses, economic damages, non-economic damages — all told, the package of punitive and compensatory damages totaled \$37.3 million, one of the largest bad-faith judgments in Colorado history.

Latham turned to Levy, tears in her eyes. "Maybe this will change the way they do business," she said.

Some jurors wanted to give her even more. Foreman Dan Vela was in favor of awarding \$150 million as a way of punishing Time. "They didn't have a leg to stand on," says Vela, a general manager for a gutter company. "I hope we sent a message back to them that this was wrong."

"Most of their witnesses seemed dishonest, defensive and just showed a basic lack of humanity," says Kaatz, a production manager for an apparel company. "It was kind of frightening."

Through a spokesman, Time officials declined interview requests. Several days later, the company issued a terse statement: "While we cannot discuss the specifics of this case, we disagree strongly with the verdict and will vigorously pursue post-trial motions and appeals."

Latham's staggering award could be reduced or nullified on appeal. But under Colorado law, the punitive damages could also be increased if Judge Bailin finds that the company continued to engage in harmful conduct "in a willful and wanton manner" or aggravated the damages in the way it litigated the case. It could take years to resolve the matter, and Latham doesn't expect her life to change dramatically in the near future.

When she told her six-year-old son about the verdict, his response was, "Now we can buy all the gas we want, Mom." Her own reaction to the nebulous concept of \$37 million is similar.

"My mind doesn't go that big," she says. "The day-to-day activities of being a grownup are hard for me. If I have any money, I spend it. I don't mean to. I lose it. It just goes away. I used to be really good with money."

In the aftermath of the accident, she was extremely angry about losing her insurance. But over time she learned that "you can live in anger or you can live in peace." The same thing goes for the man who plowed into her and Alex; she doesn't know his name, but she would like to meet him some day.

What's important to her is not the terrible times she endured getting to the courtroom, but where she finally arrived, the place she knew she would be all along.

"I feel vindicated," she says. "I feel like maybe I am going to be changing things."

For more on the Latham case and Assurant Health — including clips of the CEO's testimony before Congress — go to westword.com. Contact the author at alan.prendergast@westword.com.

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