

VERDICT DATA COLLECTION FORM

Date of Verdict: 11-16-01

Venue: Ramsey County

Case Title: Kelly J. Sundquist, n/k/a Kelly J. Olson v. Helen R. Tomassoni and Illinois Farmers Insurance Co.

Court File No.: 62-C3-00-6763

Judge: John B. Van de North

Type of Case: Auto Accident/Uninsured Motorist/Underinsured Motorist

Plaintiff's Attorney: Robert D. Boedigheimer

Defense Attorney: Timothy Godfrey

Insurance Carrier: Illinois Farmers Insurance Co. (UM/UIM)

Insurance Limits: \$100,000.00/UM and \$100,000.00/UIM

Brief Facts/Issues Disputed: Plaintiff was traveling eastbound on Highway 118 in the left lane prior to its merger with the right lane and entrance to southbound Interstate Highway 35W when an unidentified pickup truck towing a trailer began to drift into her lane forcing her to slow her vehicle. Defendant Tomassoni, also traveling in the right lane behind Plaintiff, rear-ended Plaintiff's vehicle. Plaintiff's vehicle sustained approximately \$1,002.00 in damage. Defendant Tomassoni's vehicle sustained approximately \$4,369.00 in damage. No injuries were reported at the scene, but immediately following the accident Plaintiff began to suffer from head, neck and back pain. Over the ensuing weeks this pain gradually increased and began radiating into her right arm and hand. Eventually in early January of 1997, approximately four months post-accident, Plaintiff sought treatment with a chiropractor. She was subsequently referred to a neurologist who diagnosed her with cervical strain/sprain syndrome, lumbar strain/sprain syndrome, cervicogenic headaches and cervical radiculopathy. Plaintiff continued treatment with a second chiropractor who also diagnosed her as having sustained a cervical spine injury, with post traumatic headaches and cervical radiculopathy at C7-C8 levels. All three of Plaintiff's treating providers opined that her injuries were causally related to the motor vehicle accident on September 5, 1996 and were permanent.

Defendant denied the existence and fault of the unidentified pickup truck towing the trailer. Defendant argued that Plaintiff was at fault for not maintaining a safe distance or lookout between herself and the unidentified pickup truck, if it existed, thereby causing Tomassoni to rear-end her vehicle.

Defendant further denied that Plaintiff suffered injuries as diagnosed by her treating providers in that she had failed to treat for approximately four months post-accident. Defendant argued that at worst she sustained a cervical sprain which resolved in 2 to 4 weeks. Defendant further argued that none of Plaintiff's medical treatment was causally related or reasonable and necessary to cure the effects of injuries sustained in the September 5, 1996 accident. Finally, Defendant opined that Plaintiff's injuries were not permanent and did not involve any restrictions or limitations.

Injuries alleged: Cervical strain/sprain, cervicogenic headaches and cervical radiculopathy

Last Offer: \$1,000.00

Last Demand: \$42,000.00

Jury Factual Determination: Jury found that Plaintiff was 10% negligent, Defendant Tomassoni was 50% negligent and the unidentified vehicle was 40% negligent and that each was a direct cause of the accident. Jury further found that the Plaintiff did sustain a permanent injury and was disabled for sixty days or more as a result of the accident on September 5, 1996.

Gross Damages Awarded (itemized):

Past Medical Expenses:	\$18,509.00
Past Wage Loss:	\$ 8,444.00
Past Pain and Suffering:	\$10,000.00
Past Diagnostic Expenses:	\$ 3,896.00
Future Medical Expenses:	\$46,000.00
Future Pain and Suffering:	\$97,500.00

Deductions (comparative fault, collateral sources, PIP offsets, etc.): The court, in its order for judgment, reduced the total gross verdict of \$184,349.00 by 10% for Plaintiff's comparative fault for a total judgment in the amount of \$165,914.10 plus costs, disbursements and interest.

Net Verdict: \$165,914.10 plus taxable costs, disbursements and interest.

Plaintiff Experts: Steven Noran, M.D.; Gregory Belting, D.C.

Defense Experts: Frederick Strobl, M.D.

Sidelights (interesting or unique circumstances): Plaintiff settled her claim against Helen Tomassoni at mediation for the total sum of \$15,000.00 pursuant to a Pierringer Release. Thereafter, Plaintiff served Defendant Illinois Farmers Insurance Co. with the appropriate Schmidt v. Clothier notice. Defendant waived its right to substitute its draft thereby permitting the settlement between Plaintiff and Defendant Tomassoni. Both prior to settlement with Tomassoni and after, Plaintiff asserted a formal UIM claim against Illinois Farmers Insurance Co. At the conclusion of the trial, Defendant argued that Plaintiff could not collect on both the UM and UIM claims. Plaintiff, in reliance on Gusk v. Farm Bureau Mutual Insurance Co., 559 N.W.2d 421 (Minn. 1997), argued that Plaintiff was entitled to recover both the UM and UIM coverages as provided by her policy. The UM and UIM coverages are separate independent coverages and an

insured who is injured in an accident involving two tortfeasors, one uninsured and the other underinsured, is entitled to recover both UM and UIM benefits. After a short letter brief the court agreed and ordered judgment against Defendant for the total verdict less Plaintiff's contributory fault.

Disposition (pending appeals, motions, etc.): Final disposition of the case is pending