

5747 - Underinsured Motorist -

A school teacher alleged an ostensibly minor crash caused a knee injury (her knee was close to the dash of her automobile) and sought UIM benefits from her insurer after settling with the tortfeasor for \$50,000 – the insurer didn't think the plaintiff had suffered any new injury and linked the plaintiff's complaint's to longstanding pre-existing conditions

Renot v. Secura Insurance, 16-1853
Plaintiff: Sandra M. Varellas, D. Todd Varellas and Preston Cahill, *Varellas & Varellas*, Lexington and Thomas P. Szczygielski, *Chaney Buckles, Szczygielski*, Lexington
Defense: Ashley K. Brown and Graham D. Barth, *Ward Hocker & Thornton*, Lexington
Verdict: Defense verdict on causation
Court: Fayette, J. VanMeter L, 11-21-19

This case began with an ordinary event. The plaintiff, Viviane Renot, then age 59 and a schoolteacher, was stopped in traffic on 11-26-13. She was driving a bright red Mini-Cooper sedan. It is a smaller car. When Renot sat in the car, her knees virtually touched the dash.

Behind Renot in traffic was Carolyn Price. She drove a larger SUV. A moment later Price rear-ended Renot. The collision resulted in very minor damage. Fault was no issue.

Renot started treating for soft-tissue symptoms in January of 2014. A short time later she began to report knee pain. In this regard she was an eggshell plaintiff of sorts.

Renot had undergone an arthroscopic surgery of her knee one month before the crash. The symptoms became more significant following the wreck. Her orthopedist, Dr. Veronica Vasicek, Lexington, opined that this crash aggravated

Renot's underlying arthritic condition.

This led to a complex course for Renot. She had a knee replacement surgery, the condition being brought into disabling reality by this crash. Her recovery was complicated by an infection and later Renot had yet another repair surgery. She ultimately retired from teaching.

Renot incurred medical bills of \$250,587 and sought \$250,000 more for future care. Her lost wages were \$387,340 and impairment was \$378,450, her aggravation injury making it impossible for her to continue teaching. The employment damages were presented in a single interrogatory. A vocational expert for Renot was Sara Ford, Louisville. Renot also claimed \$1,000,000 for her pain and suffering.

Renot would link her knee injury (and minor soft-tissue symptoms) to this crash. While it was a minor impact, the injury producing event occurred when her knee (already close to the dashboard) was pushed forward into it. A biomechanics expert, William Smock, Louisville, explained this process. Vasicek provided the medical causation proof.

Renot moved first against Price. She had a \$50,000 policy with Farm Bureau. Farm Bureau paid. Renot then sought UIM coverage (a \$500,000 policy) from her insurer, Secura Insurance. She sought a total of \$2.26 million as quantified above.

Secura defended that the wreck was too minor to have caused Renot's permanent injury. It focused on her pre-existing conditions and particularly that as of the October 2013 surgery (a month before this crash), she had already been identified as suffering from advanced degenerative conditions. The defense also noted that after this crash and before Renot mentioned knee pain, she suffered a fall on a set of stairs.

The defense IME was Dr. Stacie Grossfeld, Orthopedics, Louisville. Secura also employed a biomechanics expert, David Porta, Louisville, who discussed the forces in the crash. While fault would be no issue, the jury would first have to hurdle a causation instruction.

There was an interesting issue in this case regarding the identification of Secura. The insurer had sought to exclude any mention of its UIM status. Judge Ishmael balked and permitted proof that this was a case about UIM coverage (as testified to by the insurer's corporate representative) although he did not allow the jury to know the limits of coverage.

The jury heard this case for four days. The court's causation instruction was framed as follows: Are you satisfied the collision was a substantial factor in causing the plaintiff's injuries including the arousal or aggravation of a pre-existing condition. The jury answered "no" by a 9-3 count for the insurer.

At the time of this report no judgment had been entered. Renot has moved to extinguish the interest of an intervening health insurer's claim for subrogation against her medical bills. She argued that if this MVA did not cause her injuries, there can be no subrogation interest. This motion is pending.

Case Documents:
[Defense Trial Memo](#)
[Plaintiff Trial Memo](#)