Automobile Insurance Law in Kentucky

Third Edition

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UK CLE University of Kentucky
Office of Continuing Legal Education

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Over a period of several months, many hours were dedicated to the production of this Monograph. A significant amount of time was invested in formatting and layout by Editorial Assistant, Elizabeth M. Stewart, without whose diligence and patience this publication would not have been possible.

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LIABILITY INSURANCE

[1.1] Liability Insurance

[1.2] General Principles

The majority of the litigation in Kentucky concerning liability insurance has dealt with automobile liability insurance, and this publication attempts to address those issues which are particular to automobile liability insurance, rather than liability insurance as a whole.

[1.3] Mandatory Nature

Every motor vehicle operating in Kentucky must have liability insurance coverage which provides coverage of either split limits in the amount of not less than $25,000 for all damages arising out of bodily injury sustained by any one person, and not less than $50,000 for all damages arising out of bodily injury sustained by all persons injured as a result of one accident, plus liability coverage of not less than $25,000 for all damages arising out of the damage to or destruction of property as a result of any one accident, or single limits liability coverage of not less than $60,000 for all damages. KRS 304.39-110(1)(a). The coverage must be provided during the contract period and within a territorial area that shall not be less than the United States of America, its territories and possessions, and Canada. KRS 304.39-110(l)(b).

KRS 304.39-110 makes those minimum limits of liability coverage mandatory. Thus, a liability insurer is not entitled to reduce those limits by deducting therefrom payments made under its medical payment provisions, *Ohio Cas. Ins. Co. v. Berger*, 311 F. Supp. 840 (E.D. Ky. 1970), or to reduce those limits based upon any workers' compensation payments received by the injured party. *State Farm Mut. Ins. Co. v. Fireman's Fund Am. Ins. Co.*, 550 S.W.2d 554 (Ky. 1977). As discussed below, the mandatory nature of the liability coverage also interferes with an insurer's ability to exclude coverage in some situations.

Even though the provision of liability coverage is mandatory, liability coverage may not exist in some circumstances. For example, there is no duty to provide liability coverage if the vehicle is being used by someone driving the vehicle without the owner's permission or who converts the vehicle to his or her own use. *Preferred Risk Mut. Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 872 S.W.2d 469 (Ky. 1994); *see also Mitchell v. Allstate Ins. Co.*, 244 S.W.3d 59 (Ky. 2008). In addition, an insurer can relieve itself of coverage through an escape clause, so long as there is other applicable insurance, which provides the minimum liability coverage amounts. *See Rees v. United States Fidelity & Guar. Co.*, 715 S.W.2d 904 (Ky. Ct. App. 1986).

[1.4] Who Is Insured?

[1.5] Definition

Automobile liability policies almost always include a definition of "insured." Generally, an "insured" will be defined to include particular persons, family members, or relatives who live in the same household of the named insured, and persons using insured vehicles with the named insured's permission.

Most liability insurance policies will also include a severability clause, which guarantees the same protection to all persons insured by the policy. *Liberty Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 522 S.W.2d 184 (Ky. 1975). Furthermore, generally liability policies cover people in addition to the named insured through an "omnibus clause." Thus, every insured under the policy, regardless of whether he or she is a "named insured" or an "omnibus insured" (an insured under the policy other than the named insured), is entitled to the same coverage.

[1.6] Family Members of the Named Insured

As stated above, family members or relatives of the named insured who live in the same household as the named insured usually are included in the definition of "insured" in an automobile liability policy. In *Nat'l Union Fire Ins. Co. v. Carricato*, 439 S.W.2d 957 (Ky. 1969), the Kentucky Court of Appeals addressed whether an emancipated child still living at home qualified as an omnibus insured. Because the father's policy made no mention of emancipation, the emancipated child was entitled to coverage under the omnibus clause.

The issue of whether a relative "resides" with the named insured has arisen in the uninsured and underinsured motorist insurance areas. In *Perry v. Motorists Mut. Ins. Co.*, 860 S.W.2d 762 (Ky. 1992), the Kentucky Court of Appeals recognized that legal residency "is based on fact and intention." *Id.* at 764. Because the question of intent is usually a factual issue, residence generally will be a factual issue resolved by the factfinder. *Id.* at 765. Therefore, the trial court in *Perry* correctly submitted to the jury the question of whether a newlywed was still a resident of her father's household when most of her belongings remained at her father's house and the living arrangements for the newlyweds had not been settled at the time of her death.

However, *Perry* should not be interpreted to stand for the proposition that summary judgment is never proper on the question of residence. *See Cincinnati Ins. Co. v. Osborne*, 2005 WL 1703262 (Ky. Ct. App. Jul. 22, 2005). In *Old Reliable Ins. Co. v. Brown*, 558 S.W.2d 190 (Ky. Ct. App. 1977), the Court of Appeals found summary judgment appropriate when a daughter had not lived with her mother for 18 months. Conversely, in *Nationwide Mut. Fire Ins. Co. v. May*, 860 F.2d 219 (6th Cir. 1988), the Sixth Circuit found that Kentucky case law did not provide a conclusive answer or sufficient guidance on the issue of whether residency re-

quirements were satisfied. In *May* the homeowner's insurance policy covered the named insured and relatives who "lived in" the household. In support of the denial of the insurance claim, Nationwide argued that the homeowner's twenty-two year old son did not "live in" the insured home because he slept at his father's house, even though he regularly returned to his mother's – the insured's – house during the day while his father was at work and also stored his personal property there. *Id.* Ultimately, the Sixth Circuit declined to address the issue, finding that it was a "novel question of Kentucky law." *Id.*

[1.7] Permissive Users

Most of the litigation in Kentucky concerning whether someone is an insured under an automobile liability insurance policy deals with permissive users. Generally, a person driving an insured automobile with the consent of the owner or an adult member of the owner's household is an additional insured. *Ocean Acc. and Guar. Co. v. Schmidt*, 46 F.2d 269 (6th Cir. 1931). For example, a person test driving a vehicle at an automobile sales company is a permissive user. *Henderson v. Selective Ins. Co.*, 242 F. Supp. 48, 50 (W.D. Ky. 1965), *aff'd*, 369 F.2d 143 (6th Cir. 1966). Where it appears that the driver did not have permission of the owner or an adult member of the owner's household, the insurer will be able to avoid coverage, even if strong public policy reasons support extending coverage.

However, in an unpublished opinion, the Sixth Circuit added some nuance to the notion of the permissive user in a case where the driver at fault was driving a car as part of a severance package with her former employer. The insurance policy on the vehicle, taken out by the employer, defined "insured" to include anyone using a vehicle that the company should happen to "own, hire or borrow." *Selective Ins. Co. of S.C. v. Sullivan*, 694 F. App'x 379 (6th Cir. 2017). The employer had "borrowed" the car from the owners, who happened to be both the owners of the business and the parents of the driver. The severance package granted to the driver of the car included indefinite use of the vehicle, which ultimately became the sticking point for the court. As the use was indefinite, the court reasoned, the vehicle was not "borrowed" under the terms of the policy, as "borrowed" implies a limited term of use.

[1.8] Implied Permission

Permission can be express or implied. *See, e.g., United States Fidelity & Guar. Co. v. Brann*, 180 S.W.2d 102 (Ky. 1944). For example, if an employer always allows its employees to use an insured vehicle for private use, there is an implied consent for the employee to continue to make private use of the insured vehicle. *Turner v. Great Am. Ins. Co.*, 424 F.2d 694 (6th Cir. 1970).

[1.9] Deviating from the Scope of the Permission

A permissive user is provided coverage under a policy of automobile liability insurance so long as his or her use of the automobile is within the scope of the permission granted. Historically, Kentucky courts examined these situations under the "minor deviation" rule, under which only a major deviation from permitted use would void coverage. However, in 2008, the Kentucky Supreme Court adopted the "initial permission" rule, which covers many situations which the "minor deviation" rule would not have. *Mitchell v. Allstate Ins. Co.*, 244 S.W.3d 59 (Ky. 2008). The Kentucky Supreme Court described the "initial permission" rule as follows:

> …as long as the original taking of the vehicle was within the permission of the named insured, any subsequent use of the vehicle by the borrower would be covered by the policy. Any subsequent change in the character or scope of the use does not require express permission by the insured. Such a change in the character or scope may involve the borrower allowing a secondary user to borrow the car without the insured's express permission. Even a person who was specifically prohibited from using the vehicle by the named insured can be covered through the omnibus policy if that specific person obtained consent from the original borrower.

Mitchell, 244 S.W.3d at 61. Thus, Kentucky's new "initial permission" standard eliminates the analysis of whether a deviation was major or minor. Nevertheless, coverage is not unlimited under the "initial permission" rule; "use of a vehicle which amounts to conversion is not covered through the omnibus clause unless the clause specially allows for such coverage." *Mitchell* at 65; *see* KRS 304.39-190. Additionally, "the initial permission rule analysis must also take into consideration the bar for benefits arising from usage of a vehicle when the operator intentionally attempts to injure someone with a vehicle." *Id.*; *see* KRS 304.39-200.

[1.10] Vehicles Covered

Typically, an automobile insurance policy provides coverage to private passenger automobiles identified in the policy and owned by the named insured. Although the phrase "private passenger automobile" is somewhat ambiguous, the Kentucky Court of Appeals has determined that courts should consider whether the insurance policy is "so clear that a person of average intelligence who read them would understand that" the specific type of vehicle, "when used for the private conveyance of himself or other passengers on the highways, is not a 'private passenger automobile.'" *Grange Mut. Cos. v. Bradshaw*, 724 S.W.2d 216 (Ky. Ct. App. 1986). In *Bradshaw*, the Kentucky Court of Appeals held that given the ambiguity, a pickup truck did fall within the definition of "private passenger automobile." *Bradshaw*, 724 S.W.2d at 221. However, a person driving a church bus was unable to benefit from coverage when he was acting as a bus driver for

the church and his use was of a different nature than someone driving a vehicle as a "private passenger automobile" for their personal coverage. *Finn v. State Farm Mut. Auto. Ins. Co.*, 510 F. Supp. 336 (W.D. Ky. 1980).

[1.11] Owned Vehicles

The issue of who owns a particular automobile for purposes of insurance coverage is governed by Kentucky's certificate of title law, KRS Chapter 186A. *Cowles v. Rogers*, 762 S.W.2d 414 (Ky. Ct. App. 1988). KRS 186A.345 mandates that courts rely on the definition of "owner" set forth in KRS 186.010(7) to determine if someone is a covered "owner." KRS 186.010(7) addresses three different factual situations where ownership is in issue. The most common being KRS 186.010(7)(a) which states that an "owner" is a person who holds the legal title of a vehicle or a person who, pursuant to a bona fide sale, has received physical possession of the vehicle subject to any applicable security interest. KRS 186.010(7)(b) then addresses the issues of ownership in a conditional sale or lease situation, and KRS 186.010(7)(c) addresses motor vehicle dealers. Pursuant to KRS 186.010(7)(c) a motor vehicle dealer will not be the owner of a motor vehicle if it transfers possession of a motor vehicle to a purchaser pursuant to a bona fide sale and, most importantly, complies with KRS 186A.220.

Thus, the name on the certificate of title may not indicate who the owner of a vehicle is, particularly if the vehicle has just been purchased. One must look to the type of transaction involved – a private sale or a motor vehicle dealer sale. Private sales are governed by KRS 186A.215, and it states in Section (1) that the transferor "shall cause the application with the certificate of title attached to be delivered to the transferee." Thereafter, the transferee is to "promptly after delivery to him of the vehicle, execute the application of a new certificate of title and registration." KRS 186A.215(2). However, if it comes to the attention of the transferor that the transferee has failed to submit necessary documents, s/he is to submit within fifteen (15) calendar days to the county clerk "an affidavit that he has transferred his interest in a specific vehicle...." KRS 186A.215(4). Otherwise, no transfer may be deemed to have occurred.

On the other hand, transfer of a vehicle by a motor vehicle dealer is governed by KRS 186A.220, and strict compliance is required or the dealership will be deemed the owner of the vehicle for insurance purposes in the event of an accident. Motor vehicle dealers have two means to effectuate transfer of ownership. (1) It can give the properly assigned certificate of title to the purchaser upon delivery of the vehicle. It is then incumbent on the purchaser to make application for registration and a certificate of title. (2) A motor vehicle dealer can deliver the vehicle to the purchaser and make application for registration and certificate of title for the purchaser itself. However, if this step is taken the motor vehicle dealer must "require from the purchaser proof of insurance as mandated by KRS 304.39-080 before delivering possession of the vehicle." KRS 186A.220(5). Additionally, the subsequent request to transfer title must be prompt as noted below.

The question of who owns a vehicle at the time of an accident has led to a wealth of litigation. *See, e.g., Nat'l Ins. Co. v. Cain*, 851 F. Supp. 265 (E.D. Ky. 1994); *Rogers v. Wheeler*, 864 S.W.2d 892 (Ky. 1993); *Potts v. Draper*, 864 S.W.2d 896 (Ky. 1993); *Hartford Acc. & Indem. Co. v. Maddix*, 842 S.W.2d 871 (Ky. Ct. App. 1992). Principally, cases turn on their individual facts, and the smallest of facts can make a difference. *See, e.g., Potts v. Draper*, *supra*; *Rogers v. Wheeler*, *supra*.

Of particular note is the case of *Ellis v. Browning Pontiac-Chevrolet-GMC Truck-GEO, Inc.*, 125 S.W.3d 306, 308 (Ky. Ct. App. 2003) in which a motor vehicle dealer was deemed the "owner" of a vehicle because it failed to "use due diligence in making a prompt transfer." Specifically, the Kentucky Court of Appeals determined that the dealer's "delay of thirty-nine days, for no stated reason" was not prompt and such "unjustified delays in transferring title could potentially result in uninsured drivers on our roadways." *Id.* Therefore, "under KRS 186A.220," the dealership "could relinquish possession of the vehicle before taking the necessary title transfer documents to the county clerk." However, "to comply with the language and intent of the entire titling scheme," the dealership "was required to use due diligence in making a prompt transfer" and its failure to do so resulted in the dealership being "deemed the owner of the vehicle on the date of the accident." *Id.*

In sum, for there to be coverage on a particular vehicle, the vehicle must be owned by the named insured. For example, an automobile owned by the son of the named insured is not an "owned automobile." *Aetna Life & Cas. Co. v. Layne*, 554 S.W.2d 407 (Ky. Ct. App. 1977). Similarly, an automobile owned by the named insured's mother is not an "owned automobile." *Tharp v. Sec. Ins. Co.*, 405 S.W.2d 760 (Ky. 1966).

[1.12] Extended Coverage to Particular Types of Vehicles

Automobile liability insurance policies typically extend coverage to vehicles which are a "temporary substitute" for an insured vehicle. That extended coverage does not apply to vehicles regularly used by the insured, *Gov't Employees Ins. Co. v. Thomas*, 357 S.W.2d 548 (Ky. 1961), and likewise does not apply to vehicles actually owned by the insured but not identified in the policy. *American Fidelity & Cas. Co. v. Pennsylvania Cas. Co.*, 258 S.W.2d 5 (Ky. 1953).

Similarly, the typical automobile liability insurance policy extends coverage to non-owned vehicles being driven by the named insured. That extended coverage applies to non-owned vehicles used by the insured with the owner's permission. *American Nat'l Fire Ins. Co. v. Aetna Cas. & Sur. Co.*, 476 S.W.2d 183 (Ky. 1972). However, an insurer can properly exclude from non-owned coverage vehicles which the named insured uses and are owned by the named insured's family members. *See Aetna Life & Cas. Co. v. Layne*, *supra*.

Usually, automobile liability insurance coverage is extended to include hired automobiles, unless the auto is hired as part of a frequent use of hired automobiles. Thus, a family renting a car on vacation falls within the extended coverage

for hired automobiles, even if the family routinely rents cars while on vacation. *See Hancock v. Western Cas. & Sur. Co.*, 154 F. Supp. 164 (E.D. Ky. 1957).

Finally, automobile liability insurance policies generally extend coverage to automobiles newly acquired by the named insured which are intended to replace the insured automobiles. To constitute a "replacement vehicle" the vehicle must be one for which the ownership is acquired "after the issuance of the policy and during the policy period" and must "replace the car described in the policy," which has subsequently been "disposed of or is incapable of further service at the time of the replacement." If a newly acquired automobile is not designed to replace the already insured vehicle, this extension of coverage does not apply. *Yenowine v. State Farm Mut. Auto. Ins. Co.*, 342 F.2d 957 (6th Cir. 1965).

[1.13] Ownership, Maintenance, or Use of an Automobile

As opposed to comprehensive liability insurance, which applies generally, automobile liability insurance coverage is limited to liability arising out of the ownership, maintenance, or use of a vehicle. However, the meaning of "use" is expansive and encompasses and includes activities beyond the mere act of driving down the road.

The phrase "arising out of use" of a vehicle has been interpreted broadly. *Insurance Co. of North America v. Royal Indem. Co.*, 429 F.2d 1014 (6th Cir. 1970). To "arise out of use, maintenance, or ownership" of a vehicle, there simply must be a "causal relation or connection" that exists between the "accident or injury and the ownership, maintenance, or use of a vehicle." *Insurance Co. of North America*, 429 F.2d at 1017. Thus, an injury caused by a car towing a trailer, which crosses the center line and collides with a car coming from the opposite direction involves the use not only of the car, but also of the trailer. *State Auto. Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 456 F.2d 238 (Ky. 1972). As discussed above, injuries incurred while stacking sheet rock on a porch arose "out of the use" of the vehicle where the sheet rock was being unloaded from the vehicle. *Dodson v. Key*, 508 S.W.2d 586 (Ky. 1974). Additionally, the federal district court for the Eastern District of Kentucky concluded that "use" of a school bus continued until the child, exiting the school bus, reached a place of safety across the road. *State Farm Mut. Auto. Ins. Co. v. Kentucky School Bd. Ins. Trust*, 851 F. Supp. 835 (E.D. Ky. 1994)

Of course, even when "use of a vehicle" is given a very broad interpretation, there are limitations. While only a causal connection is required to find that an accident or injury "arose out of the use" of a vehicle, the accident or injury "must be more than incidental." *Kentucky Sch. Bd. Ins. Trust*, 851 F. Supp. at 837. For example, the Kentucky Supreme Court determined that persons injured while filling a water tank on an insured truck were not using that truck. *Kentucky Water Serv. Co. v. Selective Ins. Co.*, 406 S.W.2d 385 (Ky. 1966). Under the same reasoning, the court held that the injuries did not arise out of the "use" of the vehicle, where a passenger handled a gun and the firearm accidentally discharged, injuring another

passenger. *United States Fidelity & Guar. Co. v. Western Fire Ins. Co.*, 450 S.W.2d 491 (Ky. 1970). Similarly, injuries caused by a firecracker thrown from a car were not injuries arising out of the "use" of the vehicle. *Wirth v. Maryland Cas. Co.*, 368 F. Supp. 789 (W.D. Ky. 1973), *aff'd*, 497 F.2d 925 (6th Cir. 1974). Finally, the Sixth Circuit recently determined that Kentucky courts would not find that a plaintiff's claims, which were that she was raped by her taxi driver after she was driven to and dropped off at her home by a taxi, to be covered. *Morell v. Star Taxi*, 343 F. App'x 54 (6th Cir. 2009).

Despite the expansive interpretation of "arising out of the use" of a motor vehicle that Kentucky courts have adopted, the terms of the insurance contract may limit and restrict coverage. Thus, a provision in an automobile liability insurance policy which restricts coverage to particular uses of a vehicle is generally enforceable. *See Hartford Acc. & Indem. Co. v. Blake*, 268 S.W.2d 419 (Ky. 1954).

[1.14] Exclusions

The mandatory nature of automobile liability insurance greatly affects an insurer's ability to exclude types of coverage in an automobile liability insurance policy. For example, policies often include a household exclusion, excluding injuries to persons residing in the same household as the named insured from coverage. In *Bishop v. Allstate Ins. Co.*, 623 S.W.2d 865 (Ky. 1981), the Kentucky Supreme Court held such a household exclusion was unenforceable because its application would interfere with the liability policy providing the minimum limits required by KRS 304.39-110(l). Essentially, the Kentucky Supreme Court held that "family or household exclusionary clauses in insurance contracts that dilute or eliminate the minimum requirements of basic reparations benefits or tort liability coverage are void and unenforceable." *Bishop*, 623 S.W.2d at 866. However, in 1990 the General Assembly enacted KRS 304.39-045, which permits an insurer and insured to agree, in writing, that any member of the insured's household, not a spouse or dependent, who operates the vehicle is excluded from the liability coverage the insurance policy provides. Nevertheless, cases decided after the enactment of KRS 304.39-045 continue to rely upon *Bishop*, and in *Lewis v. West Am. Ins. Co.*, the Kentucky Supreme Court took the "next logical step from *Bishop*" and held that the "MVRA precludes the application of a family or household exclusion provision to the extent it attempts to eliminate any coverage in an automobile liability insurance policy, including amounts in excess of the statutory minimums." *Lewis v. West Am. Ins. Co.*, 927 S.W.2d 829, 835-36 (Ky. 1996). Essentially, *Lewis* voids any household exclusion clause in the automobile insurance context. In 2004, the Kentucky Supreme Court again considered household exclusion clauses and voided such clauses even for umbrella policies. *State Farm Mut. Auto Ins. Co. v. Marley*, 151 S.W.3d 33 (Ky. 2004).

Although the policy arguments successfully advanced in *Bishop* and *Lewis* are not always applicable, there are other exclusions that are similarly unenforceable. For example, a named driver exclusion (excluding coverage in the event the

vehicle is being driven by specifically identified persons) is void if it interferes with the policy providing the minimum liability limits. *See Beacon Ins. Co. v. State Farm Mut. Ins. Co.*, 795 S.W.2d 62 (Ky. 1990). In fact, even intentional act exclusions cannot be enforced if to do so would interfere with the policy providing the statutorily required limits. *See Mosley v. West Am. Ins. Co.*, 743 S.W.2d 854 (Ky. Ct. App. 1987).

[1.15] Stacking of Automobile Liability Coverages

Occasionally, insurance policies or coverage can be "stacked," meaning that more than one policy or coverage may apply so as to increase the available limits. However, in *Butler v. Robinette*, 614 S.W.2d 944 (Ky. 1981), the Kentucky Supreme Court held that a policy provision which prevented the stacking of automobile *liability* coverages was enforceable. The court distinguished the cases allowing the stacking of uninsured motorist coverages on the basis that the uninsured motorist statute requires minimum uninsured motorist coverage for each policy, while the Motor Vehicle Reparations Act requires minimum liability coverage for each insured and each vehicle. *See id.* at 947.

[1.16] Dividing a Single Policy's Limits Among Several Claimants

Insurers often are faced with situations where more than one claimant is seeking recovery from the same policy of automobile liability insurance. Where there are multiple claimants in a single action and the insurance is inadequate to satisfy all claims, the proceeds should be distributed to the claimants on a pro rata basis. *Underwriters for Lloyds of London v. Jones*, 261 S.W.2d 686 (Ky. 1953). However, if some of the claimants do not join in the same action, they run the risk of having the limits exhausted in resolving the claims of the persons who have joined in the action. *See Wren v. Ohio Cas. Ins. Co.*, 535 S.W.2d 849 (Ky. 1976).

[1.17] Per Occurrence Limit

Depending on the language in the insurance policy, there could be an issue of whether multiple claims arise from the same "occurrence," which would limit the available coverage to the policy's per occurrence limit. Some courts have adopted a "cause" approach, under which the court resolves the issue by considering whether the claims arose from a single cause, while others have adopted an "effect" approach, under which each different effect arising from a single incident constitutes a different "occurrence." In *Continental Ins. Cos. v. Hancock*, 507 S.W.2d 146 (Ky. 1973), the Kentucky Supreme Court found that injuries received in a series of separate, but related, fights, arose from a single occurrence where the policy required the insurer to "pay all sums which [the insured] should become legally obligated to pay by reason of an accident resulting in bodily injury." However, in 2000, the Kentucky Supreme Court reached the opposite conclusion in a similar case. *Kentucky Cent. Ins. Co. v. Schneider*, 15 S.W.3d 373 (Ky. 2000). Distinguishing *Hancock* based on the language in the policy, the Kentucky Supreme Court determined that the

insurance policy, which provided the insurer was required to pay "damages which an 'insured' is legally entitled to recover…because of 'bodily injury'…caused by an accident," permitted only recovery of damages that arose from the bodily injuries sustained during that accident, precluding punitive and potentially other incidental damages. *Schneider*, 15 S.W.3d at 376. Therefore, an attempt to classify Kentucky law as either adopting the "cause" theory or "effect" approach, proves difficult. *See* 64 ALR 4th 668 (1988) *citing Hancock*, *supra*.

[1.18] Per Person Limit

A per person limit applies to all claims relating to a single person's injuries, even though those injuries may give people other than the injured party some type of claim. Kentucky courts have adopted the view that "under policies fixing a maximum recovery for 'bodily' injury to one person… the limitation is applicable to all claims of damage flowing from such bodily injury, and that therefore it is immaterial that some part of the damages may be claimed by a person other than the one suffering the bodily injuries. In other words, all damage claims, direct and consequential, resulting from injury to one person, are subject to the limitation." *Moore v. State Farm Mut. Ins. Co.*, 710 S.W.2d 225 (Ky. 1986) *citing* 13 ALR 3d 1228, 1234. For example, the per person limit applies to both a minor's claim for pain and suffering and the minor's parents' claim for medical expenses. *Commonwealth Fire & Cas. Ins. Co. v. Manis*, 549 S.W.2d 303 (Ky. Ct. App. 1977). Similarly, the per person limit applies to both an injured party's claims and the claim for loss of consortium by the injured party's spouse or the injured party's parents. *Moore*, 710 S.W.2d 225; *Daley v. Reed*, 87 S.W.3d 247 (Ky. 2002).

[1.19] Cancellation of Liability Coverage

Due to Kentucky's mandatory liability insurance law, statutes have been enacted to regulate the cancellation of automobile liability insurance policies. KRS 304.20-040 governs the cancellation of automobile liability insurance policies. If the policy or coverage has been in effect for sixty (60) days or more, the reasons for which an insurer can cancel a policy are limited and include: nonpayment of premium, driver's license or motor vehicle registration of the named insured or of any other operation who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period, discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining or continuing the policy or in presenting a claim under the policy, discovery of willful acts or omissions on the part of the named insured that increase any hazard insured against, or a determination by the commissioner that the continuation of the policy would place the insurer in violation of a statute or administrative regulation. KRS 304.20-040(2)(a). Furthermore, for the cancellation to be effective, certain requirements must be met. A notice of cancellation must be mailed at least twenty (20) days prior to the effective date of cancellation and that notice must state the reason for cancellation.

KRS 304.20-040(3) & (12). Additionally, the notice must include a proper designation of the vehicle to which the cancellation applies; a notice of cancellation which does not properly designate the vehicle is inadequate as a matter of law. *Kentucky Farm Bureau Ins. Co. v. Gearhart*, 853 S.W.2d 907 (Ky. Ct. App. 1993). However, the Kentucky Court of Appeals has since distinguished *Gearhart* and held that failure to specifically designate which vehicle is being cancelled is not "inadequate as a matter of law" in a situation where there is "but one policy and one vehicle," and thus, "the insured could not be confused as to what policy is being cancelled." *Fogle v. Generali-U.S.*, 2006 WL 3040781 (Ky. Ct. App. Oct. 27, 2006).

Alternatively, an insured's cancellation of an automobile liability insurance policy is significantly less regulated. Insureds have the right to cancel their policy according to the terms of the insurance contract. However, for the cancellation to be effective, the insured must state a cancellation date and the cancellation must be unambiguous. *See Goodin v. General Acc. Fire & Life Assur. Corp.*, 450 S.W.2d 252 (Ky. 1970).

[1.20] Actions for Extra Contractual Damages from Liability Insurer

Kentucky recognizes three types of extra contractual causes of action against insurers:

(1) the tort of bad faith, *Curry v. Fireman's Fund Ins. Co.*, 784 S.W.2d 176 (Ky. 1989);

(2) violation of the Unfair Claims Settlement Practices Act, *State Farm Mut. Auto. Ins. Co. v. Reeder*, 763 S.W.2d 116 (Ky. 1988); and

(3) violation of the Consumer Protection Act, *Stevens v. Motorists Mut. Ins. Co.*, 759 S.W.2d 819 (Ky. 1988).

Kentucky law permits an insured to bring a tort claim against their carrier for bad faith. *Curry v. Fireman's Fund Ins. Co.*, *supra*. To make out a claim of bad faith against an insurer, the insured must prove three elements: "(1) the insurer must be obligated to pay the claim under the terms of the policy, (2) the insurer must lack a reasonable basis in law or fact for denying the claim, and (3) it must be shown that the insurer either knew there was no reasonable basis for denying the claim or acted with reckless disregard for whether such a basis existed." *Id.* The "insurer's refusal to pay on a claim, alone," is not sufficient to give rise to a claim for bad faith. *Id.* Furthermore, the bad faith tort recognized in *Curry* is limited to first party claims, unless the first-party insured has assigned his rights to a third-party claimant. *Manchester Ins. & Indemnity Co. v. Grundy*, 531 S.W.2d 493 (Ky. Ct. App. 1976).

Additionally, Kentucky courts have established that purchasers of insurance have a cause of action under the Consumer Protection Act, codified as KRS 367.220. The Kentucky Supreme Court has held that "the purchase of an insur-

ance policy is a purchase of a 'service' intended to be covered by the Consumer Protection Act." *Stevens v. Motorists Mut. Ins. Co.*, 759 S.W.2d 819 (Ky. 1988). However, such a claim exists only when the violation of the Consumer Protection Act relates to the actual purchase of the insurance policy, and not regarding "the manner in which the insurance company went about settling the claim after the car accident." *Adams v. Westfield Ins. Co.*, 2005 WL 3006992, *4 (W.D. Ky. Nov. 8, 2005). Furthermore, similar to a bad faith claim, Kentucky courts do not permit third-party claims under the Consumer Protection Act against automobile insurance companies and have held that the "Consumer Protection Act has no application to third-party claims." *Motorists Mut. Ins. Co. v. Glass*, 996 S.W.2d 437 (Ky. 1997).

Turning then to the Unfair Claims Settlement Practices Act, it has been recognized to cover both first- and third-party claims against insurers. The Kentucky Supreme Court addressed this law in the seminal case of *Wittmer v. Jones*, 864 S.W.2d 885 (Ky. 1993).

The court in *Wittmer* recognized several rules:

(1) There is no such thing as a "technical violation" of the Unfair Claims Settlement Practices Act.

(2) However, before a cause of action for violation of the Unfair Claims Settlement Practices Act exists, there must be evidence sufficient to warrant the imposition of punitive damages against the insurer.

(3) If there is such evidence, it is within the jury's discretion to award punitive damages.

(4) If there is not sufficient proof that the insurer was involved in intentional misconduct sufficient to warrant punitive damages, the insurer is entitled to a directed verdict on a claim of statutory bad faith.

(5) It is not bad faith to make an offer based on cost of repair if the claimant fails to establish that the fair market value of the car is diminished because it has been in a wreck (even if it has been repaired perfectly).

(6) When a claim for compensatory damages is joined with a bad faith claim, the underlying negligence claim should first be adjudicated. Only then should the direct action against the insurer be presented.

2

NO-FAULT INSURANCE

[2.1] No-Fault Insurance

The Kentucky Motor Vehicle Reparations Act (the "MVRA"), occasionally referred to as the No-Fault Act, was enacted by the General Assembly in 1974 and is applicable to almost all motor vehicle accidents that occur in Kentucky. While the MVRA profoundly changed the law of automobile insurance in Kentucky, the act only applies to specified economic losses, and notably, does not concern property damage. The MVRA is comprised of two main components: (1) basic reparation benefits a/k/a personal injury protection ("PIP") coverage; and (2) tort limitations which govern an individual's right to sue and be sued. Although the MVRA is based on the Uniform Motor Vehicle Accident Reparations Act, it is unique because the General Assembly made several modifications to the Uniform Act so that the MVRA would conform to Kentucky constitutional law and accommodate important policy considerations. *Bailey v. Reeves*, 662 S.W.2d 832 (Ky. 1984).

[2.2] Outline of the Motor Vehicle Reparations Act

The Kentucky Supreme Court outlined the MVRA in *Fann v. McGuffey*, 534 S.W.2d 770 (Ky. 1975). As explained in *Fann*, every owner of an automobile registered in Kentucky or operated in Kentucky (except for governmental agencies) must carry insurance which provides a certain level of liability insurance and no-fault "basic reparation benefits" coverage. KRS 304.39-080; 304.39-090; 304.39-110. Likewise, every insurer licensed in the state of Kentucky is required to include basic reparation benefits (PIP benefits), whenever the vehicle is in Kentucky. *Dairyland Ins. Co. v. Assigned Claims Plan*, 666 S.W.2d 746 (Ky. 1984).

Essentially, the general rule of the MVRA is that every person suffering economic loss from a bodily injury arising out of the maintenance or use of a motor vehicle is entitled to PIP benefits, unless the injured party has exercised the option to reject said benefits. KRS 304.39-030. These benefits are available to the injured party regardless of who was at fault in causing the injuries. PIP benefits usually include compensation for medical expenses and lost wages, but do not include payment for pain and suffering, property damage, or other non-economic damages. *American Premier Ins. Co. v. McBride*, 159 S.W.3d 342 (Ky. Ct. App. 2004) *citing* KRS 304.39-020(5). However, the maximum amount of benefits payable to any one person, as a result of one accident, is $10,000.00 unless additional benefits have been purchased. KRS 304.39-020(2).

A reparation obligor typically has the right to recover the amount of its payments from the reparation obligor of a liable secured person. However, there are express restrictions on how that can be done. In exchange for every person injured in a motor vehicle accident being entitled to these benefits, the injured party gives up the right to sue the tortfeasor for his or her injuries unless the injured party has rejected the limitation on his or her available tort rights or the injured party satisfies one of the thresholds set forth in the statute. KRS 304.39-060. If the injured party satisfies one of the thresholds, the injured party may sue for damages for

both economic and non-economic loss. However, in any such action, the injured party cannot recover any damages for which basic reparation benefits have been paid or are payable.

Essential to a thorough understanding of Kentucky's no-fault insurance regime is a working knowledge of the key terms used throughout the MVRA. KRS 304.39-020(2) defines "basic reparation benefits" (PIP benefits) as "benefits providing reimbursement for net loss suffered through injury arising out of the operation, maintenance, or use of a motor vehicle, subject, where applicable to the limits, deductibles, exclusions, disqualifications, and other conditions provided in this subtitle." In addition, KRS 304.39-020's definition of "basic reparation insureds" includes persons identified by name as an insured; persons residing in that person's household who are married or related to that person, if they are not themselves an insured in any other policy; and any minor in the custody of a named insured or in the custody of a relative residing in the same household with the named insured.

[2.3] Constitutionality

Shortly after the MVRA went into effect, its constitutionality was challenged. In *Fann v. McGuffey*, 534 S.W.2d 770 (Ky. 1975), the Kentucky Supreme Court considered the argument that the MVRA was unconstitutional because it destroyed an injured party's right to sue in certain situations. However, the Supreme Court determined that the MVRA was constitutional. Since *Fann*, other constitutional challenges to the MVRA have been rejected. *See*, *e.g.*, *Fireman's Fund Ins. Co. v. Bennett*, 635 S.W.2d 482 (Ky. Ct. App. 1981), *aff'd sub nom., Fireman's Fund Ins. Co. v. Government Employees Ins. Co.*, 635 S.W.2d 475 (Ky. 1982) *overruled on other grounds by Perkins v. Northeastern Log Homes*, 808 S.W.2d 809 (Ky. 1991); *Lawrence v. Risen*, 598 S.W.2d 474 (Ky. Ct. App. 1980); *Stinnett v. Mulquin*, 579 S.W.2d 374 (Ky. Ct. App. 1978); *Probus v. Sirles*, 569 S.W.2d 707 (Ky. Ct. App. 1978).

[2.4] Interpretation and Application

In *Bailey v. Reeves*, 662 S.W.2d 832 (Ky. 1984), the Kentucky Supreme Court declared its intention to give the words of the MVRA their literal meaning without limitation or amplification, unless such would lead to an absurd or wholly unreasonable conclusion. In *Fann*, *supra*, the Kentucky Supreme Court indicated that one of the purposes of the Act was to "eliminate the main brunt of small personal injury claims." *Fann*, 534 S.W.2d at 773. While that statement is consistent with the stated purposes of the MVRA, the Kentucky Supreme Court also rejected the notion that only "serious" injuries are not barred by the sections abolishing tort liability. *See Smith v. Higgins*, 819 S.W.2d 710, 712 (Ky. 1991).

Additionally, the MVRA has broad application. The MVRA preempts general insurance law if the insurance claim arises from physical injury inflicted by a motor vehicle accident. *Foster v. Kentucky Farm Bureau Mut. Ins. Co.*, 189

S.W.3d 553 (Ky. 2006). Furthermore, in *Lyle v. Swanks & Madison Standard Serv. Station*, 577 S.W.2d 427 (Ky. Ct. App. 1979), the Court of Appeals held that the MVRA applies to accidents which occur on private highways, in addition to public highways.

[2.5] Mandatory Nature

Except for state and federal governments and subdivisions thereof, every owner of a motor vehicle registered in Kentucky or operating in Kentucky shall continuously provide security (in the form of insurance or by qualifying as a self-insurer) for the payment of basic reparation benefits. KRS 304.39-080(5). To meet this mandatory requirement, an insurance company must provide separate bodily injury liability coverage and basic reparation benefits coverage. *Ammons v. Winklepleck*, 570 S.W.2d 287 (Ky. Ct. App. 1978).

Any effort to limit or interfere with a vehicle having the mandatory basic reparation benefits coverage is void. For instance, a household exclusion clause which would dilute or eliminate the requirements of KRS 304.39-080(5) regarding basic reparation benefits is void and unenforceable. *See Bishop v. Allstate Ins. Co.*, 623 S.W.2d 865, 866 (Ky. 1981). Although the court in *Bishop* actually dealt with a household exclusion being applied to liability coverage, the court indicated that a household exclusion could not be applied to interfere with a policy providing the required basic reparation benefits.

However, there can be limits on basic reparation benefits coverage. For example, in *Brown v. Atlantic Cas. Co.*, 875 S.W.2d 103 (Ky. Ct. App. 1994), the Kentucky Court of Appeals considered an exclusion which excluded basic reparation benefits coverage to bodily injury sustained by a relative of the named insured while occupying a motor vehicle owned by such relative, if the motor vehicle owned by the relative does not have basic reparation benefits coverage. The Court of Appeals determined that the exclusion was consistent with the MVRA's policy of requiring every owner of a motor vehicle to have basic reparation benefits coverage. Thus, a person owning a motor vehicle in violation of the requirement of possessing basic reparation benefits coverage can be denied basic reparation benefits from another source.

Likewise, the same is true for a person who drives a vehicle without the owner's permission. Although that person may be covered under a liability policy and basic reparation benefits coverage is mandatory, there is no requirement to provide basic reparation benefits coverage when a person drives a vehicle without the vehicle's owner's permission. *Preferred Risk Mut. Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 872 S.W.2d 469, 470-71 (Ky. 1994).

[2.6] Mandatory Amounts

The maximum amount of basic reparation benefits payable to one person for injuries from one accident is $10,000. KRS 304.39-020(2). Every owner of a

motor vehicle registered or operated in Kentucky (with the exception of certain governmental entities) must have basic reparation benefits coverage with respect to that vehicle. KRS 304.39-080(5).

[2.7] Optional Additional Benefits

If an insured requests, s/he can purchase and obtain additional reparation benefits. Thus, every basic reparation benefits obligor is required to make available to an insured additional basic reparation benefits in units of $10,000 up to the lesser of $40,000 or the amount of the insured's liability coverage in excess of the minimum liability coverage required. KRS 304.39-140(l). However, purchasing optional additional benefits does not authorize "double recovery for any item of damages under the no-fault law." *See Saxe v. State Farm Mut. Auto. Ins. Co.*, 955 S.W.2d 188 (Ky. Ct. App. 1997). Therefore, the added reparation obligor shall be subrogated to the injured person's right of recovery against any responsible third-party, as it would be for PIP benefits recovery.

[2.8] Stacking of Reparation Benefits

Basic reparation benefits coverages cannot be stacked. KRS 304.39-050(3). Therefore, "unless additional benefits have been purchased" under KRS 304.39-140, "the maximum amount" of basic reparations/PIP benefits "payable to any one person as a result of any one accident is $10,000…regardless of the number of different providers of security which might be obligated to pay such benefits." *Capital Enterprise Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 804 S.W.2d 377 (Ky. Ct. App. 1991). Nevertheless, additional reparation benefits coverages can be stacked. In fact, a policy provision prohibiting the stacking of added reparation benefits coverages is void as against public policy. *State Farm Mut. Auto. Ins. Co. v. Mattox*, 862 S.W.2d 325 (Ky. 1993).

[2.9] Definition of Basic Reparation Benefits

Kentucky law defines "basic reparation benefits" as "benefits providing reimbursement for net loss suffered through injury arising out of the operation, maintenance, or use of a motor vehicle, subject, where applicable, to the limits, deductibles, exclusions, disqualifications and other conditions provided in this subtitle." KRS 304.39-020(1). The statute specifically states that basic reparation benefits consist of one or more of the limits defined as "loss." *See id.*

"Loss" means "accrued economic loss consisting only of medical expense, work loss, replacement service loss, and, if injury causes death, survivor's economic loss and survivor's replacement services loss." KRS 304.39-020(5). Non-economic detriment, such as pain and suffering, is not "loss" for which an injured party is entitled to basic reparation benefits. *Id.* Similarly, property damage is not a "loss" which entitles an insured to basic reparation benefits. *See Fann v. McGuffey*, 534 S.W.2d 770, 772 n.7 (Ky. 1975).

[2.10] Medical Expenses

The MVRA defines "medical expense" as "reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, physical rehabilitation, rehabilitative occupational training, licensed ambulance services, and other remedial treatment and care." KRS 304.39-020(5)(a). As that definition implies, the medical expenses must be both reasonable and reasonably needed to be recoverable from the appropriate basic reparation benefits obligor. *Bolin v. Grider*, 580 S.W.2d 490 (Ky. 1979).

The MVRA establishes a statutory presumption that any medical bill submitted is reasonable. *See* KRS 304.39-020(5)(a). Accordingly, an injured party does not need to show the reasonableness of a medical expense; evidence of the medical bill alone can be sufficient. *Daugherty v. Daugherty*, 609 S.W.2d 127 (Ky. 1980). Instead, once a medical expense is introduced, if the obligor from which the basic reparation benefits are sought elects to contest the expense, it must produce affirmative impeaching proof to avoid a directed verdict. *Bolin v. Grider*, 580 S.W.2d 490 (Ky. 1979). However, there is no such presumption with regard to whether medical expenses are "reasonably needed," meaning that the insured must establish that the medical expenses for which recovery is sought were reasonably necessary. *See Smith v. Meyer*, 660 S.W.2d 9 (Ky. Ct. App. 1983).

In addition, recoverable "medical expenses" includes a benefit for expenses "in any way related to funeral, cremation and burial" within the meaning of the MVRA, to the extent it does not exceed $1,000. *See* KRS 304.39-020(5)(a).

[2.11] Work Loss

Work loss is the "loss of income from work" and "expenses incurred in obtaining services in lieu of those the insured would have performed for income, reduced by any income" received by the insured from substitute work. KRS 304.39-020(5)(b). The work loss recoverable as basic reparation benefits is limited to the actual loss of earnings suffered by an injured employed person; thus, the injured party's estate has no claim for basic reparation benefits for projected earnings lost because of the injured party's death. *See Gregory v. Allstate Ins. Co.*, 618 S.W.2d 582 (Ky. Ct. App. 1981). However, there is no requirement that the injured person seeking benefits was employed at the time they sustained the injury to be covered under the MVRA. In fact, "an individual who is unemployed at the time of an automobile accident may collect work loss benefits from a job that she is later offered, but cannot fulfill, because of a physician's advice." *Foster v. Kentucky Farm Bureau Mut. Ins. Co.*, 189 S.W.3d 553, 557 (Ky. 2006).

[2.12] Replacement Services Loss

Replacement services loss is defined as "expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would

have performed" for his or her own benefit if he or she had not been injured. KRS 304.39-020(5)(c). The classic example of the type of loss covered by this element is the expense of additional household help for housecleaning tasks the insured cannot perform. *See Schulz v. Chadwell*, 558 S.W.2d 183 (Ky. Ct. App. 1977).

[2.13] Survivor's Economic Loss

Basic reparation benefits are payable in the event that the person injured in the automobile accident dies. The MVRA defines a "survivor" as one entitled to receive benefits by reason of the death of another pursuant to Kentucky's descent and distribution statute. KRS 304.39-020(14). In addition, "survivor's economic loss" is defined as "loss after decedent's death of contributions of things of economic value to his survivors, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death." KRS 304.39-020(5)(d). Therefore, if a survivor suffers real economic loss because of the death of the insured, that survivor is entitled to recover basic reparation benefits for this loss. However, the loss must be to the survivor and the survivor only; the settlement does not include damages to a corporation of which the survivor is the sole shareholder. *Holsclaw v. Kenilworth Ins. Co.*, 644 S.W.2d 353 (Ky. Ct. App. 1982). Similarly, based on the definition of "survivor" contained in KRS 304.39-020(14), the decedent's administrator is not automatically a survivor entitled to benefits. *Gregory v. Allstate Ins. Co.*, 618 S.W.2d 582 (Ky. Ct. App. 1981).

[2.14] Survivor's Replacement Services Loss

Survivor's replacement services loss is equivalent to the replacement services loss benefit which is payable in situations where the person is injured but survives the automobile accident. KRS 304.39-020(5)(e) defines "survivor's replacement services loss" as expenses reasonably incurred by a survivor after a decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for the benefit of the survivor if the decedent had not suffered the fatal injury, less expenses avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss. KRS 304.39-020(5)(e). This item of loss includes loss of services which it is reasonably probable would have been rendered in the future. *Couty v. Kentucky Farm Bureau Mut. Ins. Co.*, 608 S.W.2d 370 (Ky. 1980); *Kentucky Farm Bureau Mut. Ins. Co. v. McQueen*, 700 S.W.2d 73 (Ky. Ct. App. 1985). Of course, like any element of claimed damages, if there is no evidence supporting the claim for loss under this section, there can be no recovery. *See France v. Kentucky Farm Bureau Mut. Ins. Co.*, 605 S.W.2d 773 (Ky. Ct. App. 1980).

[2.15] Persons Entitled to Basic Reparation Benefits

[2.16] Accidents Within Kentucky

Every person suffering "loss," as that term is defined in the MVRA, from injury arising out of the maintenance or use of a motor vehicle within Kentucky, is entitled to basic reparation benefits, unless that person has rejected the application of the no-fault statute. KRS 304.39-030(l). The MVRA broadly applies to all automobile accidents in Kentucky, including those involving foreign drivers. Even a non-resident with no basic reparation benefits coverage, struck in Kentucky by someone who likewise has no basic reparation benefits coverage, is entitled to basic reparation benefits through the assigned claims plan, provided they have the necessary "security," as that term is defined in KRS 304.39-020(17). *See Schmidt v. Leppert*, 214 S.W.3d 309 (Ky. 2007).

However, basic reparation benefits are not available in every situation. Principally, if the person has rejected the limitation upon their tort rights as provided in KRS 304.39-060(4), they will not benefit from basic reparation benefits, unless they have bought back their basic reparations/PIP benefits for an additional premium in accordance with KRS 304.39-140(5). In addition, since recovery is limited to every "person," the estate of a deceased motorist is not entitled to no-fault benefits. *United States Fidelity & Guar. Co. v. McEnroe*, 610 S.W.2d 593 (Ky. 1980); *Gregory v. Allstate Ins. Co.*, 618 S.W.2d 582 (Ky. Ct. App. 1981).

[2.17] Accidents Outside Kentucky

Basic reparation benefits are also available when the policy is issued in Kentucky but the accident occurs outside Kentucky, but within the United States, its territories and possessions, or Canada. However, to have the right to basic reparation benefits, the person must be either an insured under a policy providing for basic reparation benefits, or a driver or occupant of a vehicle for which basic reparation benefits have been obtained. If the claim for basic reparation benefits is based solely on the person's driving of or occupancy of a secured vehicle, additional requirements must be satisfied: (1) the vehicle must not have been regularly used in the course of the business of transporting persons or property and must not be one of five or more vehicles under common ownership; and (2) the vehicle must not be owned by an obligated government other than the Commonwealth of Kentucky and its subdivisions. KRS 304.39-030(2).

[2.18] Persons Disqualified from Coverage

[2.19] Converters

Two categories of persons are statutorily barred from receiving basic reparation benefits. First, a person who converts a motor vehicle is disqualified

from receiving basic or added reparation benefits from any source other than an insurance contract under which the converter is a basic or added reparation insured. KRS 304.39-190. This disqualification extends to the converter's survivors. *Id.* Consistent with that statute, there is no requirement that basic reparation benefits coverage be available if the vehicle has been converted. *Preferred Risk Mut. Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 872 S.W.2d 469 (Ky. 1994). However, conversion of an automobile by the driver does not discharge the insurer's obligation to pay basic reparation benefits to passengers in the automobile, unless there is evidence that the passengers had knowledge that the borrower was unauthorized. *Stuart v. Capital Enterprise Ins. Co.*, 743 S.W.2d 856 (Ky. Ct. App. 1987).

To be a "converter" within the meaning of the MVRA, the person must have acted in bad faith; thus, a person is not a converter if the person "uses the motor vehicle in the good faith belief that he or she is legally entitled to do so." KRS 304.39-190. For example, a passenger injured while riding with the named insured's employee, who believed that the driver had the right to use the vehicle in question at any time, was entitled to basic reparation benefits. *See Covington Mut. Ins. Co. v. Hurst*, 656 S.W.2d 742 (Ky. Ct. App. 1983).

[2.20] Persons Intentionally Causing Injury

The MVRA also disqualifies a "person intentionally causing or attempting to cause injury to himself or another person" from receiving basic or added reparation benefits. KRS 304.39-200. A person does not intentionally cause or attempt to cause injury "merely because his or her act or failure to act is intentional or done with the realization that it creates a grave risk of causing an injury or if the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person." *Id.* Instead, a person intentionally causes or attempts to cause injury when he or she "acts or fails to act for the purpose of causing an injury." *Id.*

[2.21] Motorcycles, Mopeds, and Electric Scooters

"Motor vehicle" is defined expansively in the MVRA as "any vehicle which transports persons or property upon the public highways of the Commonwealth…" KRS 304.39-020(7). Thus, the MVRA's definition of "motor vehicle" is broad enough to include automobiles beyond the traditional car, including motorcycles. *See* KRS 304.39-020(7). However, the definition specifically excludes certain forms of motor vehicles from MVRA coverage, including

> road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electrical power obtained from overhead wires while being operated within any municipality or

> where said vehicles do not travel more than five (5) miles beyond the said limits of any municipality.

KRS 304.39-020(7).

Therefore, the MVRA "applies to motorcycles…in the same manner and to the same extent as it applies to all motor vehicles, except where the Act specifies otherwise." *Troxell v. Trammell*, 730 S.W.2d 525 (Ky. 1987). Applying the MVRA, the *Troxell* court held that a person injured while operating a motorcycle was subject to the two-year statute of limitations contained in KRS 304.39-230. Likewise, in *Miller v. Barr*, 737 S.W.2d 182 (Ky. Ct. App. 1987), the Kentucky Court of Appeals held that the abolition of tort liability contained in the MVRA applied to persons injured while operating a motorcycle.

The one area where the MVRA "specifically provides otherwise" and does not apply to motorcycles is in the entitlement to basic reparation benefits. No operator or passenger of a motorcycle is entitled to basic reparation benefits, unless the reparation benefits have been purchased as an optional coverage for the motorcycle or the person injured. KRS 304.39-040(3). Thus, a person injured while operating or riding a motorcycle is not automatically entitled to recover basic reparation benefits. However, KRS 304.39-040(3) also provides that "every insurer writing liability insurance coverage for motorcycles in this Commonwealth shall make available for purchase as a part of every policy of insurance…the option of basic reparation benefits, added reparation benefits, uninsured motorist, and underinsured motorist coverages." In considering the availability of benefits, a court may decide that an accident involving a motorcycle does not fall within the purview of KRS 304.39-040(3)'s prohibition. For instance, in *Kentucky Farm Bureau Mut. Ins. Co. v. Mason*, 600 S.W.2d 483 (Ky. Ct. App. 1980), the Kentucky Court of Appeals determined that a person injured in a collision while pushing a motorcycle was not operating the motorcycle but, instead, was a pedestrian and, therefore, entitled to basic reparation benefits.

Additionally, a motorcycle must be distinguished from a moped or, more recently, an electric low-speed scooter. A "moped," as defined in KRS 304.39-020(8), and an "electric low-speed scooter," as defined in KRS 189.010(26), are excluded from the definition of "motor vehicle." *See* KRS 304.39-020(7). For purposes of the MVRA, a person riding on a moped is considered a pedestrian. *Howard v. Hicks*, 737 S.W.2d 711 (Ky. Ct. App. 1987).

[2.22] Golf Carts, ATVs, and Farm Equipment

In addition to motorcycles, there has been much litigation concerning whether the MVRA applies to other vehicles. In their consideration of a variety of different vehicles, Kentucky courts have seemed hesitant to expand the meaning of "motor vehicle" in the MVRA beyond vehicles typically used to transport persons or property, although other vehicles may be capable of doing so. Statute and case law have clearly determined that a "farm tractor is not an automobile within the

meaning of the MVRA." *State Farm Mut. Auto. Ins. Co. v. Marley*, 151 S.W.3d 33 (Ky. 2004); *see also Kentucky Farm Bureau Mut. Ins. Co. v. Vanover*, 506 S.W.2d 517 (Ky. 1974); KRS 304.39-020(7). In addition, the Kentucky Court of Appeals has held that, "although a golf cart is capable of transporting persons or property upon a public highway and conceivably could be construed as a motor vehicle for purposes of applying the MVRA," a "golf cart operated on a golf course fairway" was not a "motor vehicle contemplated by KRS 304.39-230. *Kenton County Public Parks Corp. v. Modlin*, 901 S.W.2d 876, 878 (Ky. Ct. App. 1995). Similarly, Kentucky courts have determined that "there is no credible basis for concluding that the registration and insurance requirements of the MVRA were intended to apply to ATVs." *Manies v. Croan*, 977 S.W.2d 22 (Ky. Ct. App. 1998). Therefore, Kentucky law is clear that ATVs are not "motor vehicles" within the meaning of the MVRA.

[2.23] The Obligated Basic Reparation Benefits Obligor

If the injured party is a driver of a vehicle or occupant of a vehicle at the time of the accident causing the injuries, the insurer of the vehicle being driven or occupied by the injured party is the responsible basic reparation benefits obligor. KRS 304.39-050(1). In fact, the insurer of the vehicle involved in the accident remains the obligor even if that policy has an escape clause. *Rees v. United States Fidelity & Guar. Co.*, 715 S.W.2d 904 (Ky. Ct. App. 1986).

[2.24] Pedestrian

If the injured party is a pedestrian, the obligor of the vehicle which actually collides with the pedestrian is the obligor responsible for the basic reparation benefits payable to that person. *State Farm Mut. Auto. Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 671 S.W.2d 258 (Ky. Ct. App. 1984). Even if an external cause or force is the reason that the vehicle came into contact with the pedestrian, the insurer of that vehicle is the obligor. Thus, if vehicle A strikes vehicle B and vehicle B then comes into contact with a pedestrian, the reparation obligor of vehicle B is responsible for paying the basic reparation benefits to the injured party. Correspondingly, if a pedestrian is hit by two vehicles in the same accident, the injured party may pursue basic reparation benefits from the basic reparation benefits obligor of either or both of the vehicles, regardless of which driver may have caused his injury. *See Capital Enterprise Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 804 S.W.2d 377 (Ky. Ct. App. 1991). Additionally, the vehicle must actually collide with the pedestrian to obligate the payment of basic reparation benefits. *Micatrotto v. Grange Mutual Casualty Company*, No. 2017-CA-000320-MR, 2018 WL 3492767 (Ky. Ct. App. July 20, 2018).

[2.25] Recovering from One's Own Reparation Obligor

The two principal situations in which an injured party recovers basic reparation benefits under his or her own policy are when the injured party is occupying their own car or struck by their own car. However, there are two additional

scenarios in which an injured party may recover basic reparation benefits from his or her own insurer. First, if the injured party is struck by an uninsured motorist, the injured party's own carrier is responsible for paying the basic reparation benefits to the injured party. *Dairyland Ins. Co. v. Assigned Claims Plan*, 666 S.W.2d 746 (Ky. 1984); KRS 304.39-050(2). Second, if the responsible obligor does not make payment within 30 days of reasonable proof of loss being submitted by the injured party, the injured party can recover benefits from any policy on which he or she is a "basic reparations insured." KRS 304.39-050(l).

[2.26] Maintenance or Use of Motor Vehicle

Basic reparation benefits are available only if the person has suffered loss from injury arising out of the maintenance or use of a motor vehicle. *See* KRS 304.39-030. The meaning of "use" is expansive and encompasses and includes activities beyond the mere act of driving down the road. Specifically, "use" is defined as "any utilization of a motor vehicle as a vehicle, including occupying, entering into, and alighting from it," except that "use" specifically does not include "conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the conduct occurs off the business premises," or "conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into, or alighting from" a motor vehicle. KRS 304.39-020(6). While the MVRA does not define "maintenance," KRS 304.39-020(16) does state that "maintaining a motor vehicle" constitutes "having legal custody, possession or responsibility for a motor vehicle by one other than an owner or operator." KRS 304.39-020(16).

Kentucky courts have interpreted these provisions as requiring a causal connection between the injuries and the maintenance or use of the motor vehicle. *See State Farm Mut. Auto. Ins. Co. v. Rains*, 715 S.W.2d 232 (Ky. 1986). Thus, an insured hit in the back of the head with a baseball bat while he was getting into his car was not entitled to basic reparation benefits. *See id.* Similarly, a person shot and injured as he crawled away from his motor vehicle was not entitled to basic reparation benefits. *Id.* However, an insured's injuries sustained when she was struck in the eye by an object thrown from a lawn mower while driving her car were found to be causally related to the operation of her vehicle, thereby entitling the insured to basic reparation benefits. *See Kentucky Farm Bureau Mut. Ins. Co. v. Hall*, 807 S.W.2d 954 (Ky. Ct. App. 1991).

Clearly, a person driving or riding in a motor vehicle is "using" the vehicle. In fact, notwithstanding the lack of a valid drivers' license, a person illegally driving the vehicle is "using" the motor vehicle within the meaning of the MVRA. *See Probus v. Sirles*, 569 S.W.2d 707 (Ky. Ct. App. 1978) (where the person was injured when driving a vehicle while preparing for her license).

As expected, most of the litigation in this area concerns persons who were doing something other than driving or riding in a motor vehicle. For example, in

Clark v. Young, 692 S.W.2d 285 (Ky. Ct. App. 1985), the injuries sustained while standing on a flatbed trailer and securing a tarpaulin were found not to arise from the "maintenance or use" of the vehicle. However, injuries which occurred while a person was attaching a tow chain to his stalled vehicle, in hopes of returning his vehicle to a drivable condition, were found to arise from the maintenance or use of the motor vehicle. *See State Farm Mut. Auto. Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 671 S.W.2d 258 (Ky. Ct. App. 1984). In *Micatrotto v. Grange Mutual Casualty Company*, No. 2017-CA-000320-MR, 2018 WL 3492767 (Ky. Ct. App. July 20, 2018), the appellant was a car salesman who injured himself tripping over a curb to avoid a car that was backing toward him. He asserted that this was a claim "arising out of the…use of a motor vehicle," per KRS 304.39-050(1). The Kentucky Court of Appeals disagreed, saying that, by definition, the appellant was a pedestrian at the time of the incident, and the statute is clear that he would have had to have been struck by the vehicle for basic reparation benefits to be applicable.

Although the definition of "use" in the MVRA specifically excludes "conduct in the course of loading and unloading the vehicle," Kentucky courts have limited this exclusion and have paid particular attention to the phrase "unless the conduct occurs while occupying" the motor vehicle. For example, in *Goodin v. Overnight Transp. Co.*, 701 S.W.2d 131 (Ky. 1985), a person was injured while unloading goods from inside a hitched, but parked, tractor trailer. The Kentucky Supreme Court stated that "use" of a motor vehicle "includes as a primary purpose the transportation of property." *Goodin*, 701 S.W.2d at 132. Grappling with the exclusion for loading and unloading the vehicle contained in KRS 304.39-020(6), the Kentucky Supreme Court reasoned that excluding "loading and unloading" from the "definition of 'use of a motor vehicle' in certain circumstances can mean only that it is an *included* use where the exception does not apply," and KRS 304.39-020(6) provides that the "exception does not apply where 'the conduct occurs while occupying' the vehicle." Hence, the court found the injured party was entitled to basic reparation benefits. However, *Goodin* appears to be limited to the particular facts of that case. In two other cases, *Cochran v. Premier Concrete Pumping, Inc.*, 2010 WL 1728920 (Ky. Ct. App. Apr. 30, 2010) and *McCall v. Zurich American Ins. Co.*, 2012 WL 6651890 (Ky. Ct. App. Dec. 21, 2012), the Kentucky Court of Appeals has declined to apply the holding in *Goodin* and distinguished the facts of the cases before them on the basis that the injured party in *Goodin* was "*inside* the vehicle when he fell through a hole in the trailer," and the injured parties in both *Cochran* and *McCall* were outside the vehicle on the ground and a ramp and platform, respectively, at the time of their injuries. Therefore, the Kentucky Court of Appeals held in both *Cochran* and *McCall* that the motor vehicle was not being "used," and thus, the MVRA did not apply and did not grant the injured parties basic reparations/PIP benefits.

Similarly, the MVRA's requirement that the injury arise from the "use" of a motor vehicle is relaxed by the inclusion of "alighting from" the vehicle in the definition of "use." KRS 304.39-020(6). The "alighting from" language was addressed in *West Am. Ins. Co. v. Dickerson*, 865 S.W.2d 320 (Ky. 1993). In *Dickerson*, the

insured fell while emerging from the vehicle and sustained a serious injury to her elbow. In considering whether the insured was in the process of "alighting" from the vehicle, the court held that a person has not finished "alighting" from the vehicle "at least until both feet are planted firmly on the ground." *Dickerson*, 865 S.W.2d at 322. However, the Kentucky Supreme Court also opined that "as a general rule, there is a rational limit to the activity that may be said to be encompassed within the term 'alighting from' which is the time and place at which the individual, after alighting, shows an intention, evidenced by an overt act based upon that intention, to undertake a new direction of activity." *Id.* Specifically, the court decided that the meaning of "alighting from" should not be limited to circumstances where the injured person remained in physical contact with the vehicle and rather, "is a question of degree." *Id.* However, it should be noted that in *Hartford Ins. Cos. of America v. Kentucky School Boards Ins. Trust*, 17 S.W.3d 525 (Ky. Ct. App. 1999), the Kentucky Court of Appeals made an important distinction between the public school bus involved in that case and the private vehicle involved in *Dickerson* and held that a "child is still 'using' a school bus after disembarking as long as he or she is crossing the street under the protection of the bus's warning lights and stop arm, and until he or she has reached a place of safety." 17 S.W.3d at 530-31.

In addition, the Kentucky Supreme Court has discussed the "patent ambiguity" that exists within the MVRA over the "maintenance of a motor vehicle." *See Commercial Union Assur. Cos. v. Howard*, 637 S.W.2d 647 (Ky. 1982). Although the MVRA clearly establishes that it applies when a person suffers loss from injury arising out of the "maintenance or use of a motor vehicle," the Act does not define "maintenance of a motor vehicle." Instead, "the closest definition is found in KRS 304.39-020(16) which defines "maintaining a motor vehicle." *Id.* at 649. In *Howard*, the Kentucky Supreme Court determined that "the answer lies within KRS 304.39-020(6) which basically defines the 'use of a motor vehicle' as 'any utilization of the motor vehicle as a vehicle…'" and "acts incidental to this utilization." *See id.* Resolving the ambiguity, the court held that the definition of "maintaining a motor vehicle" clearly does not include the repairing or servicing of a vehicle by someone not in the business of repairing vehicles. Accordingly, a person injured while repairing his own vehicle in his driveway is not entitled to basic reparation benefits. *See id.* at 649. Furthermore, Kentucky courts have also decided that persons involved in the repairing of motor vehicles on their business premises are not entitled to recover basic reparation benefits under KRS 304.39-020(6), rejecting the argument that such persons should receive basic reparation benefits because they fit within persons entitled to benefits under KRS 304.39-030(1). *Thompson v. Ky. Farm Bureau Mut. Ins. Co.*, 901 S.W.2d 874 (Ky. Ct. App. 1995).

[2.27] Assigned Claims Plan

A person entitled to benefits, but who is unable to collect them through no fault of their own, can receive basic reparation benefits through the assigned claims plan. *See* KRS 304.39-160. Thus, an uninsured pedestrian struck by an uninsured motorist has a right to seek benefits from the assigned claims plan. *See*

Blair v. Day, 600 S.W.2d 477 (Ky. Ct. App. 1979). However, if the injured party's failure to receive basic reparation benefits is their own fault, that person has no right to receive the basic reparation benefits through the assigned claims plan. KRS 304.39-160(4).

[2.28] Calculation of Benefits

The elements which constitute basic reparation benefits are discussed above. In determining what benefits are payable to a party entitled to basic reparation benefits, there are two limitations upon the calculation of benefits, one applying to the calculation of net loss and the other applying to the benefits recoverable.

[2.29] Net Loss

"Net loss" is defined as "loss less benefits or advantages, from sources other than basic and added reparation insurance, required to be subtracted from loss in calculating net loss." KRS 304.39-020(10). As to the calculation of a party's "net loss," the MVRA specifically provides that workers' compensation benefits must be subtracted in calculating the injured party's net loss, and only the difference between the actual wage loss and the workers' compensation benefits is payable as basic reparation benefits. *See* KRS 304.39-120(l). In fact, if an injured party recovers both workers' compensation benefits and no-fault benefits for the same element of loss, the no-fault carrier is entitled to reimbursement from the injured party. *Morrison v. Kentucky Cent. Ins. Co.*, 731 S.W.2d 822 (Ky. Ct. App. 1987).

However, the deduction relating to workers' compensation benefits does not extend to other types of payments. For example, collateral insurance payments are not to be included in determining net loss. *United States Fidelity & Guar. Co. v. Smith*, 580 S.W.2d 216 (Ky. 1979); *Kentucky Farm Bureau Mut. Ins. Co. v. Allstate Ins. Co.*, 681 S.W.2d 919 (Ky. Ct. App. 1984). In addition, state medical assistance payments are not to be included in determining net loss. *State Auto. Mut. Ins. Co. v. Outlaw*, 575 S.W.2d 489 (Ky. Ct. App. 1978).

Finally, if the benefit or advantage received to compensate for loss of service because of injury is not taxable income, the income tax saving that is attributable to the loss of income and the receipt of non-taxable basic reparation benefits is subtracted in calculating net loss. KRS 304.39-120(2). However, that subtraction from net loss may not exceed 15% of the loss of income. *Id.* Additionally, the deduction can be less than 15% if the injured person "furnishes to the insurer reasonable proof of a lower value of the income tax advantage." *Id.*

[2.30] Benefits to Be Paid

Once the injured party's net loss is determined, the insurer must determine how much of that net loss is to be paid to the injured party. However, the benefits payable for lost wages is limited to $200 a week. *See* KRS 304.39-130. If

the injured party's earnings or work are seasonal or irregular, that weekly limit of $200 shall be equitably adjusted or apportioned on an annual basis. *Id.* This limit is a limit on the benefits to be paid and not a limit on the determination of the "net loss" incurred by the injured party. *United States Fidelity & Guar. Co. v. Smith*, 580 S.W.2d 216 (Ky. 1979).

[2.31] Mechanics of Claims for Basic Reparation Benefits

One of the MVRA's purposes is to provide prompt payment of certain benefits to victims of motor vehicle accidents without regard to whose negligence caused the accident in order to eliminate the inequities which fault determination creates. KRS 304.39-010(2). Accordingly, a basic reparation benefits obligor is required to make payment for a claim for basic reparation benefits within 30 days after the obligor receives reasonable proof of the fact and amount of loss realized. KRS 304.39-210(l). However, the obligor has the opportunity to extend the time requirement by electing to accumulate claims for periods not exceeding 31 days after the obligor receives reasonable proof of the fact and amount of loss realized, so long as the obligor pays them within 15 days after the period of accumulation. *Id.* Basic and added reparation benefits are payable monthly as loss accrues, which is defined as when the work loss, replacement services loss, or medical expense is incurred. *Id.*

The injured party has the burden of providing reasonable proof of the fact and amount of loss realized. *Automobile Club Ins. Co. v. Lainhart*, 609 S.W.2d 692 (Ky. Ct. App. 1980); *State Auto. Mut. Ins. Co. v. Outlaw*, 575 S.W.2d 489 (Ky. Ct. App. 1978). An injured party cannot satisfy this burden simply by stating that the medical expense has been incurred or by merely offering to furnish the proof if requested. *See Outlaw*, *supra*; *Lainhart*, *supra*. However, the injured party does not have a "duty to search out or to have reports prepared," or to "ascertain that the medical bills are the result of the injury;" that burden lies with the insurer. *Kentucky Farm Bureau Mut. Ins. Co. v. Roberts*, 603 S.W.2d 498, 500 (Ky. Ct. App. 1980).

Once the insured provides the necessary proof, the insurer has a duty to respond to the claim, because "otherwise, the claimant may be lulled into the false assumption that he has furnished reasonable proof of loss and that the claim will be paid." *Outlaw* at 493. Thus, if the insurer "does not intend to pay a claim for medical expenses" because copies of medical bills have not been provided, the insurer should give the claimant "prompt notice" of the reason why the claim is not being paid. *Id.*

If the insurance company fails to provide the required "prompt notice," the insurer "must be deemed to have waived any question of the sufficiency of the proof of loss for the purpose of determining when an otherwise valid claim became 'overdue.'" *Id.* Moreover, an insurer's failure to promptly respond and pay a legitimate claim may result in the insurance company incurring two additional expenses – attorney fees and interest.

Overdue payments bear interest at the rate of 12% per annum, except that if the delay was without reasonable foundation, the rate of interest shall be 18% per annum. KRS 304.39-210(2). Therefore, a delay of two and a half months when the insurer had already been provided all outstanding physicians' bills along with a completed medical authorization form, justified the imposition of 18% interest. *See Roberts*, *supra*. Similarly, where the insurer relied on a case which was not expressly overruled but was supplemented by a later case, the insurer's failure to pay on the claim was unreasonable and subject to the imposition of 18% interest. *Kentucky Farm Bureau Mut. Ins. Co. v. McQueen*, 700 S.W.2d 73 (Ky. Ct. App. 1985). However, the assertion of a legitimate and bona fide defense by the insurer makes the 18% interest provision inapplicable, even if the case is ultimately decided against the insurer. *See Automobile Club Ins. Co. v. Lainhart*, *supra*.

In paying basic reparation benefits, the obligor may pay the benefits directly to "persons supplying the products, services, or accommodations to the claimant, if the claimant so designates." KRS 304.39-210(l). However, such a provider is not a third-party beneficiary of the insurance contract which would give it a right to enforce the insurance contract. *United States v. Allstate Ins. Co.*, 754 F.2d 662 (6th Cir. 1985). Lastly, a reparations obligor can recover from its own insured payments of basic reparation benefits made under a mistake of law if the mistake is one that courts will remedy in equity. *Riverside Ins. Co. v. McDowell*, 576 S.W.2d 268 (Ky. Ct. App. 1979); *State Farm Auto. Ins. Co. v. Newburg Chiropractic, P.S.C.*, 741 F.3d 661 (6th Cir. 2013).

[2.32] Denial of Claims

In 2018, the Kentucky Supreme Court threw a curve ball at insurers in the form of *Gov't Employees Ins. Co. v. Sanders*, 569 S.W.3d 923 (Ky. 2018), *reh'g denied* (Apr. 18, 2019). GEICO had denied the plaintiffs' claim to payment of basic reparation benefits for medical expenses based upon a paper review of the plaintiffs' medical records. That review lead GEICO to the conclusion that the claimed expenses were unrelated to the accident in issue. GEICO asserted that a paper review alone was sufficient for denial and that a formal medical evaluation under KRS 304.39-270(1) was not necessary. The Kentucky Supreme Court disagreed, holding a paper review of medical records is insufficient for a denial of a claim for payment for medical expenses. The Court stated that under the statute, a reparations obligor is not required to seek an examination of a claimant, but the statute addresses only discovery concerns and not denial of basic reparation benefits. The Court stated that the purpose of the Kentucky Motor Vehicle Reparations Act is to provide prompt medical treatment, so treatments and invoices are presumed to be reasonable (rebuttal through suit) and the statute requires prompt payment. Thus, after *Sanders*, to deny a claim for payment of basic reparation benefits for submitted medical bills an insurer will need more than the conclusions of a medical records review, even if that review were done by a medical professional.

Just a year prior, however, the Kentucky Supreme Court gave insurers another arrow in their quiver in *State Farm Mut. Auto. Ins. Co. v. Adams*, 526 S.W.3d 63 (Ky. 2017), which found that insurance companies are permitted to "unilaterally…require that a person seeking coverage undergo questioning under oath." *Id.* at 64. The ability to take a deposition of the insured as "a condition precedent to coverage" provides an avenue to evaluate the legitimacy of a claim now that a paper review alone can no longer serve as a singular means by which an insurer may deny basic reparation benefits.

[2.33] Subrogation Rights of Basic Reparation Benefits Obligor

The MVRA provides that "a reparation obligor which has paid or may become obligated to pay basic reparation benefits shall be subrogated to the extent of its obligations to all of the right of the person suffering the injury against any person or organization other than a secured person." KRS 304.39-070(2). A "secured person" for purposes of KRS 304.39-070 is the "owner, operator or occupant of a secured motor vehicle, and any other person or organization legally responsible for the acts or omissions of such owner, operator or occupant." KRS 304.39-070(1). Therefore, under Kentucky law, the payor of basic reparation benefits can recover the amounts paid and recover from the tortfeasor or the tortfeasor's liability carrier. *Ohio Cas. Ins. Co. v. Atherton*, 656 S.W.2d 724 (Ky. 1983). That the insured is dead has no effect on the subrogation rights of the reparations obligor. *Id.*

However, the subrogation rights of the basic reparation benefits obligor against an alleged tortfeasor who has a policy of insurance which provides basic reparation benefits coverage is greatly curtailed. Specifically, KRS 304.39-070(3) establishes that "the reparation obligor shall elect to assert its claim (i) by joining as a party in an action that may be commenced by the person suffering the injury; or (ii) to reimbursement, pursuant to KRS 304.39-030, sixty (60) days after said claim has been presented to the reparation obligor of secured persons." In what has been described as "a mechanism for reimbursement of losses paid as basic reparation benefits solely on the law of torts," *Affiliated FM Ins. Cos. v. Grange Mut. Cas. Co.*, 641 S.W.2d 49 (Ky. Ct. App. 1982), a basic reparation benefits obligor can assert its subrogation rights against the reparations obligor of the insured tortfeasor in one of two ways – intervention or arbitration. Upon challenge, the Kentucky Supreme Court held that this limitation upon the obligor's subrogation rights was constitutional. *Fireman's Fund Ins. Co. v. Government Employees Ins. Co.*, 635 S.W.2d 475 (Ky. 1982), *overruled on other grounds by Perkins v. Northeastern Log Homes*, 808 S.W.2d 809 (Ky. 1991).

Each motor vehicle insurance carrier doing business in Kentucky is required to join the Kentucky Insurance Arbitration Association, as provided in KRS 304.39-290, and "the right to recover basic reparation benefits paid…shall be limited to those instances established as applicable by the Kentucky Insurance Arbitration Association," if arbitration is selected as the method for recovery. KRS 304.39-070(3). Alternatively, the basic reparations carrier can assert its subrogation

rights through intervention in an existing tort suit, if they follow the proper procedures. As the statute indicates, the basic reparation benefits obligor's subrogation claim is against the tortfeasor's basic reparation benefits obligor. *Beckner v. Palmore*, 719 S.W.2d 288 (Ky. Ct. App. 1986). However, the basic reparation benefits obligor of the injured party can join as a party in an action which has been brought by the injured party. *See* KRS 304.39-070(2). Thus, typically the basic reparation benefits obligor can intervene as an intervening plaintiff and name the tortfeasor's basic reparation benefits provider as the intervening defendant, if arbitration is not chosen.

Furthermore, KRS 304.39-070 has been interpreted strictly. In the event that the basic reparation benefits obligor fails to assert their subrogation right by acting under one of the two methods, the injured person is permitted to keep the entire recovery received, in addition to any recovery he obtains on a tort claim. *Progressive Cas. Ins. Co. v. Kidd*, 602 S.W.2d 416, 417 (Ky. 1980).

The MVRA also contains another important section which addresses subrogation. KRS 304.39-140(3) establishes that "if the injured person, or injured persons, is entitled to damages under KRS 304.39-060 from the liability insurer of a second person, a self-insurer or an obligated government, collection of such damages shall have priority over the rights of the subrogee for its reimbursement of basic or added reparation benefits paid to or in behalf of such injured person or persons." Therefore, if an injured person is owed damages from a liability carrier, payment of those damages takes priority over the payment of subrogated damages to the basic reparation benefits or added reparations carrier.

Additionally, it must be determined whether liability coverage is sufficient or insufficient. If coverage is insufficient to pay both the injured person and the basic reparation benefits subrogation, the injured plaintiff has priority. *Fireman's Fund Ins. Co. v. Government Employees Ins. Co.*, *supra*; *Stovall v. Ford*, 661 S.W.2d 467 (Ky. 1983). However, if the available funds are sufficient to satisfy both the tort judgment and the subrogation, the basic reparation benefits payor must be reimbursed in full. *Shelter Mut. Ins. Co. v. McCarthy*, 896 S.W.2d 17 (Ky. Ct. App. 1995).

Lastly, in *Shelter Ins. Co. v. Humana Health Plans, Inc.*, 882 S.W.2d 127 (Ky. Ct. App. 1994), the Court of Appeals addressed the interplay between KRS 304.39-310(2), which imposes upon an uninsured driver all the "rights and obligations" of a reparations obligor, and KRS 304.39-070, which creates the right of a reparations obligor to pursue a subrogation claim against the tortfeasor's reparations obligor. The Court of Appeals concluded that the uninsured motorist "clearly" did not acquire the statutory subrogation right conferred on reparations obligors by KRS 304.39-070. Likewise, an uninsured motorist has no claim against the tortfeasor's reparations obligor for her medical expenses. *Id.*

[2.34] Notification of Action Against Tortfeasor

Enacted in 1988, KRS 411.188 required a party filing a lawsuit to give notice of the action to all parties believed by the plaintiff or plaintiff's attorney to

"hold subrogation rights to any award received by the plaintiff as a result of the action." However, this statute was held unconstitutional in *O'Bryan v. Hedgespeth*, 892 S.W.2d 571 (Ky. 1995) on the basis of a violation of the separation of powers doctrine.

[2.35] Right to Intervene

A basic reparation benefits obligor has an absolute right to intervene in the injured party's action. *Grange Mut. Cas. Co. v. McDavid*, 664 S.W.2d 931 (Ky. 1984); *Stovall v. Ford*, 661 S.W.2d 467 (Ky. 1983). Thus, if an insurer attempts to intervene in the injured party's tort action, it must be allowed to do so. Once the basic reparation benefits obligor enters as an intervening plaintiff, the obligor has standing to appeal from a dismissal of the action. *Grange Mut. Cas. Co. v. McDavid*, *supra*. If the injured party's tort action against the alleged tortfeasor is dismissed, the intervening claim goes forward, unless the underlying action is dismissed because of a finding of no tort liability. *Id.* However, even though the court must allow the obligor to intervene, the court can hold the insurer's claim in abeyance until the underlying action is resolved. *See Smith v. Earp*, 449 F. Supp. 503 (W.D. Ky. 1978).

Typically, if the basic reparation benefits obligor decides to intervene in the action, the proper procedure is for the basic reparation benefits obligor to intervene as an intervening plaintiff and name the tortfeasor's basic reparation benefits provider as the intervening defendant. However, the Kentucky Supreme Court has held that "the requirement of joining in an action commenced by the injured person may also be satisfied when a reparation obligor is joined as a party defendant and participates in the suit." *State Farm Mut. Auto. Ins. Co. v. Waldeck*, 619 S.W.2d 494 (Ky. 1981). Thus, the court determined that where the plaintiffs had joined State Farm as a party defendant, and State Farm answered the complaint and subsequently filed a counterclaim, "State Farm joined and participated in an action commenced by the persons injured" and satisfied the procedural requirements set out in KRS 304.39-070(3) and thus, was "entitled to full reimbursement of the basic reparation benefits payments with accrued interest." *Id.* at 496.

[2.36] Timing of Intervention

The time in which the reparations obligor must intervene may be subject to debate. In *Grange Mut. Cas. Co. v. McDavid*, *supra*, the Kentucky Supreme Court indicated that there was no time limit on the reparation obligor's right to intervene. However, in *Gray v. State Farm Mut. Auto. Ins. Co.*, 605 S.W.2d 775 (Ky. Ct. App. 1980), the Kentucky Court of Appeals held that the reparations obligor must intervene within five years of making the payments pursuant to KRS 413.120(2), a statute of limitations applicable to actions upon a statutory liability, when no other time is fixed by the statute creating the liability. Subsequently, the *Gray* decision has been cited approvingly by both the Kentucky Court of Appeals and the Federal District Court for the Western District of Kentucky. *See Gov't Employees Ins. Co.*

v. Winsett, 153 S.W.3d 862 (Ky. Ct. App. 2004); *State Farm Mut. Auto. Ins. Co. v. Newburg Chiropractic, P.S.C.*, 683 F. Supp. 2d 502 (W.D. Ky. 2010).

[2.37] Right to Recover Amount of Benefits Paid

The intervening obligor's right to recover the amount of basic reparation benefits it paid is subject to the plaintiff showing the right to recover from the alleged tortfeasor. *See Gray v. State Farm Mut. Auto. Ins. Co.*, 605 S.W.2d 775, 776 (Ky. Ct. App. 1980). Consequently, the basic reparation benefits carrier will not be permitted to recover the benefits it paid, from its insured or any other party, if the jury subsequently determines that the injuries were not caused by the automobile accident covered by the insurance policy. *Carlson v. McElroy*, 584 S.W.2d 754 (Ky. Ct. App. 1979). Thus, where a plaintiff is unable show any injuries resulting from the accident, the injured party's reparations obligor recovers nothing on the intervening complaint. *Id.*

[2.38] Obligor as Real Party in Interest

The reparations obligor is the real party in interest when recovery of the basic reparation benefits it has paid from the tortfeasor or tortfeasor's carrier is sought. *Progressive Cas. Ins. Co. v. Kidd*, 602 S.W.2d 416 (Ky. 1980). Thus, the insured does not have a claim for the no-fault benefits. *Carta v. Dale*, 718 S.W.2d 126 (Ky. 1986). Accordingly, the insured is not entitled to recover for any element of damages which constitute basic reparation benefits. However, if the insured does recover a judgment which covers some of those elements, but the basic reparation benefits obligor neither intervened nor submitted the claim to arbitration, the reparations obligor has no right of reimbursement against the insured. *Progressive Cas. Ins. Co. v. Kidd*, *supra*. Nonetheless, "the fact that the insurance company, for whatever reasons it may have, chooses not to prosecute its claim to recovery does not by operation of law re-assign the claim to the insured for her to assert. To the contrary, KRS 304.39-060 expressly abolishes tort liability to the extent compensated by basic reparation benefits." *Hargett v. Dodson*, 597 S.W.2d 151, 152 (Ky. Ct. App. 1979); *Carta v. Dale*, *supra*.

[2.39] Tortfeasor's Coverage Applicable to Subrogation Claim

After the adoption of the MVRA, the subrogation statute had been interpreted to require that the tortfeasor's carrier must reimburse the injured party's reparation obligor even if the injured party's claim totally consumed the amount of liability coverage available to the tortfeasor. *Ohio Security Ins. Co. v. Drury*, 582 S.W.2d 64 (Ky. Ct. App. 1979). However, KRS 304.39-140 was subsequently amended to make clear that the tortfeasor's carrier's total liability arising from the injuries is limited to its policy limits. Therefore, the total amount of coverage available to satisfy both the injured party's tort claim and the reparation obligor's subrogation claim is the limit of liability coverage available to the alleged tortfeasor.

If there is not enough liability coverage to fully cover both claims, the injured party has priority over the subrogated obligor. *Fireman's Fund Ins. Co. v. Bennett*, 635 S.W.2d 482 (Ky. Ct. App. 1981), *aff'd sub nom. Fireman's Fund Ins. Co. v. Government Employees Ins. Co.*, 635 S.W.2d 475 (Ky. 1982), *overruled on other grounds by Perkins v. Northeastern Log Homes*, 808 S.W.2d 809 (Ky. 1991); *Stovall v. Ford*, 661 S.W.2d 467 (Ky. 1983); KRS 304.39-140(3). Although a no-fault carrier may subrogate against the reparation obligor, the no-fault carrier has no claim against the tortfeasor's excess carrier. *State Auto. Mut. Ins. Co. v. Empire Fire & Marine Ins. Co.*, 808 S.W.2d 805 (Ky. 1991).

[2.40] Other Miscellaneous Rules

Three special rules relating to subrogation claims are worthy of mention. First, an assigned claims plan payor of basic reparation benefits has a subrogation claim against an insurance agent whose retention of the claimant's premium resulted in the claimant not having basic reparation benefits coverage. *See Travelers Ins. Co. v. Bowling*, 806 S.W.2d 40 (Ky. Ct. App. 1991). In addition, an assigned claims plan payor has a subrogation claim against the no-fault carrier who should have paid the basic reparation benefits. *Capital Enterprise Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 804 S.W.2d 377 (Ky. Ct. App. 1991). However, an assigned claims plan payor's subrogation rights do not include the right to 18% interest or attorney fees. *Id.* Second, if the tortfeasor is the Commonwealth of Kentucky, the proper forum in which to assert a subrogation claim is the Board of Claims. OAG 84-122 (1984). Third, an injured party who is not insured in violation of Kentucky's MVRA cannot be considered a basic reparation benefits obligor and, therefore, has no subrogation rights against the tortfeasor's reparation obligor. *See Thomas v. Ferguson*, 560 S.W.2d 835 (Ky. Ct. App. 1978).

[2.41] Attorney Fees

[2.42] Claim for Overdue Benefits

The no-fault statute has two separate provisions relating to attorney fees. First, reasonable attorney fees may be recovered in an action for overdue benefits if the obligor's denial or delay in the payment of benefits was without reasonable foundation. KRS 304.39-220. Any attorney fees awarded shall be in addition to the amount of no-fault benefits that the insured recovers. *Id.* The trial court can increase the award of attorney fees if an appeal is taken. *Moore v. Roberts*, 684 S.W.2d 276 (Ky. 1982).

Obviously, most of the litigation in this area concerns whether a denial or delay in payment was without reasonable foundation. If an insurer refuses to pay basic reparation benefits in the face of conflicting medical proof, it does so at its own peril. *Shelter Mut. Ins. Co. v. Askew*, 701 S.W.2d 139 (Ky. Ct. App. 1985). Conversely, when there is no reasonable proof submitted to the insurer and the denial is based on a legitimate and bona fide defense, an award of attorney fees is

not appropriate. *Automobile Club Ins. Co. v. Lainhart*, 609 S.W.2d 692 (Ky. Ct. App. 1980). However, if the denial is based on legal grounds, but the case law providing the insurer the legal basis for the denial is no longer good law, an award of attorney fees is appropriate. *Kentucky Farm Bureau Mut. Ins. Co. v. McQueen*, 700 S.W.2d 73 (Ky. Ct. App. 1985).

As to what may constitute an "unreasonable delay," the Kentucky Court of Appeals held that the recovery of attorney fees was appropriate when the insurer had received all necessary documentation on December 28, but did not begin paying the claim until March 12, in *Kentucky Farm Bureau Mut. Ins. Co. v. Roberts*, 603 S.W.2d 498 (Ky. Ct. App. 1980).

[2.43] Subrogation Claims

The second attorney fees provision relates to the reparation obligor's subrogation claim. Specifically, the MVRA provides that an injured party's attorney is entitled to reasonable attorney fees from the reparation obligor if, through the attorney's representation, basic reparation benefits are reimbursed by the tortfeasor's carrier or if a prospective action is settled and the basic reparation benefits are reimbursed. KRS 304.39-070(5).

This provision, permitting the injured party's attorney to recover fees from the reparation obligor, has resulted in a multitude of litigation. An injured party's attorney is only entitled to a fee from the reparation obligor if the attorney's representation "decidedly influences" the actions of the court. *Meridian Mut. Ins. Co. v. Walker*, 602 S.W.2d 181 (Ky. Ct. App. 1980). Thus, if the injured party's counsel recovers the basic reparation benefits for the no-fault carrier, the injured party's counsel is entitled to a fee from the reparations obligor. *Woodall v. Grange Mut. Cas. Co.*, 648 S.W.2d 871 (Ky. 1983). To be entitled to a fee, it is not necessary that the reparations obligor actually employ the services of the injured party's attorney, or that the attorney actually intended to confer a benefit to the obligor; instead, the issue is whether the attorney's representation actually conferred some benefit to the reparations obligor. *Baker v. Motorists Ins. Cos.*, 695 S.W.2d 415 (Ky. 1985). However, where the attorney's representation confers no benefit, either direct or indirect, to the reparations obligor, the attorney is not entitled to an attorney fee. *Id.*

The MVRA nor case law has established criteria for determining the amount of attorneys' fees to be awarded. Therefore, if the award of attorney fees does not constitute an abuse of discretion, the award will not be disturbed. *Woodall v. Grange Mut. Cas. Co.*, *supra*.

Of course, if the reparations obligor does not recover anything, the attorney is not entitled to a fee. Thus, where the no-fault carrier does not seek reimbursement from the alleged tortfeasor's carrier, the injured party's attorney is not entitled to an attorney fee from the reparations obligor. *State Farm Mut. Auto. Ins. Co. v. Beard*, 636 S.W.2d 26 (Ky. Ct. App. 1982).

KRS 304.39-070 relates to the reparation obligor's subrogation claim and does not apply if the insurer arbitrates its subrogation claim, since the benefit of counsel to the payor is indirect at best. *MFA Ins. Co. v. Carroll*, 687 S.W.2d 553 (Ky. Ct. App. 1985). However, an insurer cannot avoid a fee by claiming it intended to later go to arbitration, when the proof shows that liability was established by the attorney efforts. *See Baker v. Motorists Ins. Co.*, 695 S.W.2d 415 (Ky. 1985).

[2.44] Releases and Basic Reparation Benefits

Often, when the injured party settles with one of the other parties, a general release will be executed. Subsequently, the party who did not settle may seek to rely on that general release to avoid the claim. Considering similar arguments, Kentucky courts have recognized "the clear dichotomy between" a "contractual claim" for basic reparation benefits, to which the injured party is "entitled regardless of fault," and the tort claim which does depend on fault. *Ohio Cas. Ins. Co. v. Ruschell*, 834 S.W.2d 166 (Ky. 1992). In *Ruschell*, the Kentucky Supreme Court concluded that a general release signed by an injured party in settlement of the injured party's negligence claim against an alleged tortfeasor did not release the injured party's own insurer from liability for basic reparation benefits. In so holding, the court stated that a tort release will not release a claim for basic reparation benefits unless there is a specific designation of the basic reparation benefits claim in the tort release. *See Ruschell* at 169. Similarly, an insured's release of the alleged tortfeasor does not affect the reparation obligor's subrogation claim, since the insured's claim for those items was abolished by the MVRA. *Stovall v. Ford*, 661 S.W.2d 467 (Ky. 1983). This is true even if the insured's release expressly applies to both the tortfeasor and the tortfeasor's carrier. *See Holzhauser v. West Am. Ins. Co.*, 772 S.W.2d 650 (Ky. Ct. App. 1989).

However, the Kentucky Supreme Court reconsidered the effect of releases on no-fault benefits in *Coleman v. Bee Line Courier Service, Inc.*, 284 S.W.3d 123 (Ky. 2009). First, the court discussed and distinguished the facts of *Ruschell*, where the plaintiff was trying to collect basic reparation benefits from her own carrier and her own basic reparation benefits carrier refused to pay under a general release to a tortfeasor. Then, the Kentucky Supreme Court considered the facts of *Coleman*, a situation where the plaintiff's basic reparation benefits carrier had already paid the basic reparation benefits, the basic reparation benefits carrier sought to recoup from the tortfeasor, and the tortfeasor in turn attempted to collect that amount back from the injured plaintiff, with whom it had settled under a general release. In addressing the question of "whether the basic reparation benefits carrier can proceed against the tortfeasor for recoupment and the tortfeasor can then seek indemnity from the settling plaintiff," the Kentucky Supreme Court determined that despite the different factual scenarios, the rule in *Ruschell*, which requires a specific designation in the release concerning basic reparation benefits, also applies to a claim for indemnification. *Coleman*, 284 S.W.3d at 128. Therefore, in the absence of a specific designation in the release that basic reparation benefits are indemnified, the injured plaintiff, who settled with the tortfeasor under a general release that

does not mention no-fault benefits, is not obligated to indemnify the tortfeasor for basic reparation benefits recoupment claims. *Id.*

[2.45] Abolition of Tort Liability

While it actually has little to do with automobile insurance, one of the key features of the MVRA is that tort liability is "abolished for damages because of bodily injury, sickness or disease to the extent that basic reparation benefits are payable therefor." KRS 304.39-060(2). This abolition of tort liability permits a defendant to raise as a defense that some element of damages is abolished by KRS 304.39-060(2); however, the abolition of tort liability is not an affirmative defense that must be pleaded specially. *Dudas v. Kaczmarek*, 652 S.W.2d 868 (Ky. Ct. App. 1983). Essentially, a plaintiff is expected to collect his/her basic reparation benefits from the appropriate basic reparation benefits carrier and cannot collect them from another party; thus, for the first $10,000 of economic loss suffered by an injured party, that injured party has no action to recover those elements of damages from the alleged tortfeasor. For example, if an injured party has only $1,500 in economic loss, that party cannot recover for that loss from the tortfeasor. *See Stone v. Montgomery*, 618 S.W.2d 595 (Ky. Ct. App. 1981). It does not matter whether the basic reparations have been paid; the abolition of tort liability exists so long as the basic reparations are payable. *Bohl v. Consolidated Freightways Corp.*, 777 S.W.2d 613 (Ky. Ct. App. 1989); *Dudas v. Kaczmarek*, *supra*. However, this abolition of tort liability only extends to items payable at or before the time of trial; it does not extend to items which may become payable in the future, such as future reasonable medical and related expenses, impairment of power to earn money, etc. *See Wemyss v. Coleman*, 729 S.W.2d 174, 181 (Ky. 1987).

This mandatory loss of the right to recover the first $10,000 of economic loss from the alleged tortfeasor applies even if the injured party is uninsured. *See Gussler v. Damron*, 599 S.W.2d 775 (Ky. Ct. App. 1980). In addition, a health insurer reimbursing an uninsured motorist for medical expenses incurred in an accident has no right to recover the sums it has paid (if under $10,000) from either the alleged tortfeasor or the alleged tortfeasor's basic reparation benefits obligor. *See Shelter Ins. Co. v. Humana Health Plans, Inc.*, 882 S.W.2d 127 (Ky. Ct. App. 1994).

The second element of the abolition of tort liability relates to the injured party's claim for pain and suffering, which is not reduced by payment of basic reparation benefits. An injured party may recover for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease, only if he or she meets one of the several thresholds set forth in KRS 304.39-060. This is true even if the injured party is uninsured, as long as he or she has not rejected the partial abolition of his or her tort rights. *Thomas v. Ferguson*, 560 S.W.2d 835 (Ky. Ct. App. 1978).

Of course, even if the injured party satisfies one of the thresholds, he or she cannot recover for the first $10,000 of economic loss, since such loss would

be payable by the appropriate basic reparation benefits obligor. However, evidence of those expenses is admissible, even though not recoverable, for two reasons: (1) to show that the injured party has satisfied the $1,000 medical expense threshold, *Frith v. Lambdin*, 703 S.W.2d 890 (Ky. Ct. App. 1986); *Southard v. Hancock*, 689 S.W.2d 616 (Ky. Ct. App. 1985); and (2) they are relevant to the injured party's claim for pain and suffering. *See Bohl v. Consol. Freightways Corp.*, 777 S.W.2d 613 (Ky. Ct. App. 1989).

The mechanics of the $10,000 set-off occasionally prove difficult. For instance, the basic reparation benefits may be less than $10,000. In a situation where less than $10,000 in basic reparation benefits is paid and payable, but the defendant nevertheless has achieved a threshold allowing him to file suit against the tortfeasor, he will be prohibited from receiving only the amount of the basic reparation benefits actually paid and payable. *Slone v. Caudill*, 734 S.W.2d 480 (Ky. Ct. App. 1987); *Henson v. Fletcher*, 957 S.W.2d 281 (Ky. Ct. App. 1997). Additionally, where there are multiple defendants, the $10,000 limit becomes complicated. In *Hall v. Fannin*, 882 S.W.2d 132 (Ky. Ct. App. 1994), the Kentucky Court of Appeals addressed the mechanics of deducting the first $10,000 of medical expenses from the jury award in a case involving multiple defendants. According to the Court of Appeals in *Hall*, the total award should first be reduced by the amount of the basic reparation benefits set-off. After that reduction is made, the remaining amount is multiplied by the degree of fault of each co-tortfeasor to determine the amount of the judgment for which each defendant is responsible.

[2.46] Basic Reparation Benefits and the Kentucky Insurance Guaranty Association

The Kentucky General Assembly created the Kentucky Insurance Guarantee Association ("KIGA") through statute to "provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to…minimize financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide a means of funding the cost of such protection among insurers." KRS 304.36-020. Under the Kentucky Insurance Guaranty Association Act, the KIGA has the rights, duties, and obligations of the insolvent insurer, subject to a maximum of $300,000 or policy limits, whichever is less, for each covered claim. KRS 304.36-080. Notably, the liability limits contained in the Kentucky Insurance Guaranty Association Act have been increased over time. When initially enacted, the Kentucky Insurance Guaranty Association Act included a $50,000 cap on the KIGA's liability. However, in 1990, the $50,000 cap on liability was increased to $100,000. Subsequently, the General Assembly amended the act to increase the amount of coverage from $100,000 to $300,000 in cases involving insolvent insurance companies.

Before an injured person is entitled to recover from KIGA, the claimant must first exhaust his or her right under his insurance policy, KRS 304.36-120(1),

even if exhausting those rights results in the claimant being deprived of benefits from his own underinsured motorist carrier. *Hawkins v. Kentucky Ins. Guar. Ass'n*, 838 S.W.2d 410 (Ky. Ct. App. 1992). Conversely, the Kentucky Court of Appeals has established that amounts paid or payable for basic reparation benefits are not deducted from the KIGA's liability. For example, in *Stone v. Kentucky Ins. Guar. Ass'n*, 858 S.W.2d 726 (Ky. Ct. App. 1993), the KIGA had taken over the defense of a tortfeasor whose insurer had become insolvent. At trial, the injured party received a jury award in excess of the KIGA's statutory maximum of $50,000. The issue before the court in *Stone* was whether the $10,000 in basic reparation benefits received by the injured party should be deducted from the total jury award, leaving the KIGA liable for $50,000, or from the statutory maximum of $50,000, leaving the KIGA liable for only $40,000. The Court of Appeals in *Stone* concluded that the $10,000 should be deducted from the total jury award, not KIGA's statutory maximum of $50,000. In so deciding, the Court of Appeals indicated that KRS 304.36-120, which requires claimants to seek recovery from their own insurer before looking to the KIGA, had no application to basic reparation benefits. *Stone* at 728.

[2.47] Satisfying the Threshold

Under the MVRA, where no exception from no-fault applies, and neither the plaintiff nor the defendant has rejected no-fault benefits in accordance with KRS 304.39-030, the injured person "may recover damages in tort for pain and suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle," only if the injury is serious enough that one of the statutory conditions, also known as "thresholds," is met. KRS 304.39-060(2)(b). There are two possible ways to satisfy the "thresholds" – meet the economic threshold of $1,000 in medical expenses or sustain an injury which fits into one of the noneconomic thresholds. KRS 304.39-060(2)(b) identifies six different noneconomic thresholds, which are met if the plaintiff's injury or disease "consists in whole or in part" of any of the following: permanent disfigurement; fracture to a bone; compound, comminuted, displaced, or compressed fracture; loss of a body member; permanent injury within reasonable medical probability; permanent loss of bodily function; or death. In sum, unless one of the thresholds discussed below is satisfied, the injured party has no claim for pain and suffering against the alleged tortfeasor.

[2.48] Medical Expenses in Excess of $1,000

KRS 304.39-060(2)(b) requires that "the benefits which are payable for such injury as 'medical expense' or which would be payable but for any exclusion or deductible…exceed one thousand dollars ($1,000)." In determining whether an injured party's medical expenses exceed $1,000, future medical expenses are disregarded. *Higgins v. Searcy*, 572 S.W.2d 623 (Ky. Ct. App. 1978). For medical expenses to be considered in determining whether the threshold is met, the medical expenses claimed by the injured party must have been reasonably necessitated by

the injuries. *See Smith v. Meyer*, 660 S.W.2d 9 (Ky. Ct. App. 1983) (jury issue may exist as to whether medical expenses were reasonably necessary). In addition, a chiropractor's expenses fall within the category of medical expenses that can be considered in determining whether the injured party has satisfied the medical expense threshold. KRS 304.39-020(5)(a).

If an injured party received free medical service, the "equivalent value" of such services should be considered in determining whether the injured party has satisfied the threshold. *Smith v. Meyer*, 660 S.W.2d 9 (Ky. Ct. App. 1983). However, the expense of a medical examination requested by an insurer pursuant to KRS 304.39-270 should not be considered in determining whether the injured party has satisfied the medical expense threshold. *Id.*

While there is no specified time within which these medical expenses must be incurred, the court in *Higgins v. Searcy*, 572 S.W.2d 623 (Ky. Ct. App. 1978), held that the plaintiff had not satisfied the threshold when she had incurred less than $1,000 in medical expenses in the two years following the accident in question, even though she anticipated incurring additional medical expenses.

[2.49] Permanent Disfigurement

The permanent disfigurement threshold was addressed in detail in *Smith v. Higgins*, 819 S.W.2d 710 (Ky. 1991). In *Smith*, the court considered five scars upon the claimant's knee, the longest of which was approximately five inches long. The Kentucky Supreme Court reversed the Court of Appeals, which relied upon its earlier decision in *Duncan v. Beck*, 553 S.W.2d 476 (Ky. Ct. App. 1977), and affirmed the trial court's granting of summary judgment in the insurer's favor because the injury "did not materially alter [the claimant's] appearance" and was insufficient to constitute permanent disfigurement. *See Higgins* at 711. Reversing the lower courts, the Kentucky Supreme Court held that "any scar capable of ordinary perception or which produces ongoing personal discomfort constitutes disfigurement." *Id.* at 712. Furthermore, the court indicated that there is a presumption that scars are permanent, and a factual issue exists as to permanency of a scar only if the insurer presents evidence that the scar is temporary or transient. To the extent that *Duncan v. Beck*, *supra*, implied that only scars of a serious nature resulted in permanent disfigurement, the Kentucky Supreme Court overruled *Duncan v. Beck* in *Smith*.

[2.50] Fracture to a Bone

Originally, this threshold element provided that the threshold was met if the injured party suffered a fracture to a weight bearing bone. However, because of apparent confusion as to what constituted a weight bearing bone, a fracture to any bone now satisfies the threshold.

[2.51] A Compound, Comminuted, Displaced, or Compressed Fracture

Because of the change to the immediately preceding threshold, this threshold element is now deemed redundant.

[2.52] Loss of a Body Member

"Body member" is not defined in the MVRA, and the issue of whether an injured person has incurred a loss of a body member has not been addressed in a reported decision in Kentucky. The lack of reported decisions on this issue probably is explained by the fact that any person who has suffered an injury which could constitute the loss of a body member will have incurred over $1,000 in reasonably needed medical expenses.

[2.53] Permanent Injury within a Reasonable Medical Probability

To establish "permanency," some medical testimony will be necessary. *Higgins v. Searcy*, *supra*. Thus, this threshold element will depend largely on whether a physician will express the opinion within a reasonable degree of medical probability, that the injured party's injury is permanent. If the physician has no opinion as to the permanency of the injured party's injury, the threshold is not satisfied. *Duncan v. Beck*, 553 S.W.2d 476 (Ky. Ct. App. 1977), *overruled on other grounds by Smith v. Higgins*, 819 S.W.2d 710 (Ky. 1991).

[2.54] Permanent Loss of Bodily Function

Like body member, "bodily function" is not defined in the MVRA, and there are no reported Kentucky decisions dealing with this threshold element. Again, any person suffering what may be considered a permanent loss of bodily function likely will have incurred $1,000 in medical expenses. If a case involves the resolution of whether a person has suffered a permanent loss of bodily function, a court likely would look to the cases discussed above in determining whether the loss is permanent.

[2.55] Death

Death is probably included as a threshold element in the MVRA to allow the administrator of an estate of a person who experiences conscious pain and suffering at the time of the accident and at the time of death, but who dies prior to incurring much in the way of medical expense, to sue in tort for the decedent's pain and suffering. There are no reported decisions in Kentucky dealing with death as a threshold element.

[2.56] Rejection of Partial Abolition of Tort Liability

Kentucky law permits any person to refuse to consent to the limitations on his or her tort rights and liabilities contained in the MVRA. *See* KRS 304.39-060(4). The procedures to follow in filing a rejection are set forth in KRS 304.39-060(4) and (5). An insurer must inform the insured of his or her right to reject the partial abolition of their tort rights. KRS 304.39-060(6). A proper rejection "shall result in the full retention by the individual of his or her tort rights and tort liabilities." KRS 304.39-060(7). The option to reject the partial abolition of tort rights appears to have been an important factor in Kentucky courts upholding the constitutionality of the MVRA's partial abolition of an injured party's tort rights. *See Fann v. McGuffey*, 534 S.W.2d 770 (Ky. 1975); *Stinnett v. Mulquin*, 579 S.W.2d 374 (Ky. Ct. App. 1978).

An accident victim seeking to avoid the partial abolition of his or her tort rights has the burden to prove that he or she has properly rejected the no-fault provisions. *Thompson v. Piasta*, 662 S.W.2d 223 (Ky. Ct. App. 1983). Where no rejection has been filed on behalf of the injured party with the Department of Insurance as required by KRS 304.39-060(5)(a), the injured party is subject to the partial abolition of his or her tort rights as a matter of law. *Id.*

More importantly, an insured who rejects the partial abolition of his or her tort rights automatically rejects the right to recover basic reparation benefits. KRS 304.39-060(8). However, an insured who has rejected the partial abolition of tort rights can "buy back" basic reparation benefits coverage. *See* KRS 304.39-150(5).

[2.57] Limitations of Actions

The MVRA contains its own statute of limitations, which establishes a default two-year limitations period, rather than the default one-year period for typical tort suits. Kentucky courts have recognized two reasons as to why this special statute of limitations was provided. First, the longer than normal limitations period contained in the MVRA created a period of time in which persons could become familiar with the intricacies of the no-fault statute. *Everman v. Miller*, 597 S.W.2d 153 (Ky. Ct. App. 1979). Second, a longer statute of limitations is needed to allow an injured party to look first to their no-fault benefits, before filing a lawsuit against the alleged tortfeasor. *Bailey v. Reeves*, 662 S.W.2d 832 (Ky. 1984).

KRS 304.39-230 establishes a complex, but fairly straightforward, set of limitations on actions. First, if no benefits have been paid for loss other than death, a claim for no-fault benefits for such loss must be brought within two years after the insured suffers the loss and either knows or should know that the loss was caused by the accident. KRS 304.39-230(l). But, in no event shall an action for those benefits be brought later than four years after the accident. *Id.* Interpreting the MVRA's statute of limitations, the Kentucky Court of Appeals interpreted KRS 304.39-230(1) to allow an action to be brought more than two years after

the accident; however, the court limited recovery in such an action to the "loss" incurred in the two years immediately preceding the filing of the action. *State Auto. Ins. Co. v. Lange*, 697 S.W.2d 167 (Ky. Ct. App. 1985). If no benefits have been paid to a decedent or survivor, the survivor's claim for survivor's benefits must be brought within one year from the decedent's death or four years from the accident, whichever is earlier. KRS 304.39-230(l).

On the other hand, if some benefits have been paid for loss other than death, an action for future benefits, other than survivor's benefits, must be brought within two years from the time of the last payment of benefits. KRS 304.39-230(l). If the decedent had received no-fault benefits prior to death, an action for survivor's benefits must be brought within one year from the death or four years from the date of the last payment of benefits to the decedent, whichever is earlier. KRS 304.39-230(2). If survivor benefits have been paid, an action for further survivor benefits by the same or another claimant must be brought within two years from the date of the last payment of survivor benefits.

Furthermore, there are three additional provisions which affect the above time limits. First, if a claimant timely files an action for benefits, but the wrong reparations obligor is named as the defendant, the claimant has an additional 60 days in which to sue the correct obligor if the original time limit has expired. KRS 304.39-230(3). If the original time has not expired, the claimant has the entire amount of remaining time. *Id.* Second, if an assigned claim is rejected, the claimant has 60 days from the time of the rejection of the claim in which to file an action against the reparation obligor to which it was assigned. KRS 304.39-230(4). Third, if a person entitled to benefits is under legal disability when the right to bring an action for the benefits first accrues, the period of his or her disability is a part of the time limited for commencement of the action. KRS 304.39-230(5). Therefore, a minor must commence a claim for benefits within the applicable limitations period and cannot wait until he or she reaches the age of majority. *See Jackson v. State Auto. Mut. Ins. Co.*, 837 S.W.2d 496 (Ky. 1992). This rule does not apply to his or her tort claims as noted below.

[2.58] Tort Actions

Most of the litigation involving the limitation of actions provisions of the MVRA deals with the limitation applicable to tort actions not abolished by the MVRA. An action for tort liability not abolished by KRS 304.39-060 may be commenced not later than two years after the injury, or the death, or the date of the last basic or added reparation payment made by any reparation obligor, whichever later occurs. KRS 304.39-230(6). That provision applies to all tort actions within the purview of the MVRA, *Goodin v. Overnight Transp. Co.*, 701 S.W.2d 131 (Ky. 1985), and even applies to motor vehicle accident victims who are not entitled to basic reparation benefits, *Troxell v. Trammell*, 730 S.W.2d 525 (Ky. 1987), to actions against nonmotorists, *Bailey v. Reeves*, 662 S.W.2d 832 (Ky. 1984), and to actions brought by survivors of a moped operator. *Howard v. Hicks*, 737 S.W.2d 711 (Ky.

Ct. App. 1987). However, under the theory that a claim against the Commonwealth for injuries received in a motor vehicle accident is not within the purview of the MVRA, a claim against the Commonwealth arising from those injuries must be filed with the Board of Claims within one year of the receipt of the injuries. *Commonwealth v. Abner*, 810 S.W.2d 504 (Ky. 1991). Relying on the same reasoning, the Kentucky Supreme Court determined that the traditional one year limitations applicable to injuries to the person applies to loss of consortium claims. *Floyd v. Gray*, 657 S.W.2d 936 (Ky. 1983). Thus, in an action in which an injured party seeks recovery for injuries incurred in a motor vehicle accident and the injured party's spouse seeks recovery for loss of consortium, different limitations periods apply to the two claims.

The provisions of KRS 304.39-230(6) can greatly extend the time in which an injured party can bring a tort action against the tortfeasor. For example, in *Crenshaw v. Weinberg*, 805 S.W.2d 129 (Ky. 1991), the accident occurred on February 3, 1986. Within the two years following the accident, no basic reparation benefits were paid and no tort action was filed. A tort action was subsequently filed on July 12, 1988, two and a half years after the accident. After the tort action was filed, basic reparation benefits were paid for the first time. Because the tort action could have been filed within two years of the date of the last payment of basic reparation benefits, the Kentucky Supreme Court held that the tort action was timely, even though it was filed two and a half years after the accident and before any basic reparation benefits were paid. *See Crenshaw* at 131-32.

In 2017, KRS 304.39-230(6) was amended to clarify that the date of issuance of the last basic or added reparation payment made by the reparation obligor would be the effective date for purposes of determining the statute of limitations for tort actions, if it were the later in time than the injury or death. The statutory revision further clarified that "replacement payments" do not extend the period further beyond the date of the original payment.

Finally, an infant or person under disability has two years after the attainment of majority or release from disability in which to bring a tort liability action. *Lemmons v. Ransom*, 670 S.W.2d 478 (Ky. 1984).

3

UNINSURED MOTORIST COVERAGE

[3.1] Uninsured Motorist Coverage

Uninsured motorist coverage (also commonly known as "UM coverage") is a required provision in every policy of automobile liability insurance, pursuant to KRS 304.20-020. UM coverage is a first-party coverage whereby the insurer must pay its own insured for damages which the insured sustained from the owner or driver of an uninsured motor vehicle. In other words, "the purpose and intent of the [UM] statute is to treat the insured victim as if the tortfeasor is insured...." *Wine v. Globe American Cas. Co.*, 917 S.W.2d 558 (Ky. 1996).

[3.2] Mandatory Nature

KRS 304.20-020(1) provides for mandatory inclusion of UM coverage along with every bodily injury liability policy covering motor vehicles registered or principally garaged in Kentucky, unless UM coverage is rejected in writing by the insured.

If a policy fails to contain the statutorily mandated coverage, it will nevertheless be read as if it contains such coverage. As an exception to the general rule that coverage follows from the payment of premium, if an insurance policy does not include UM coverage and the insured did not reject it in writing, UM coverage in the minimum statutory amount will be imputed, even if the premium has not been paid for that specific coverage. *Meridian Mut. Ins. Co. v. Siddons*, 451 S.W.2d 831 (Ky. 1970).

If an insured does reject UM coverage in writing, the rejection will continue to apply to renewal policies with the same company until the insured requests UM coverage in writing. KRS 304.20-020(2).

Kentucky's Motor Vehicle Reparations Act does not mandate UM coverage and is of a separate statutory basis; therefore, rejecting UM coverage is not in conflict with mandatory insurance requirements. *Hoffman v. Yellow Cab Co. of Louisville*, 57 S.W.3d 257 (Ky. 2001). Self-insureds are not required to provide UM coverage. *Id.*

[3.3] Mandatory Limits

The coverage must be in at least the minimum limits established for bodily injury liability coverage (presently $25,000 per person and $50,000 per accident). KRS 304.20-020(1). Any policy provision that attempts to reduce the amount of UM coverage below the required amount will be void because public policy will not permit the contract to take away that which the statute requires to be given. *State Farm Mut. Auto. Ins. Co. v. Fletcher*, 578 S.W.2d 41 (Ky. 1979).

[3.4] Definition of Uninsured Motor Vehicle

By statute, uninsured vehicles include those where the torfeasor's insurer is insolvent; the bodily injury coverage limits are less than the statutory limits required by law; and where the tortfeasor's insurer denies coverage. KRS 304.20-020(2).

In addition to the statutory definitions, insurers have some leeway in further defining an uninsured motor vehicle, as the General Assembly did not presume to write a policy with the statute, but only provide a general outline of mandatory coverage. *Preferred Risk Mut. Ins. Co. v. Oliver*, 551 S.W.2d 574 (Ky. 1977).

The fact that a vehicle is not insured by its owner does not automatically render it as an uninsured motor vehicle. If the uninsured vehicle is being driven by a driver who has liability insurance applicable to the accident, the vehicle is insured with regard to that accident and occupants of the other car will not prevail in an uninsured motorist claim. *See Roy v. State Farm Mut. Auto. Ins. Co.*, 954 F.2d 392 (6th Cir. 1992); *Commonwealth Fire & Cas. Ins. Co. v. Manis*, 549 S.W.2d 303 (Ky. Ct. App. 1977).

The insured has the burden of establishing that an adverse driver was in fact an uninsured motorist. *Motorist Mut. Ins. Co. v. Hunt*, 549 S.W.2d 845 (Ky. Ct. App. 1977). In the event an injured party accepts a settlement payout from a tortfeasor's liability insurer, recovery under the injured party's UM policy will be precluded, even if the liability insurer denies the applicability of liability coverage. *Dyer v. Providian Auto & Home Ins. Co.*, 242 S.W.3d 654 (Ky. Ct. App. 2007).

[3.5] Persons Covered

The motorist who purchases uninsured motorist insurance is covered while driving his own insured vehicle. Given the personal nature of UM coverage, courts have held that it follows the insured regardless of whether the insured is injured as a motorist, a passenger, or as a pedestrian and such coverage is only limited by the actual, valid exclusions of each insurance policy. *Dupin v. Adkins*, 17 S.W.3d 538 (Ky. Ct. App. 2000).

No coverage exists for an insured's own intentional act. Some polices may require that insured's injuries result from an "accident." Courts will interpret what incidents constitute an "accident" from the perspective of the insured-victim, not the uninsured motorist. *Stamper v. Hayden*, 334 S.W.3d 120 (Ky. Ct. App. 2011).

UM coverage is often expanded by the use of omnibus clauses to also cover members of the insured's family residing in the same household. Prior to UM coverage being mandatory, a household exclusion could be applied to coverage. *See*, *e.g.*, *Allen v. West Am. Ins. Co.*, 467 S.W.2d 123 (Ky. 1971). In light of the Kentucky Supreme Court's decision in *Bishop v. Allstate Ins. Co.*, 623 S.W.2d 865 (Ky. 1981), wherein the court held that the household exclusion could not be applied to defeat coverage which is mandatory in nature, such an exclusion no

longer is permitted. *See Chaffin v. Kentucky Farm Bureau Ins. Cos.*, 789 S.W.2d 754 (Ky. 1990).

The courts have been required to hear several cases involving the construction of an omnibus clause with the language "resident of the same household." Legal residency is based on fact and intention. *Ellison v. Smoots, Admr.*, 151 S.W.2d 1017 (1941). Because the question of intent is usually a factual issue, residence generally will be a factual issue. *Perry v. Motorists Mut. Ins. Co.*, 860 S.W.2d 762 (Ky. 1992).

The availability of UM coverage may also be determined based upon whether an individual is said to be an "occupant" of a vehicle. In *Kentucky Farm Bureau Mut. Ins. Co. v. McKinney*, 831 S.W.2d 164 (Ky. 1992), the court set forth the following criteria to determine whether someone is "occupying" a vehicle:

(1) a causal connection between the injury and the use of the insured vehicle;

(2) a reasonably close geographic proximity to the insured vehicle – there does not need to be actual touching;

(3) the person must be vehicle oriented rather than highway or sidewalk oriented at the time; and,

(4) the person must also be engaged in a transaction essential to the use of the vehicle.

Using this criteria the *McKinney* court found that a woman and her unborn child were occupying a truck the mother had been driving, even though the mother had exited the truck and was standing 130-200 feet from it when struck by a motorcycle.

[3.6] Exclusions

Because the uninsured motorist statute only presents an outline of what must be included in UM coverage, that statute does not invalidate all exclusions but only those that are unreasonable. *Commercial Union Ins. Co. v. Delaney*, 550 S.W.2d 499 (Ky. 1977). The exclusionary or limiting language in policies must be clear and unequivocal and such policy language is to be strictly construed against the insurance company and in favor of the extension of coverage. *Eyler v. Nationwide Mutual Fire Ins. Co.*, 824 S.W.2d 855 (Ky. 1992).

KRS 304.20-020(1) does not require coverage for damages caused by an "unidentified motor vehicle," (*e.g.*, a "hit and run" vehicle, whose insurance status is unknown) and KRS 304.20-020(2) does not include such a vehicle within the additional definitions of an "uninsured motor vehicle." Therefore, a policy may specifically exclude coverage in a hit and run incident. *Dowell v. Safe Auto Ins. Co.*, 208 S.W.3d 872 (Ky. 2006). Further, most UM policies contain a provision requiring physical contact between an unidentified (hit and run) vehicle and the insured

or the vehicle which he was occupying in order to prevent fraudulent claims. *Jett v. Doe*, 551 S.W.2d 221 (Ky. 1977); *Burton v. Farm Bureau Ins. Co.*, 116 S.W.3d 475 (Ky. 2003). The physical contact requirement does not necessarily have to be between the claimant's vehicle and the unidentified vehicle – it may be between the insured vehicle and an intermediate vehicle in the case of a chain reaction. *Shelter Mut. Ins. Co. v. Arnold*, 169 S.W.3d 855 (Ky. 2005). In some instances, physical contact may not be with the unidentified vehicle, but rather with an object. If the object that hit the injured party's vehicle is, or was, attached to the unidentified vehicle and was an "integral part" of it, then the physical contact requirement will be satisfied. *State Farm Mut. Auto. Ins. Co. v. Baldwin*, 373 S.W.3d 424 (Ky. 2012). However, an object, such as a propelled rock, into the insured vehicle does not satisfy the physical contact requirement. *Masler v. State Farm Mut. Auto. Ins. Co.*, 894 S.W.2d 633 (Ky. 1995).

Although Kentucky case law previously held that policies could contain a clause that excluded bodily injuries sustained while occupying vehicles which are owned by the injured person or a relative but are not scheduled for UM coverage, Kentucky law now establishes that such clauses, with respect specifically to UM coverage, are void as against public policy. *Chaffin v. Kentucky Farm Bureau Ins. Cos.*, 789 S.W.2d 754 (Ky. 1990); *Allstate Ins. Co. v. Dicke*, 862 S.W.2d 327 (Ky. 1993); *Hamilton Mut. Ins. Co. v. U.S. Fidelity & Guar. Co.*, 926 S.W.2d 466 (Ky. Ct. App. 1996). It is important to note that while this exclusion is void as against public policy for uninsured motorist ("UM") coverage, underinsured motorist ("UIM") coverage now undergoes a separate analysis. *See Philadelphia Indem. Ins. Co., Inc. v. Tryon*, 502 S.W.3d 585 (Ky. 2016). However, a provision specifically excluding from UM coverage persons using or occupying motorcycles remains valid and enforceable. *State Farm Mut. Auto. Ins. Co. v. Christian*, 555 S.W.2d 571 (Ky. 1977); *Preferred Risk Mut. Ins. Co. v. Oliver*, 551 S.W.2d 574 (Ky. 1977).

[3.7] Setoffs

Once all requirements are met for a valid uninsured motorist claim, the injured party is entitled to receive a sum equivalent to the compensatory damages for which the uninsured person is legally liable, subject only to the UM policy limits. KRS 304.20-020(1) does not require a liability insurer to provide UM coverage for punitive damages.

In a case where both UM coverage and personal injury protection ("PIP") are available, PIP is paid first. Then, any UM payments which do not duplicate the same items of damage already paid under PIP must be paid, up to and including policy limits. *State Farm Mut. Auto. Ins. Co. v. Fletcher*, 578 S.W.2d 41 (Ky. 1979). Any provision that attempts to reduce the amount payable under UM coverage by the amount of PIP paid or payable to the injured person is void. *Id.*

[3.8] Stacking

In *Meridian Mut. Ins. Co. v. Siddons*, 451 S.W.2d 831 (Ky. 1970), the Kentucky Supreme Court first held that stacking of UM coverage by the named insured is permitted where there are separate policies for each vehicle insured and where the named insured has not rejected the coverage in writing. A number of decisions followed which addressed the scope and application of KRS 304.20-020 (requiring, unless waived, UM coverage as a part of every automobile liability policy) and the stacking of that coverage where more than one policy was potentially available. In *Kentucky Farm Bureau Mut. Ins. Co. v. Vanover*, 506 S.W.2d 517 (Ky. 1974), for instance, stacking was approved where the insured was not occupying either of his insured vehicles at the time of the accident. *See also Allstate Ins. Co. v. Napier*, 505 S.W.2d 169 (Ky. 1974) (insured injured while operating a vehicle insured by one policy was entitled to payment of UM coverage under both that policy and a separate policy insuring another vehicle owned by the insured); *Zurich Insurance Co. v. Hall*, 516 S.W.2d 861 (Ky. 1974) (estate of deceased passenger in a vehicle owned and operated by another was entitled to UM coverages of both her own policy and the operator's policy, despite the fact that she had not paid the premium for the operator's policy).

The Supreme Court addressed whether a UM claimant could stack separate UM coverages for multiple vehicles insured by the same policy in *Ohio Cas. Ins. Co. v. Stanfield*, 581 S.W.2d 555 (Ky. 1979). The claimant, an injured police officer, sought to stack the UM coverages on all 63 vehicles owned by the police department, for a total coverage of $630,000. Both the Circuit Court and the Court of Appeals held that stacking applied and the officer was entitled to the full $630,000. The outcome of stacking in this case caused the Supreme Court to distinguish between an "insured of the first class" who paid the premium (or on whose behalf the premium was paid) and an "insured of the second class" who did not pay the premium. Based on this distinction, the court established that an insured may stack coverages with respect to which he is an insured of the first class but may not stack coverages with respect to which he is an insured of the second class.

After *Stanfield*, the response of the insurance industry was to include anti-stacking provisions. In *Hamilton v. Allstate Ins. Co.*, 789 S.W.2d 751 (Ky. 1990) and *Chaffin v. Kentucky Farm Bureau Ins. Cos.*, 789 S.W.2d 754 (Ky. 1990), the Kentucky Supreme Court held that provisions which prevent the stacking of coverages are unenforceable as they relate to UM coverage. The court's reasoning was based both on the mandatory nature of UM coverage and the doctrine of "reasonable expectations," when one has paid separate premiums on separate vehicles, he may reasonably expect to be able to stack those coverages. In *Hamilton*, the court expressly overruled *State Farm Fire & Cas. Co. v. Short*, 603 S.W.2d 496 (Ky. Ct. App. 1980), an earlier Court of Appeals decision in which an anti-stacking provision was upheld.

In *Adkins v. Kentucky Nat. Ins. Co.*, 220 S.W.3d 296 (Ky. Ct. App. 2007), the Court of Appeals held that an insurer is not required to stack multiple units of UM coverage which have been paid by a single premium, if that premium is not based on the number of vehicles insured. In other words, stacking can be defeated with appropriate policy language where the premium is actuarial. This conclusion was based on the court's recognition that an insured has no reasonable expectation of stacking where he pays a single premium which does not vary based on the number of vehicles insured.

[3.9] UM Coverage and the Kentucky Insurance Guaranty Association

Included within the definition of an uninsured motor vehicle is a motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured. KRS 304.20-020(2). Thus, a person injured in an automobile accident caused by the negligence of a person whose insurer has become insolvent will have a claim against his own uninsured motorist carrier. That injured party may also be entitled to recover from the Kentucky Insurance Guaranty Association ("KIGA"), which steps into the shoes of an insolvent insurer. KRS 304.36-020. Before being entitled to recovery from KIGA, the claimant must first exhaust his right under "his insurance policy." KRS 304.36-120(1). The KIGA's liability is reduced by the amount recovered by the injured party from his own insurer (though payments made under one's policy for basic reparation benefits are not deductible from KIGA's liability). *Hawkins v. Kentucky Ins. Guar. Ass'n.*, 838 S.W.2d 410 (Ky. Ct. App. 1992); *Stone v. Kentucky Ins. Guar. Ass'n*, 858 S.W.2d 726 (Ky. Ct. App. 1993).

[3.10] Limitation of Actions for UM Benefits

In Kentucky, the statute of limitations for a claim based on a written contract, such as an insurance policy, is fifteen years after the cause of action accrued. KRS 413.090(2). However, parties to an insurance contract may limit the time in which to bring a claim against an insurance carrier, so long as the time is no shorter than the two years provided for tort claims by the Motor Vehicle Reparations Act (that is, two years from the date of injury or issuance of last PIP payment, whichever is later). *State Farm Mut. Auto. Ins. Co. v. Riggs*, 484 S.W.3d 724 (Ky. 2016); *Pike v. Government Employees Ins. Co.*, 174 F. App'x 311 (6th Cir. 2006) (unpublished opinion) ("Because the policy limitation does not conflict with the period of time prescribed by Kentucky law for filing a personal injury claim arising from a motor vehicle accident, we conclude that it is reasonable, and enforceable.").

[3.11] Parties

In uninsured motorist cases, the insurer has a direct contractual obligation to the insured. Therefore, an insured is not required to obtain a judgment against the uninsured motorist before making a claim for UM benefits and may sue his own uninsured carrier as an additional party defendant when he sues the negligent

motorist who caused the accident. *Puckett v. Liberty Mut. Ins. Co.*, 477 S.W.2d 811 (Ky. 1971); *Wheeler v. Creekmore*, 469 S.W.2d 559 (Ky. 1971).

A policy may require joinder of the negligent uninsured motorist in an action against the insurer for UM benefits, but such a provision will not be enforced when the accident has occurred elsewhere and the uninsured motorist is a nonresident who is not amenable to process in Kentucky. A policy provision giving the insurer an absolute right to require joinder would have the effect of defeating the jurisdiction of the court, and therefore is unenforceable. *See Puckett v. Liberty Mut. Ins. Co.*, 477 S.W.2d 811 (Ky. 1971).

Where the insured sues the uninsured motorist but not his insurance carrier, the carrier may wish to intervene to exert influence on that action. One way in which an insurance carrier can accomplish intervention in a case was addressed in *Barry v. Keith*, 474 S.W.2d 876 (Ky. 1971).

[3.12] Priority of Coverage

When there are two or more automobile insurance policies which provide coverage, it must be determined which will be "primary" and which will be "secondary," responsible for the excess. In the context of uninsured motorist coverage, the Kentucky Supreme Court has weighed decisively in favor of the vehicle owner's insurer bearing primary responsibility. *Countryway Ins. Co. v. United Fin. Cas. Ins. Co.*, 496 S.W.3d 424 (Ky. 2016). Specifically, where two competing excess clauses are found, the court opted not to pursue a "battle of the forms" approach in favor of setting a bright line rule. *Id.* The rule adopted by the court mirrored the result in *Kentucky Farm Bureau Mut. Ins. Co. v. Shelter Mut. Ins. Co.*, 326 S.W.3d 803 (Ky. 2010), in that the court determined priority of liability should be assigned according to the intent of the Kentucky Motor Vehicle Reparations Act. "In our view, much as in *Shelter*, the MVRA generally obviates priority disputes between the UM insurers of the vehicle and an injured passenger by implicitly fixing primary UM coverage on the vehicle's insurer." *Countryway Ins. Co. v. United Fin. Cas. Ins. Co.*, 496 S.W.3d at 435.

4

UNDERINSURED MOTORIST COVERAGE

[4.1] Underinsured Motorist Coverage

KRS 304.39-320 requires insurers to make available underinsured motorist coverage (also commonly known as "UIM coverage") to insureds upon their request. UIM coverage is designed to allow an insured to obtain coverage for the insured's own injuries in the event that the tortfeasor causing the injured's injuries does not have sufficient liability coverage to fully compensate the insured for his injuries.

Despite the fact that UIM coverage is required to be offered, it is not mandatory. In other words, an insured's request for "full coverage" does not constitute a request for UIM coverage. *Flowers v. Wells*, 602 S.W.2d 179 (Ky. Ct. App. 1980).

UIM coverage, like uninsured coverage, is personal to the insured. It will cover the insured while he is riding in other vehicles or as pedestrian, as long as all conditions are met. *Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121 (Ky. Ct. App. 2012).

[4.2] Relationship to Uninsured Motorist Coverage

An individual who does not elect UIM coverage may still have a certain amount of what can be termed UIM coverage. This is because KRS 304.20-020, the *uninsured* motorist statute, defines "uninsured" to include a car (usually from another a state) which has some liability insurance, but less than the statutory minimum. In *American Home Assur. Co. v. Hughes*, 310 F.3d 947 (6th Cir. 2002), the Sixth Circuit held that "once a victim is injured by a motorist who falls within the definition of an uninsured motorist, the proper figure to which one should look to determine maximum recovery is the amount of coverage purchased." *Hughes*, 310 F.3d 947 *citing Vigneault v. Travelers Ins. Co.*, 382 A.2d 910 (N.H. 1978). Thus, in these instances, the insured is entitled to the benefit of the entire coverage he purchased, not just the difference between the actual coverage and the statutory minimum.

[4.3] Amount of Coverage

While KRS 304.39-320 requires an insurer to provide underinsured motorist coverage if it is requested, the coverage does not need to be in any minimum amount. Thus, a policy providing UIM coverage in the amount of "basic limits" has been interpreted as providing $60,000 in UIM coverage, an amount consistent with the minimum amount of liability coverage required by KRS 304.39-110(2). *Transport Ins. Co. v. Ford*, 886 S.W.2d 901 (Ky. Ct. App. 1994).

[4.4] Stacking

The law of stacking with respect to UIM coverage has been muddled in recent years due to UIM coverage, unlike UM coverage, not being considered mandatory. *Allstate Ins. Co. v. Dicke*, 862 S.W.2d 327 (Ky. 1993), had stood for the

proposition that UIM coverage for which a separate premium has been paid may be stacked, even in the face of a policy provision that prohibits stacking. However, *Dicke* was expressly overruled by *Philadelphia Indem. Ins. Co., Inc. v. Tryon*, 502 S.W.3d 585 (Ky. 2016) to the extent that it was inconsistent with the *Tyron* ruling. *Tryon* made a distinction between the treatment of UM and UIM coverage under Kentucky statutory law – that as insurers and insured have more freedom to negotiate UIM coverage (as it is not mandatory), policy provisions excluding stacking are a reasonable result of the contract process and should be enforced where explicit (and, as in *Tryon*, ignored when not made explicitly). Yet a close reading of the *Tryon* decision appears to support the notion that the previous rule on stacking in *Dicke* would still apply, particularly based upon application of the reasonable expectation doctrine. There is no reason, based upon recent case law, to believe that the rule on stacking has changed in light of *Tyron*.

[4.5] Right to an Offset

Prior to 1988, KRS 304.39-320 contained language affording "a mandatory setoff of a tortfeasor's liability limits against the insured's UIM limits." *See also LaFrange v. United Serv. Auto. Ass'n*, 700 S.W.2d 411 (Ky. 1985); *Simon v. Continental Ins. Co.*, 724 S.W.2d 210 (Ky. 1986). However, on July 15, 1988, the Kentucky legislature eliminated the mandatory setoff language, transforming KRS 304.39-320 "into a representation of the so-called 'broad view'" of UIM coverage. Under the broad view, UIM coverage is triggered when the insured's damages exceed the tortfeasor's liability limits and PIP/basic reparation benefits coverage, at which point the insured is entitled, if damages require it, to receive the full amount of the UIM policy. The Kentucky Supreme Court explained the calculation used to determine an insured's entitlement to UIM in *Progressive Max Ins. Co. v. Jamison*, 431 S.W.3d 452 (Ky. Ct. App. 2013) and held that "Progressive was entitled two statutory set-offs or credits against…the total damages award, as fixed by the jury." *Id.* at 458. First, Progressive was entitled to a "$10,000 offset for basic reparation benefits paid." The court reasoned that as Progressive had stepped into the shoes of the tortfeasor, it would have the same tort liability, and as basic reparations benefits supplant tort liability per statute, Progressive was due the offset. Then, Progressive was then entitled to a "$25,000 credit representing the liability insurance policy limit." *Id.* The plaintiff in *Jamison* had settled for $15,000 with the tortfeasor's insurer, but the court reasoned that, per the UIM statute, UIM coverage is available only after the tortfeasor's full liability insurance has been exhausted, which in this case was $25,000. After applying the set-offs to the jury's total damages award of $37.709.21, the net judgment totaled $2,709.21 and thus, the Kentucky Court of Appeals determined Progressive was "only contractually liable" under the UIM provision of the insurance policy "in the amount of $2,709.21."

However, in *Philadelphia Indemnity Co. v. Morris*, 990 S.W.2d 621 (Ky. 1999), the Supreme Court declared void as against public policy a provision in an employer's UIM endorsement that required that workers' compensation benefits be set off against policy limits. *Morris*, 900 S.W.2d at 627. Therefore, insurance

carriers cannot set off workers' compensation benefits against the policy's face amount of UIM coverage. *Id.*

[4.6] Actions for UIM Benefits

An injured party is not required to obtain a judgment against the tortfeasor before pursuing a claim against his own UIM carrier. *Coots v. Allstate Ins. Co.*, 853 S.W.2d 895 (Ky. 1993). A settlement with the tortfeasor and tortfeasor's carrier for the liability limits will suffice, so long as the "UIM insured notifies his UIM carrier of his intent to do so and provides the carrier with an opportunity to protect its subrogation…" *Id.* As a prerequisite to recovery, however, the tortfeasor does have to be legally liable (*i.e.*, negligent), and the fact that a settlement has been reached with the tortfeasor's liability carrier does not establish that liability. *Kentucky Nat.'l Ins. Co. v. Lester*, 998 S.W.2d 499 (Ky. Ct. App. 1999).

The *Coots* decision also created a notice requirement to the UIM carrier; and in 1998 the Kentucky General Assembly codified this procedure in KRS 304.39-320(3),(4), and (5). When an injured "agrees to settle a claim with a liability insurer and its insured, and the settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an underinsured motorist claim," all UIM insurers that provide coverage must first receive "written notice of the proposed settlement" to ensure they have an opportunity to substitute its own money for that of the underinsured. KRS 304.39-320(3). By paying the amount of the underlying settlement, the UIM carrier reserves the right of subrogation until the UIM claim is finally resolved. After receiving notice, the carrier has thirty (30) days to either consent or refuse to consent to the proposed settlement. If the carrier consents (or fails to respond), the injured party may then finalize the settlement, releasing both the underinsured motorist and his liability carrier without prejudicing his UIM claim.

It is crucial that an injured party's notice of a proposed settlement follow the statutory language verbatim. *Malone v. Kentucky Farm Bureau Mut. Ins. Co.*, 287 S.W.3d 656 (Ky. 2009). The notice must be sent by certified or registered mail. *Liberty Mut. Fire Ins. Co. v. Massarone*, 326 F.3d 813 (6th Cir. 2003).

[4.7] Statute of Limitations

Nationally, courts have solved the issue of statute of limitations for UIM claims with several different approaches. A majority of jurisdictions have held that UIM claims accrue when the insurer denies a claim for benefits, while a minority of courts have determined on the date of the accident or when the insured agrees to a settlement with or is granted a judgment against the tortfeasor's insurance carrier. Although the Kentucky Court of Appeals considered this issue for the first time and initially joined the majority approach (*see Hensley v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 3973115, 2013-CA-000006-MR (Ky. Ct. App. Aug. 15, 2014)), the Kentucky Supreme Court threw that somewhat into disarray with the

result in *State Farm Mut. Auto. Ins. Co. v. Riggs*, 484 S.W.3d 724 (Ky. 2016), which dealt not with the accrual of the claim but with contractual time limitations on bringing the claim. The decision in *Hensley* was vacated and remanded to the Court of Appeals, which, in an unpublished opinion, then opined through the lens of *Riggs* that contractual limitations on such UIM claims that run from the date of the accident are not unreasonable. *Hensley v. State Farm Mut. Auto. Ins. Co.*, No. 2013-CA-000006-MR, 2017 WL 837698 (Ky. Ct. App. Mar. 3, 2017).

[4.8] Priority of Coverage

As noted above, when there are two or more automobile insurance policies which provide coverage, it must be determined which will be "primary" and which will be "secondary," responsible for the excess. As noted above, recently the Kentucky Supreme Court determined that the policy covering the insured vehicle is deemed primary and the policy covering the person is secondary in the UM context. *See Countryway Ins. Co. v. United Fin. Cas. Ins. Co.*, 496 S.W.3d 424 (Ky. 2016). There is no corresponding case for a UIM analysis to date, but the language of the court in *Countryway Ins. Co.* strongly implies that both UM and UIM are to be interpreted in a similar fashion with respect to the Motor Vehicle Reparations Act. "[W]e have observed that no less than its MVRA sibling, the UIM statute (KRS 304.39-320), the UM statute must be construed in light of and in accord with the MVRA." *Countryway Ins. Co. v. United Fin. Cas. Ins. Co.*, 496 S.W.3d at 434.

APPENDIX

I. Selected Statutes
II. Table of Cases

I. SELECTED STATUTES

186.010 Definitions for chapter.

As used in this chapter, unless otherwise indicated:

(1) "Cabinet," as used in KRS 186.400 to 186.640, means the Transportation Cabinet; except as specifically designated, "cabinet," as used in KRS 186.020 to 186.270, means the Transportation Cabinet only with respect to motor vehicles, other than commercial vehicles; "cabinet," as used in KRS 186.020 to 186.270, means the Department of Vehicle Regulation when used with respect to commercial vehicles;

(2) "Highway" means every way or place of whatever nature when any part of it is open to the use of the public, as a matter of right, license, or privilege, for the purpose of vehicular traffic;

(3) "Manufacturer" means any person engaged in manufacturing motor vehicles who will, under normal conditions during the year, manufacture or assemble at least ten (10) new motor vehicles;

(4) "Motor vehicle" means in KRS 186.020 to 186.260, all vehicles, as defined in paragraph (a) of subsection (8) of this section, which are propelled otherwise than by muscular power. As used in KRS 186.400 to 186.640, it means all vehicles, as defined in paragraph (b) of subsection (8) of this section, which are self-propelled. "Motor vehicle" shall not include a moped as defined in this section, but for registration purposes shall include low-speed vehicles and military surplus vehicles as defined in this section and vehicles operating under KRS 189.283;

(5) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(6) "Operator" means any person in actual control of a motor vehicle upon a highway;

(7) (a) "Owner" means a person who holds the legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest.

(b) A vehicle is the subject of an agreement for the conditional sale or lease, with the vendee or lessee entitled to possession of the vehicle, upon performance of the contract terms, for a period of three hundred sixty-five (365) days or more and with the right of purchase upon per-

formance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, the conditional vendee or lessee or mortgagor shall be deemed the owner.

(c) A licensed motor vehicle dealer who transfers physical possession of a motor vehicle to a purchaser pursuant to a bona fide sale, and complies with the requirements of KRS 186A.220, shall not be deemed the owner of that motor vehicle solely due to an assignment to his dealership or a certificate of title in the dealership's name. Rather, under these circumstances, ownership shall transfer upon delivery of the vehicle to the purchaser, subject to any applicable security interest;

(8) (a) "Vehicle," as used in KRS 186.020 to 186.260, includes all agencies for the transportation of persons or property over or upon the public highways of this Commonwealth and all vehicles passing over or upon said highways, except electric low-speed scooters, road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electric power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the city limit of any municipality.

(b) As used in KRS 186.400 to 186.640, "vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except electric low-speed scooters, devices moved by human and animal power or used exclusively upon stationary rails or tracks, or which derives its power from overhead wires;

(9) KRS 186.020 to 186.270 apply to motor vehicle licenses. KRS 186.400 to 186.640 apply to operator's licenses;

(10) "Dealer" means any person engaging in the business of buying or selling motor vehicles;

(11) "Commercial vehicles" means all motor vehicles that are required to be registered under the terms of KRS 186.050, but not including vehicles primarily designed for carrying passengers and having provisions for not more than nine (9) passengers (including driver), motorcycles, sidecar attachments, pickup trucks and passenger vans which are not being used for commercial or business purposes, and motor vehicles registered under KRS 186.060;

(12) "Resident" means any person who has established Kentucky as his or her state of domicile. Proof of residency shall include but not be limited to a

deed or property tax bill, utility agreement or utility bill, or rental housing agreement. The possession by an operator of a vehicle of a valid Kentucky operator's license shall be prima- facie evidence that the operator is a resident of Kentucky;

(13) "Special status individual" means:

(a) "Asylee" means any person lawfully present in the United States who possesses an I-94 card issued by the United States Department of Justice, Immigration and Naturalization Service, on which it states "asylum status granted indefinitely pursuant to Section 208 of the Immigration & Nationality Act";

(b) "K-1 status" means the status of any person lawfully present in the United States who has been granted permission by the United States Department of Justice, Immigration and Naturalization Service to enter the United States for the purpose of marrying a United States citizen within ninety (90) days from the date of that entry;

(c) "Refugee" means any person lawfully present in the United States who possesses an I-94 card issued by the United States Department of Justice, Immigration and Naturalization Service, on which it states "admitted as a refugee pursuant to Section 207 of the Immigration & Nationality Act"; and

(d) "Paroled in the Public Interest" means any person lawfully present in the United States who possesses an I-94 card issued by the United States Department of Justice, Immigration and Naturalization Service, on which it states "paroled pursuant to Section 212 of the Immigration & Nationality Act for an indefinite period of time";

(14) "Instruction permit" includes both motor vehicle instruction permits and motorcycle instruction permits;

(15) "Motorcycle" means any motor driven vehicle that has a maximum speed that exceeds fifty (50) miles per hour, has a seat or saddle for the use of the operator, and is designed to travel on not more than three (3) wheels in contact with the ground, including vehicles on which the operator and passengers ride in an enclosed cab. Only for purposes of registration, "motorcycle" shall include a motor scooter, an alternative-speed motorcycle, and an autocycle as defined in this section, but shall not include a tractor or a moped as defined in this section;

(16) "Low-speed vehicle" means a motor vehicle that:

(a) Is self-propelled using an electric motor, combustion-driven motor, or a combination thereof;

(b) Is four (4) wheeled; and

(c) Is designed to operate at a speed not to exceed twenty-five (25) miles per hour as certified by the manufacturer;

(17) "Alternative-speed motorcycle" means a motorcycle that:

(a) Is self-propelled using an electric motor;

(b) Is three (3) wheeled;

(c) Has a fully enclosed cab and includes at least one (1) door for entry;

(d) Is designed to operate at a speed not to exceed forty (40) miles per hour as certified by the manufacturer; and

(e) Is not an autocycle as defined in this section;

(18) "Multiple-vehicle driving range" means an enclosed area that is not part of a highway or otherwise open to the public on which a number of motor vehicles may be used simultaneously to provide driver training under the supervision of one (1) or more driver training instructors;

(19) "Autocycle" means any motor vehicle that:

(a) Is equipped with a seat that does not require the operator to straddle or sit astride it;

(b) Is designed to travel on three (3) wheels in contact with the ground; Is designed to operate at a speed that exceeds forty (40) miles per hour as certified by the manufacturer;

(c) Allows the operator and passenger to ride either side-by-side or in tandem in a seating area that may be enclosed with a removable or fixed top;

(d) Is equipped with a three (3) point safety belt system;

(e) May be equipped with a manufacturer-installed air bags or a roll cage;

(f) Is designed to be controlled with a steering wheel and pedals; and

(g) Is not an alternative-speed motorcycle as defined in this section;

(20) "Military surplus vehicle" means a multipurpose wheeled surplus military vehicle that:

(a) Is not operated using continuous tracks;

(b) Was originally manufactured for and sold directly to the Armed Forces of the United States; and

(c) Was originally manufactured under the federally mandated requirements set forth in 49 C.F.R. sec. 571.7;

(21) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes, and any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species;

(22) "Identity document" means an instruction permit, operator's license, or personal identification card issued under KRS 186.4102, 186.412, 186.4121, 186.4122, and 186.4123 or a commercial driver's license issued under KRS Chapter 281A;

(23) "Travel ID," as it refers to an identity document, means a document that complies with Pub. L. No. 109-13, Title II; and

(24) "Motor scooter" means a low-speed motorcycle that is:

(a) Equipped with wheels greater than sixteen (16) inches in diameter;

(b) Equipped with an engine greater than fifty (50) cubic centimeters;

(c) Designed to operate at a speed not to exceed fifty (50) miles per hour;

(d) Equipped with brake horsepower of two (2) or greater; and

(e) Equipped with a step-through frame or a platform for the operator's feet.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 22, sec. 1, effective June 27, 2019. – Amended 2017 Ky. Acts ch. 55, sec. 3, effective June 29, 2017; ch. 69, sec. 1, effective June 29, 2017; ch. 100, sec. 35, effective January 1, 2019; ch. 129, sec. 8, effective June 29, 2017; and ch. 184, sec. 2, effective June 29, 2017. – Amended 2012 Ky. Acts ch. 16, sec. 2, effective July 12, 2012. – Amended 2009 Ky. Acts ch. 103, sec. 1, effective June 25, 2009. – Amended 2002 Ky. Acts ch. 264, sec. 1, effective July 15, 2002. – Amended 2001 Ky. Acts ch. 43, sec. 2, effective June 21, 2001. – Amended 1994 Ky. Acts ch. 51, sec. 1, effective July 15, 1994. – Amended 1988 Ky. Acts ch. 287, sec. 1, effective January 1, 1989. – Amended 1986 Ky. Acts ch. 431, sec. 7, effective January 1, 1987. – Amended 1982 Ky. Acts ch. 194, sec. 2, effective July 15, 1982. – Amended 1978 Ky. Acts ch. 349, sec. 2, effective June 17, 1978. – Amended 1974 Ky. Acts ch. 74, Art. IX, sec. 20(2), (7), (9). – Amended 1966 Ky. Acts ch. 139, sec. 2, effective January 1, 1967. – Amended 1962 Ky. Acts ch. 62, sec. 1, effective January 1, 1963. – Amended 1956 (1st Extra. Sess.) Ky. Acts ch. 7, Art. X, sec. 10, effective September 1, 1956. – Amended 1950 Ky. Acts ch. 190, secs. 1 and 2, effective June 15, 1950. – Amended 1942 Ky. Acts ch. 78, sec. 1. – Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 2739g-1, 2739m-33.

186A.215 Procedures for transfer of vehicle ownership.

(1) If an owner transfers his interest in a vehicle, he shall, at the time of the delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate of title, except if the space provided therefor on the owner's certificate of title fails to meet the Kentucky requirements for lawful conveyance of title or if the space provided therefor on the owner's certificate of title fails to meet the requirements for the owner to execute an odometer disclosure statement as required by federal law in effect at the time transferor executes an assignment and warranty of title. Pursuant to the exceptions provided by this subsection and in other cases where applicable, the transferor shall execute an assignment and warranty of title to the transferee by executing the application as provided by the Department of Vehicle Regulation and available from the county clerk. The transferor shall cause the application with the certificate of title attached to be delivered to the transferee.

(2) Except as otherwise provided in this chapter, the transferee shall, promptly after delivery to him of the vehicle, execute the application for a new certificate of title and registration. If an application is required by subsection (1) of this section, the transferee shall execute the applicable portions provided to him by his transferor. Any unexpired registration shall remain valid upon transfer of said vehicle to the transferee.

(3) The application with its supporting documentation attached shall promptly be submitted to the county clerk as provided in KRS 186A.115, together with the required fees.

(4) If it comes to the attention of a transferor that a transferee did not promptly submit the necessary document within fifteen (15) calendar days to the county clerk as required by law in order to complete the transfer transaction, a transferor shall submit to the county clerk, in his county of residence, an affidavit that he has transferred his interest in a specific vehicle, and the clerk shall enter appropriate data into the AVIS system which shall restrict any registration transaction from occurring on that vehicle until the transfer has been processed. The Transportation Cabinet may adopt administrative regulations governing this subsection. This subsection shall not apply to any transactions involving licensed Kentucky motor vehicle dealers.

(5) This section shall not apply to a vehicle which has had the title surrendered to a county clerk or a hulk vehicle. Hulk vehicle shall mean a vehicle or part thereof that is:

   (a) In a rusted, wrecked, discarded, worn out, extensively damaged, dismantled, and mechanically inoperative condition; or

   (b) Of an apparent value of less than two hundred dollars ($200).

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 35, sec. 5, effective July 15, 1996.
– Amended 1988 Ky. Acts ch. 98, sec. 1, effective July 15, 1988.
– Amended 1984 Ky. Acts ch. 36, sec. 2, effective July 13, 1984.
– Created 1982 Ky. Acts ch. 164, sec. 40, effective July 15, 1982.

189.010 Definitions for chapter.

As used in this chapter:

(1) "Department" means the Department of Highways;

(2) "Crosswalk" means:

(a) That part of a roadway at an intersection within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface;

(3) "Highway" means any public road, street, avenue, alley or boulevard, bridge, viaduct, or trestle and the approaches to them and includes private residential roads and parking lots covered by an agreement under KRS 61.362, off-street parking facilities offered for public use, whether publicly or privately owned, except for-hire parking facilities listed in KRS 189.700;

(4) "Intersection" means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another, but do not necessarily continue, at approximately right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come into conflict; or

(b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two (2) roadways thirty (30) feet or more apart, every crossing of two (2) roadways of the highways shall be regarded as a separate intersection. The junction of a private alley with a public street or highway shall not constitute an intersection;

(5) "Manufactured home" has the same meaning as defined in KRS 186.650;

(6) "Motor truck" means any motor-propelled vehicle designed for carrying freight or merchandise. It shall not include self-propelled vehicles designed primarily for passenger transportation but equipped with frames, racks, or bodies having a load capacity of not exceeding one thousand (1,000) pounds;

(7) "Operator" means the person in actual physical control of a vehicle;

(8) "Pedestrian" means any person afoot or in a wheelchair;

(9) "Right-of-way" means the right of one (1) vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other;

(10) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any roadway separately but not to all such roadways collectively;

(11) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone;

(12) "Semitrailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand (1,000) pounds;

(13) "Truck tractor" means any motor-propelled vehicle designed to draw and to support the front end of a semitrailer. The semitrailer and the truck tractor shall be considered to be one (1) unit;

(14) "Sharp curve" means a curve of not less than thirty (30) degrees;

(15) "State Police" includes any agency for the enforcement of the highway laws established pursuant to law;

(16) "Steep grade" means a grade exceeding seven percent (7%);

(17) "Trailer" means any vehicle designed to be drawn by a motor truck or truck-tractor, but supported wholly upon its own wheels, intended for the carriage of freight or merchandise and having a load capacity of over one thousand (1,000) pounds;

(18) "Unobstructed highway" means a straight, level, first-class road upon which no other vehicle is passing or attempting to pass and upon which no other vehicle or pedestrian is approaching in the opposite direction, closer than three hundred (300) yards;

(19) (a) "Vehicle" includes:

1. All agencies for the transportation of persons or property over or upon the public highways of the Commonwealth; and

2. All vehicles passing over or upon the highways.

(b) "Motor vehicle" includes all vehicles, as defined in paragraph (a) of this subsection except:

1. Road rollers;

2. Road graders;

3. Farm tractors;

4. Vehicles on which power shovels are mounted;

5. Construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways;

6. Vehicles that travel exclusively upon rails;

7. Vehicles propelled by electric power obtained from overhead wires while being operated within any municipality or where the vehicles do not travel more than five (5) miles beyond the city limits of any municipality; and

8. Vehicles propelled by muscular power;

(20) "Reflectance" means the ratio of the amount of total light, expressed in a percentage, which is reflected outward by the product or material to the amount of total light falling on the product or material;

(21) "Sunscreening material" means a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effects of the sun with respect to light reflectance or transmittance;

(22) "Transmittance" means the ratio of the amount of total light, expressed in a percentage, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing;

(23) "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield, any roof-mounted viewing device, and any viewing device having less than one hundred fifty (150) square inches in area;

(24) "All-terrain vehicle" means any motor vehicle used for recreational off-road use; and

(25) "Nondivisible load," as pertains to state highways that are not part of the national truck network established pursuant to 23 C.F.R. pt. 658, means a load or vehicle, that if separated into smaller loads or vehicles:

(a) Compromises the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroys the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Requires more than four (4) work hours to dismantle and reassemble using appropriate equipment.

Effective: March 20, 2017

History: Amended 2017 Ky. Acts ch. 35, sec. 1, effective March 20, 2017. -- Amended 1998 Ky. Acts ch. 47, sec. 1, effective July 15, 1998; ch. 270, sec. 1, effective July 15, 1998; and ch. 587, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 327, sec. 1, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 42, sec. 6, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 400, sec. 1, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 244, sec. 1, effective July 15, 1988. -- Amended 1978 Ky. Acts ch. 46, sec. 1, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 46, sec. 1. -- Amended 1958 Ky. Acts ch. 126, sec. 22. -- Amended 1956 (2nd Extra. Sess.) Ky. Acts ch. 1, sec. 1. -- Amended 1942 Ky. Acts ch. 78, secs. 1 and 2. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 2739g-1, 2739g-69gg, 2739g-80.

186A.220 Requirements for motor vehicle dealer upon receipt of vehicle.

(1) Except as otherwise provided in this chapter, when any motor vehicle dealer licensed in this state buys or accepts such a vehicle in trade, which has been previously registered or titled for use in this or another state, and which he holds for resale, he shall not be required to obtain a certificate of title for it, but shall, within fifteen (15) days after acquiring such vehicle, notify the county clerk of the assignment of the motor vehicle to his dealership and pay the required transferor fee.

(2) Upon purchasing such a vehicle or accepting it in trade, the dealer shall obtain from his transferor, properly executed, all documents required by KRS 186A.215, to include the odometer disclosure statement thereon, together with a properly assigned certificate of title.

(3) The dealer shall execute his application for assignment upon documents designated by the Department of Vehicle Regulation, to the county clerk of the county in which he maintains his principal place of business. Such clerk

shall enter the assignment upon the automated system.

(4) The dealer shall retain the properly assigned certificate of title received from his transferor, and may make any reassignments thereon until the forms for dealer assignment on the certificate of title are exhausted. The Department of Vehicle Regulation may, if it deems it warranted, provide a special document to allow for additional dealer assignments without requiring system generated documents.

(5) (a) When a dealer assigns the vehicle to a purchaser for use, he shall deliver the properly assigned certificate of title, and other documents if appropriate, to such purchaser, who shall make application for registration and a certificate of title thereon.

(b) The dealer may, with the consent of the purchaser, deliver the assigned certificate of title, and other appropriate documents of a new or used vehicle, directly to the county clerk, and on behalf of the purchaser, make application for registration and a certificate of title. In so doing, the dealer shall require from the purchaser proof of insurance as mandated by KRS 304.39-080 before delivering possession of the vehicle.

(c) Notwithstanding the provisions of KRS 186.020, 186A.065, 186A.095, 186A.215, and 186A.300, if a dealer elects to deliver the title documents to the county clerk and has not received a clear certificate of title from a prior owner, the dealer shall retain the documents in his possession until the certificate of title is obtained.

(d) When a dealer assigns a vehicle to a purchaser for use under paragraph (a) of this subsection, the transfer and delivery of the vehicle is effective immediately upon the delivery of all necessary legal documents, or copies thereof, including proof of insurance as mandated by KRS 304.39-080.

(6) The department may make available, upon proper application from a licensed motor vehicle dealer, electronic means by which the dealer can interface directly with AVIS and the department. If the department grants this access, all fees currently required for the issuance of a certificate of title shall continue to be charged and remitted to the appropriate parties as provided by statute.

(7) The Department of Vehicle Regulation shall assure that the automated system is capable of accepting instructions from the county clerk that a certificate of title shall not be produced under a dealer registration situation.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 90, sec. 1, effective July 15, 2016. – Amended 1998 Ky. Acts ch. 128, sec. 7, effective July 15, 1998. – Amended 1996 Ky. Acts ch. 35, sec. 6, effective July

15, 1996. – Amended 1994 Ky. Acts ch. 51, sec. 2, effective July 15, 1994. – Amended 1988 Ky. Acts ch. 98, sec. 2, effective July 15, 1988. – Created 1982 Ky. Acts ch. 164, sec. 41, effective July 1, 1982.

186A.345 Definitions to be consistent with KRS 186.010.

Unless the context requires otherwise, terms used in this chapter shall be defined, where applicable, as provided by KRS 186.010.

Effective: July 15, 1982

History: Created 1982 Ky. Acts ch. 164, sec. 67, effective July 15, 1982.

304.20-020 Uninsured vehicle coverage – Insolvency of insurer.

(1) No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in KRS 304.39-110 under provisions approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided that any named insured shall have the right to reject in writing such coverage; and provided further that the rejection shall be valid for all insureds under the policy, and unless a named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal, reinstatement, substitute, replacement, or amended policy issued to the same named insured by the same insurer or any of its affiliates or subsidiaries.

(2) For the purpose of this coverage the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; an insured motor vehicle with respect to which the amounts provided, under the bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such motor vehicle, are less than the limits described in KRS 304.39-110; and an insured motor vehicle to the extent that the amounts provided in the liability coverage applicable at the time of the accident is denied by the insurer writing the same.

(3) Protection against an insurer's insolvency shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one (1) year after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.

(4) In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 34, sec. 3, effective June 29, 2017. – Amended 2010 Ky. Acts ch. 24, sec. 1307, effective July 15, 2010. – Amended 1978 Ky. Acts ch. 384, sec. 105, effective June 17, 1978. – Created 1970 Ky. Acts ch. 301, subtit. 20, sec. 2, effective June 18, 1970.

304.20-040 Cancellation, nonrenewal, or termination of automobile insurance – Definitions – Scope – Penalties.

(1) As used in this section:

(a) "Policy" means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:

1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others; and

2. Any other four-wheel motor vehicle with a load capacity of one thousand five hundred (1,500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this section shall not apply:

a. To any policy issued under an automobile assigned risk plan; or

b. To any policy covering garage, automobile sales agency, re-

pair shop, service station, or public parking place operation hazards;

(b) "Automobile liability insurance policy" includes only coverage for bodily injury and property damage liability, basic reparations benefits, and the provisions therein, if any, relating to medical payments, uninsured motorists coverage, underinsured motorists coverage, and automobile physical damage coverage;

(c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than three (3) months shall for the purpose of this section be considered as if written for a policy period or term of three (3) months. Provided, further, that any policy written for a term longer than one (1) year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one (1) year, and the policy may be terminated at the expiration of any annual period upon giving seventy- five (75) days' notice of nonrenewal prior to the anniversary date;

(d) "Nonpayment of premium" means failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(e) "Declination" or "decline" means either the refusal of an insurer to issue an automobile liability insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant, or refusal of an agent to transmit to an insurer a written nonbinding application or written request for coverage received from an applicant. The offering of insurance coverage with a company within an insurance group that is different from the company requested on the nonbinding application or written request for coverage, or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage, shall be considered to be a declination; and

(f) "Agent" includes but is not limited to surplus lines broker.

(2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:

1. Nonpayment of premium;

2. The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;

3. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;

4. Discovery of willful acts or omissions on the part of the named insured that increase any hazard insured against; or

5. A determination by the commissioner that the continuation of the policy would place the insurer in violation of this chapter or the rules or administrative regulations of the commissioner.

(b) This subsection shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars ($100) shall not be deemed a cancellation of the coverage or of the policy.

(d) This subsection shall not apply to nonrenewal.

(3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given. This subsection shall not apply to renewals. A policy or coverage which has been in effect less than sixty (60) days at the time the notice of cancellation is mailed or delivered by the insurer is not limited to the reasons for cancellation set forth in subsection (2)(a) of this section unless it is a renewal policy. Notice of cancellation for a policy that has been in effect for less than sixty (60) days shall be mailed or delivered to the named insured at least fourteen (14) days in advance of the effective cancellation date.

(4) No insurer or agent shall decline, refuse to renew, or cancel a policy of automobile insurance solely because:

(a) Of the credit history, lack of credit history, or the following extraordinary life circumstances that directly influence the credit history of the applicant or insured:

1. Catastrophic event, as declared by the federal or state government;
2. Serious illness or injury, or serious illness or injury to an immediate family member;
3. Death of a spouse, child, or parent;
4. Divorce or involuntary interruption of legally owed alimony or support payments;
5. Identity theft;
6. Temporary loss of employment for a period of three (3) months or more, if it results from involuntary termination;
7. Military deployment overseas; or
8. Other events, as determined by the insurer;

(b) The applicant or insured has previously obtained automobile coverage through a residual market mechanism or from a carrier providing nonstandard coverage;

(c) The applicant or insured has sustained one (1) or more losses that immediately result from a natural cause without the intervention of any person and that could not have been prevented by the exercise of prudence, diligence, and care;

(d) Of the race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured; or

(e) Another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

(5) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least seventy-five (75) days' advance notice of its intention not to renew. If notice is not provided, coverage shall be deemed to be renewed for the ensuing policy period upon payment of the appropriate payment under the same terms and conditions, until the named insured has accepted replacement coverage with another insurer, or until the named insured has agreed to the nonrenewal.

(6) The transfer of a policyholder between companies within the same insurance group shall be considered a nonrenewal.

(7) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the renewal.

(8) If the insurer has manifested its willingness to renew by mailing or deliver-

ing a renewal notice, bill, certificate, or policy to the first-named insured at his or her last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date, unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named insured at his or her last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist.

(9) (a) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date, shall constitute a presumption of receipt pursuant to subsection (8) of this section.

(b) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation or nonrenewal to the named insured at the address shown in the policy shall be sufficient proof of notice.

(10) No insurer shall impose or request an additional premium higher than its standard premium for automobile insurance, cancel or refuse to issue a policy, or refuse to renew a policy solely because the insured or the applicant is an individual with a disability, so long as the disability does not substantially impair the person's mechanically assisted driving ability.

(11) When an automobile liability insurance policy is canceled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance, the insurer shall notify the named insured of his or her possible eligibility for automobile liability insurance coverage through the Kentucky automobile assigned risk plan. The notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew. The notice shall also inform the insured that he or she may, within seven (7) days, request the commissioner in writing to determine whether there is sufficient reason to cancel or not to renew the policy. Upon receipt of a request from the insured, the commissioner may request additional information regarding the cancellation or nonrenewal of a policy from the insurer. An insurer shall respond to a request for information from the commissioner within seven (7) days from receipt of the request. Within fourteen (14) days of receiving a written request from the insured, the commissioner shall send his or her findings to the insurer and to the insured. If an insurer fails to respond to a request for additional information within seven (7) days from receipt of the request, the commissioner may make a finding in favor of the insured. When he or she sends findings, the commissioner shall notify both parties of their right to request a hearing under KRS 304.2-310(2)(b) and KRS Chapter 13B. The party requesting the hearing shall give the commissioner written confirmation of attendance at the hearing not

more than five (5) days before, nor less than forty-eight (48) hours before, the scheduled hearing. If the requesting party fails to give the required written confirmation, the commissioner shall cancel the hearing.

(12) The reason for nonrenewal or cancellation shall accompany or be included in the notice of nonrenewal or cancellation.

(13) Except where the maximum limits of coverage have been purchased, every notice of first renewal shall include a provision or be accompanied by a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.

(14) There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

(15) (a) If the commissioner determines that an insurer has violated any provision of this section, the commissioner may require the insurer to:

1. Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;

2. Reinstate insurance coverage to the end of the policy period; or

3. Continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated.

(b) As to any person who has violated any provisions of this section, the commissioner may:

1. Issue a cease and desist order to restrain the person from engaging in practices that violate this section;

2. Suspend or revoke the person's license or certificate of authority;

3. Assess a civil penalty against the person in accordance with KRS 304.99-020; or

4. Take any combination of the actions specified in this paragraph.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 116, sec. 7, effective July 12, 2012. – Amended 2010 Ky. Acts ch. 24, sec. 1308, effective July 15, 2010. – Amended 2000 Ky. Acts ch. 540, sec. 1, effective July 14, 2000. – Amended 1998 Ky. Acts ch. 212, sec. 1, effective July 15, 1998; and ch. 483, sec. 23, effective July 15, 1998. – Amended 1994 Ky. Acts ch. 219, sec. 1, effective July 15, 1994; and ch. 405, sec. 83, effective July 15, 1994. – Amended 1990 Ky. Acts ch. 103, sec. 1, effective December 1, 1990. – Amended 1988 Ky. Acts ch. 225, sec. 6, effective July 15, 1988. – Amended 1986 Ky. Acts ch. 116, sec. 1, effective July 15, 1986. – Amended 1984 Ky. Acts ch. 129, sec. 5, effective January 1, 1985. – Amended 1982 Ky. Acts ch. 177, sec. 1, effective July 15, 1982. – Amended 1980 Ky. Acts ch. 35, sec. 1, effective July 15, 1980. – Created 1970 Ky. Acts ch. 301, subtit. 20, sec. 4, effective June 18, 1970.

304.36-020 Purpose of subtitle.

The purpose of this subtitle is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to the extent provided in this subtitle to minimize financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide a means of funding the cost of such protection among insurers.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 99, sec. 1, effective July 15, 1998. – Created 1972 Ky. Acts ch. 137, sec. 2, effective June 16, 1972.

304.36-080 Powers and duties of association.

(1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if the insured does so within thirty (30) days of the order of liquidation. The obligation shall be satisfied by paying to the claimant an amount as follows:

1. The full amount of a covered claim for benefits arising from a workers' compensation insurance policy purchased to satisfy the requirements of KRS 342.340;

2. An amount not exceeding ten thousand dollars ($10,000) per policy for a covered claim for the return of unearned premium; or

3. An amount not exceeding three hundred thousand dollars ($300,000) per claimant for all other covered claims;

(b) Not be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this subtitle, a covered claim shall not include a claim filed with the association after the earlier of twelve (12) months after the date of the order of liquidation, or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred but not reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit. Notwithstanding any other provisions of this subtitle, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons shall cease when ten million dollars ($10,000,000) shall have been paid in the aggregate by the association and any one (1) or more associations similar to the association of any other state or states or any property/casualty security fund that obtains contributions from insurers on a preinsolvency basis to or on behalf of any insured and its affiliates on covered claims or allowed claims arising under the policy or policies of any one (1) insolvent insurer. For purposes of this section, the term "affiliate" shall mean a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person. If the claimant has a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund of another states, under the policy or policies of any one (1) insolvent insurer, the association may establish a plan to allocate amounts payable by the association in a manner as the association in its discretion deems equitable; Be deemed the insurer to the extent of its obligation on the covered claims and to that extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations;

(c) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under KRS 304.36-130 and other expenses authorized by this subtitle. The assessments of each member insurer shall be in the proportion that the net direct written premiums

of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two percent (2%) of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital and surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer;

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims;

(e) Notify such persons as the commissioner directs under KRS 304.36-100(2)(a);

(f) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer; and

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this subtitle.

(2) The association may:

(a) Appear in, defend, and appeal any action on a claim brought against the association;

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(c) Borrow funds necessary to effect the purposes of this subtitle in accord with the plan of operation;

(d) Sue or be sued;

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subtitle;

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this subtitle; and

(g) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1466, effective July 15, 2010. – Amended 1998 Ky. Acts ch. 99, sec. 5, effective July 15, 1998. – Amended 1990 Ky. Acts ch. 268, sec. 1, effective July 13, 1990. – Amended 1986 Ky. Acts ch. 437, sec. 24, effective July 15, 1986. – Amended 1984 Ky. Acts ch. 322, sec. 15, effective July 13, 1984. – Created 1972 Ky. Acts ch. 137, sec. 8, effective June 16, 1972.

304.36-120 Nonduplication of recovery.

(1) Any person having a claim against an insurer under any provision in an insurance policy other than the policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under the policy. Any amount payable on a covered claim under this subtitle shall be reduced by the amount of recovery under the insurance policy. Any provision in an insurance policy includes, but is not limited to, the following coverages: basic reparation benefits under KRS Chapter 304, Subtitle 39; uninsured motorist; underinsured motorist; workers' compensation; and health care.

(2) Any person having a claim which may be recovered under more than one (1) insurance guaranty association or its equivalent shall seek recovery first

from the association of the place of residence of the insured except that if it is a first-party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim, from the association of the residence of the claimant. Any recovery under this subtitle shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

(3) The guaranty association shall receive the benefit of any reinsurance contract or treaties entered into by the insolvent insurer which cover any of the liabilities incurred by the insolvent insurer with respect to covered claims.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 99, sec. 8, effective July 15, 1998. – Created 1972 Ky. Acts ch. 137, sec. 12, effective June 16, 1972.

304.39-010 Policy and purpose.

The toll of about 20,000,000 motor vehicle accidents nationally and comparable experience in Kentucky upon the interests of victims, the public, policyholders and others require that improvements in the reparations provided for herein be adopted to effect the following purposes:

(1) To require owners, registrants and operators of motor vehicles in the Commonwealth to procure insurance covering basic reparation benefits and legal liability arising out of ownership, operation or use of such motor vehicles;

(2) To provide prompt payment to victims of motor vehicle accidents without regard to whose negligence caused the accident in order to eliminate the inequities which fault-determination has created;

(3) To encourage prompt medical treatment and rehabilitation of the motor vehicle accident victim by providing for prompt payment of needed medical care and rehabilitation;

(4) To permit more liberal wage loss and medical benefits by allowing claims for intangible loss only when their determination is reasonable and appropriate;

(5) To reduce the need to resort to bargaining and litigation through a system which can pay victims of motor vehicle accidents without the delay, expense, aggravation, inconvenience, inequities and uncertainties of the liability system;

(6) To help guarantee the continued availability of motor vehicle insurance at reasonable prices by a more efficient, economical and equitable system of motor vehicle accident reparations;

(7) To create an insurance system which can more adequately be regulated; and

(8) To correct the inadequacies of the present reparation system, recognizing that it was devised and our present Constitution adopted prior to the development of the internal combustion motor vehicle.

Effective: July 1, 1975

History: Created 1974 Ky. Acts ch. 385, sec. 1, effective July 1, 1975.

304.39-020 Definitions for subtitle.

As used in this subtitle:

(1) "Added reparation benefits" mean benefits provided by optional added reparation insurance.

(2) "Basic reparation benefits" mean benefits providing reimbursement for net loss suffered through injury arising out of the operation, maintenance, or use of a motor vehicle, subject, where applicable, to the limits, deductibles, exclusions, disqualifications, and other conditions provided in this subtitle. The maximum amount of basic reparation benefits payable for all economic loss resulting from injury to any one (1) person as the result of one (1) accident shall be ten thousand dollars ($10,000), regardless of the number of persons entitled to such benefits or the number of providers of security obligated to pay such benefits. Basic reparation benefits consist of one (1) or more of the elements defined as "loss."

(3) "Basic reparation insured" means:

(a) A person identified by name as an insured in a contract of basic reparation insurance complying with this subtitle; and

(b) While residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of basic reparation insurance complying with this subtitle: a spouse or other relative of a named insured; and a minor in the custody of a named insured or of a relative residing in the same household with the named insured if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

(4) "Injury" and "injury to person" mean bodily harm, sickness, disease, or death.

(5) "Loss" means accrued economic loss consisting only of medical expense, work loss, replacement services loss, and, if injury causes death, survivor's economic loss and survivor's replacement services loss. Noneconomic detriment is not loss. However, economic loss is loss although caused by pain

and suffering or physical impairment.

(a) "Medical expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, physical rehabilitation, rehabilitative occupational training, licensed ambulance services, and other remedial treatment and care. "Medical expense" may include non-medical remedial treatment rendered in accordance with a recognized religious method of healing. The term includes a total charge not in excess of one thousand dollars ($1,000) per person for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required. Medical expense shall include all healing arts professions licensed by the Commonwealth of Kentucky. There shall be a presumption that any medical bill submitted is reasonable.

(b) "Work loss" means loss of income from work the injured person would probably have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him.

(c) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(d) "Survivor's economic loss" means loss after decedent's death of contributions of things of economic value to his survivors, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of decedent's death.

(e) "Survivor's replacement services loss" means expenses reasonably incurred by survivors after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss.

(6) "Use of a motor vehicle" means any utilization of the motor vehicle as a vehicle including occupying, entering into, and alighting from it. It does not include:

(a) Conduct within the course of a business of repairing, servicing, or oth-

erwise maintaining motor vehicles unless the conduct occurs off the business premises; or

(b) Conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into, or alighting from it.

(7) "Motor vehicle" means any vehicle which transports persons or property upon the public highways of the Commonwealth, propelled by other than muscular power except road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electrical power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the said limits of any municipality. Motor vehicle shall not mean moped as defined in this section or an electric low-speed scooter as defined in KRS 189.010.

(8) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

(9) "Public roadway" means a way open to the use of the public for purposes of motor vehicle travel.

(10) "Net loss" means loss less benefits or advantages, from sources other than basic and added reparation insurance, required to be subtracted from loss in calculating net loss.

(11) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damages recoverable under the tort law of this Commonwealth. The term does not include punitive or exemplary damages.

(12) "Owner" means a person, other than a lienholder or secured party, who owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. The term does not include a lessee under a lease not intended as security.

(13) "Reparation obligor" means an insurer, self-insurer, or obligated government providing basic or added reparation benefits under this subtitle.

(14) "Survivor" means a person identified in KRS 411.130 as one entitled to receive benefits by reason of the death of another person.

(15) A "user" means a person who resides in a household in which any person owns or maintains a motor vehicle.

(16) "Maintaining a motor vehicle" means having legal custody, possession or responsibility for a motor vehicle by one other than an owner or operator.

(17) "Security" means any continuing undertaking complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this subtitle.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 22, sec. 10, effective June 27, 2019. – Amended 2000 Ky. Acts ch. 343, sec. 17, effective July 14, 2000. – Amended 1982 Ky. Acts ch. 194, sec. 6, effective July 15, 1982. – Amended 1978 Ky. Acts ch. 215, sec. 1, effective June 17, 1978; and ch. 349, sec. 12, effective June 17, 1978. – Created 1974 Ky. Acts ch. 385, sec. 2, effective July 1, 1975

304.39-030 Right to basic reparation benefits.

(1) If the accident causing injury occurs in this Commonwealth every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic reparation benefits, unless he has rejected the limitation upon his tort rights as provided in KRS 304.39-060(4).

(2) If the accident causing injury occurs outside this Commonwealth but within the United States, its territories and possessions, or Canada, the following persons and their survivors suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic reparation benefits:

(a) Basic reparation insureds;

(b) The driver and other occupants of a secured vehicle who have not rejected the limitation upon their tort rights, other than:

1. A vehicle, except for a vehicle as provided in paragraph (c) of this subsection, which is regularly used in the course of the business of transporting persons or property and which is one (1) of five (5) or more vehicles under common ownership; or

2. A vehicle owned by an obligated government other than this Commonwealth, its political subdivisions, municipal corporations, or public agencies; and

(c) The driver and other occupants of a bus, who have not rejected the limitation upon their tort rights, are Kentucky residents, and boarded a bus in Kentucky, if the bus is:

1. A secured vehicle;
2. Registered in Kentucky;
3. Regularly used in the course of the business of transporting persons or property; and
4. One (1) of five (5) or more vehicles under common ownership.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 372, sec. 1, effective July 14, 2000. -- Created 1974 Ky. Acts ch. 385, sec. 3, effective July 1, 1975.

304.39-040 Obligation to pay basic reparation benefits – Requirement of option for motorcycle coverage in liability contracts – Exclusion of motorcycle operator or passenger who has not purchased optional coverage.

(1) Basic reparation benefits shall be paid without regard to fault.

(2) Basic reparation obligors and the assigned claims plan shall pay basic reparation benefits, under the terms and conditions stated in this subtitle, for loss from injury arising out of maintenance or use of a motor vehicle. This obligation exists without regard to immunity from liability or suit which might otherwise be applicable.

(3) Every insurer writing liability insurance coverage for motorcycles in this Commonwealth shall make available for purchase as a part of every policy of insurance covering the ownership, use, and operation of motorcycles the option of basic reparations benefits, added reparations benefits, uninsured motorist, and underinsured motorist coverages.

(4) Notwithstanding any other provisions of this subtitle, no operator or passenger on a motorcycle is entitled to basic reparation benefits from any source for injuries arising out of the maintenance or use of such a motorcycle unless such reparation benefits have been purchased as optional coverage for the motorcycle or by the individual so injured.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 567, sec. 1, effective July 15, 1998. – Amended 1976 Ky. Acts ch. 75, sec. 1 effective March

29, 1976. – Created 1974 Ky. Acts ch. 385, sec. 4, effective July 1, 1975.

304.39-045 Exclusion from coverage as operator by agreement.

In an automobile liability insurance policy, the insurer and the named insured may agree to exclude any member of the household not a spouse or dependent from coverage as the operator of an insured vehicle. The names of persons excluded shall be set forth in the policy or in an endorsement that is signed by both parties.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 101, sec. 1, effective July 13, 1990.

304.39-050 Priority of applicability of security for payment of basic reparation benefits.

(1) The basic reparation insurance applicable to bodily injury to which this subtitle applies is the security covering the vehicle occupied by the injured person at the time of the accident or, if the injured person is a pedestrian, the security covering the vehicle which struck such pedestrian. If the reparation obligor providing such insurance fails to make payment for loss within thirty (30) days after receipt of reasonable proof of the fact and the amount of loss sustained, the injured person shall be entitled to payment under any contract of basic reparation insurance under which he is a basic reparation insured and the insurer making such payments shall be entitled to full reimbursement from the reparation obligor providing the security covering the vehicle. A pedestrian, as used herein, means any person who is not making "use of a motor vehicle" at the time his injury occurs.

(2) If there is no security covering the vehicle, any contract of basic reparation insurance under which the injured person is a basic reparation insured shall apply.

(3) No person shall recover basic reparation benefits from more than one (1) reparation obligor as a result of the same accident, except as provided in KRS 304.39-140(4), nor in excess of ten thousand dollars ($10,000) as the result of the same accident.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 215, sec. 2, effective June 17, 1978. – Created 1974 Ky. Acts ch. 385, sec. 5, effective July 1, 1975.

304.39-060 Acceptance or rejection of partial abolition of tort liability – Exceptions.

(1) Any person who registers, operates, maintains or uses a motor vehicle on the public roadways of this Commonwealth shall, as a condition of such registration, operation, maintenance or use of such motor vehicle and use of the public roadways, be deemed to have accepted the provisions of this subtitle, and in particular those provisions which are contained in this section.

(2) (a) Tort liability with respect to accidents occurring in this Commonwealth and arising from the ownership, maintenance, or use of a motor vehicle is "abolished" for damages because of bodily injury, sickness or disease to the extent the basic reparation benefits provided in this subtitle are payable therefor, or that would be payable but for any deductible authorized by this subtitle, under any insurance policy or other method of security complying with the requirements of this subtitle, except to the extent noneconomic detriment qualifies under paragraph (b) of this subsection.

(b) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required in this subtitle, or against any person or organization legally responsible for his or her acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury as "medical expense" or which would be payable but for any exclusion or deductible authorized by this subtitle exceed one thousand dollars ($1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of bodily function or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars ($1,000).

(c) Tort liability is not so limited for injury to a person who is not an owner, operator, maintainer or user of a motor vehicle within subsection (1) of this section, nor for injury to the passenger of a motorcycle arising out of the maintenance or use of such motorcycle.

(3) For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity, a person does not intention-

ally cause harm merely because his or her act or failure to act is intentional or done with the realization that it creates a grave risk of harm.

(4) Any person may refuse to consent to the limitations of his or her tort rights and liabilities as contained in this section. Such rejection must be completed in writing or electronically in a form to be prescribed by the Department of Insurance and must have been executed and filed with the department at a time prior to any motor vehicle accident for which such rejection is to apply. Such rejection form shall affirmatively state in bold print that acceptance of this form of insurance denies the applicant the right to sue a negligent motorist unless certain requirements contained in the policy of insurance are met. Rejection by a person who is under legal disability shall be made on behalf of such person by his or her legal guardian, conservator, or natural parent. The failure of such guardian or a natural parent of a person under legal disability to file a rejection, within six (6) months from the date that this subtitle would otherwise become applicable to such person, shall be deemed to be an affirmative acceptance of all provisions of this subtitle. Provided, however, any person who, at the time of an accident, does not have basic reparation insurance but has not formally rejected such limitations of his or her tort rights and liabilities and has at such time in effect security equivalent to that required by KRS 304.39-110 shall be deemed to have fully rejected such limitations within meaning of this section for that accident only.

(5) (a) Any rejection must be filed with the Department of Insurance and shall become effective on the date of its filing until revoked. Nothing in this section shall require a new rejection to be filed for each new motor vehicle policy issued;

(b) Any rejection filed prior to June 30, 1980, shall be deemed to be effective from the date of its filing until revoked; and

(c) Any revocation shall be in writing and shall become effective upon the date of its filing with the Department of Insurance.

(6) Every insurance company when issuing an automobile policy to a resident of this Commonwealth must inform the buyer in writing in a form to be prescribed by the insurance commissioner of his or her right to reject the limitations of the tort rights and liabilities under this subtitle in the manner provided in subsections (4) and (7) of this section.

(7) Any rejection shall result in the full retention by the individual of his or her tort rights and tort liabilities. Any person injured by a motor vehicle operator who has such rejection on file may claim the full damages, including nonpecuniary damages, or, if such injured person has not rejected his or her own tort limitations, he or she may also claim basic reparation benefits from the appropriate security on the vehicle as established under KRS 304.39-050. If such provider of security is other than the one providing security for the

operator who has rejected the limitations, such provider shall be subrogated to the rights of the injured person to the extent of reparation benefits paid against the owner and operator of the vehicle.

(8) No person who has rejected the tort limitations under this section, except as provided in subsection (9) of this section or KRS 304.39-140(5), may collect basic reparation benefits.

(9) Any owner or operator of a motorcycle, as defined in Kentucky Revised Statutes, may file a rejection as described in subsections (4) and (5) of this section, which will apply solely to the ownership and operation of a motorcycle but will not apply to injury resulting from the ownership, operation or use of any other type of motor vehicle.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1525, effective July 15, 2010; and ch. 166, sec. 11, effective July 15, 2010. – Amended 1986 Ky. Acts ch. 37, sec. 1, effective July 15, 1986. – Amended 1980 Ky. Acts ch. 364, sec. 1, effective July 15, 1980. – Amended 1976 Ky. Acts ch. 75, sec. 2, effective March 29, 1976. – Created 1974 Ky. Acts ch. 385, sec. 6, effective July 1, 1975.

Note: 1980 Ky. Acts ch. 396, sec. 92 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1,1982.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts chs. 24 and 166, which do not appear to be in conflict and have been codified together.

304.39-070 "Secured person" – Obligor's rights to recovery.

(1) "Secured person" means the owner, operator or occupant of a secured motor vehicle, and any other person or organization legally responsible for the acts or omissions of such owner, operator or occupant.

(2) A reparation obligor which has paid or may become obligated to pay basic reparation benefits shall be subrogated to the extent of its obligations to all of the rights of the person suffering the injury against any person or organization other than a secured person.

(3) A reparation obligor shall have the right to recover basic reparation benefits paid to or for the benefit of a person suffering the injury from the reparation obligor of a secured person as provided in this subsection, except as provided in KRS 304.39- 140(3). The reparation obligor shall elect to assert its claim (i) by joining as a party in an action that may be commenced by the person suffering the injury, or (ii) to reimbursement, pursuant to KRS

304.39-030, sixty (60) days after said claim has been presented to the reparation obligor of secured persons. The right to recover basic reparation benefits paid under (ii) shall be limited to those instances established as applicable by the Kentucky Insurance Arbitration Association as provided in KRS 304.39-290.

(4) Any entitlement to recovery for basic or added reparation benefits paid or to be paid by the subrogee shall in no event exceed the limits of automobile bodily injury liability coverage available to the secured party after priority of entitlement as provided in this section and KRS 304.39-140(3) has been satisfied.

(5) An attorney representing a secured person in any action filed under KRS 304.39- 060 shall be entitled to a reasonable attorneys' fee in the event that reparation benefits paid to said secured person by that secured person's reparation's obligor are reimbursed by any insurance carrier on behalf of a tortfeasor who is the defendant in any such action filed by the said secured person or in the event such potential "action" is settled by said potential tortfeasor's insurance carrier on his behalf prior to the filing of any such suit.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 215, sec. 4, effective June 17, 1978; and ch. 384, sec. 104, effective June 17, 1978. – Created 1974 Ky. Acts ch. 385, sec. 7, effective July 1, 1975.

Legislative Research Commission Note. This section was amended by two 1978 acts which do not appear to be in conflict and have been compiled together.

304.39-080 Security covering motor vehicle.

(1) "Security covering the vehicle" is the insurance or other security so provided. The vehicle for which the security is so provided is the "secured vehicle."

(2) "Basic reparation insurance" includes a contract, self-insurance, or other legal means under which the obligation to pay basic reparation benefits arises.

(3) This Commonwealth, its political subdivisions, municipal corporations, and public agencies may continuously provide, pursuant to subsection (6) of this section, security for the payment of basic reparation benefits in accordance with this subtitle for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.

(4) The United States and its public agencies and any other state, its political subdivisions, municipal corporation, and public agencies may provide, pursuant to subsection (6) of this section, security for the payment of basic reparation benefits in accordance with this subtitle for injury arising from

maintenance or use of motor vehicles owned by those entities and operated with their permission.

(5) Except for entities described in subsections (3) and (4) of this section, every owner or operator of a motor vehicle registered in this Commonwealth or operated in this Commonwealth with an owner's permission shall continuously provide with respect to the motor vehicle while it is either present or registered in this Commonwealth, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this subtitle and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle. The owner of a motor vehicle who fails to maintain security on a motor vehicle in accordance with this subsection shall have his or her motor vehicle registration revoked in accordance with KRS 186A.040 and shall be subject to the penalties in KRS 304.99-060. An owner who permits another person to operate a motor vehicle without security on the motor vehicle as required by this subtitle shall be subject to the penalties in KRS 304.99-060.

(6) Security may be provided by a contract of insurance or by qualifying as a self- insurer or obligated government in compliance with this subtitle.

(7) Self-insurance, subject to approval of the commissioner of insurance, is effected by filing with the commissioner in satisfactory form:

(a) A continuing undertaking by the owner or other appropriate person to pay tort liabilities or basic reparation benefits, or both, and to perform all other obligations imposed by this subtitle;

(b) Evidence that appropriate provision exists for prompt and efficient administration of all claims, benefits, and obligations provided by this subtitle; and

(c) Evidence that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a policy of insurance, complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this subtitle.

(8) An entity described in subsection (3) or (4) of this section may provide security by lawfully obligating itself to pay basic reparation benefits in accordance with this subtitle.

(9) A person providing security pursuant to subsection (7) of this section is a "self- insurer." An entity described in subsection (3) or (4) of this section that has provided security pursuant to subsection (6) of this section is an "obligated government."

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1526, effective July 15, 2010. – Amended 2007 Ky. Acts ch. 38, sec. 1, effective June 26, 2007. – Amended 2005 Ky. Acts ch. 152, sec. 1, effective June 20, 2005. – Amended 1998 Ky. Acts ch. 442, sec. 3, effective July 15, 1998. – Amended 1996 Ky. Acts ch. 341, sec. 6, effective July 15, 1996. – Created 1974 Ky. Acts ch. 385, sec. 8, effective July 1, 1975.

304.39-090 Required security.

An owner of a motor vehicle registered in this Commonwealth who ceases to maintain security as required by the provisions on security may not operate or permit operation of the vehicle in this Commonwealth until security has again been provided as required by this subtitle. An owner who fails to maintain security as required by this subtitle shall have his or her motor vehicle registration revoked in accordance with KRS 186A.040. All other owners shall provide such security while operating a motor vehicle in this Commonwealth.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 442, sec. 4, effective July 15, 1998. – Amended 1996 Ky. Acts ch. 341, sec. 8, effective July 15, 1996. – Created 1974 Ky. Acts ch. 385, sec. 9, effective July 1, 1975.

304.39-110 Required minimum tort liability insurance.

(1) The requirement of security for payment of tort liabilities is fulfilled by providing:

(a) Either:

1. Split limits liability coverage of not less than twenty-five thousand dollars ($25,000) for all damages arising out of bodily injury sustained by any one (1) person, and not less than fifty thousand dollars ($50,000) for all damages arising out of bodily injury sustained by all persons injured as a result of any one (1) accident, plus liability coverage of not less than twenty-five thousand dollars ($25,000) for all damages arising out of damage to or destruction of property, including the loss of use thereof, as a result of any one (1) accident arising out of ownership, maintenance, use, loading, or unloading, of the secured vehicle; or

2. Single limits liability coverage of not less than sixty thousand dollars ($60,000) for all damages whether arising out of bodily injury or damage to property as a result of any one (1) accident arising out of ownership, maintenance, use, loading, or unloading, of the

secured vehicle;

(b) That the liability coverages apply to accidents during the contract period in a territorial area not less than the United States of America, its territories and possessions, and Canada; and

(c) Basic reparation benefits as defined in KRS 304.39-020(2).

(2) Subject to the provisions on approval of terms and forms, the requirement of security for payment of tort liabilities may be met by a contract the coverage of which is secondary or excess to other applicable valid and collectible liability insurance. To the extent the secondary or excess coverage applies to liability within the minimum security required by this subtitle it must be subject to conditions consistent with the system of required liability insurance established by this subtitle.

(3) Security for a motorcycle is fulfilled by providing only the coverages set forth in subsections (1)(a) and (b) of this section.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 157, sec. 1, effective June 29, 2017. – Amended 1986 Ky. Acts ch. 437, sec. 31, effective July 15, 1986. – Amended 1984 Ky. Acts ch. 19, sec. 2, effective July 13, 1984; and ch. 86, sec. 1, effective July 13, 1984. – Amended 1976 Ky. Acts ch. 75, sec. 4, effective March 29, 1976. – Created 1974 Ky. Acts ch. 385, sec. 11, effective July 1, 1975.

Legislative Research Commission Note (6/29/2017). 2017 Ky. Acts ch. 157, sec. 3 provided that amendments made to subsection (1) of this statute in 2017 Ky. Acts ch. 157, sec. 1 regarding the required minimum tort liability for motor vehicle damage to property shall apply to policies issued or renewed on or after January 1, 2018.

304.39-120 Calculation of net loss.

(1) All benefits or advantages a person receives or is entitled to receive because of the injury from workers' compensation are subtracted in calculating net loss.

(2) If a benefit or advantage received to compensate for loss of income because of injury, whether from basic reparation benefits or from any source of benefits or advantages subtracted under subsection (1), is not taxable income, the income tax saving that is attributable to his loss of income because of injury is subtracted in calculating net loss. Subtraction may not exceed fifteen percent (15%) of the loss of income and shall be in a lesser amount if the claimant furnishes to the insurer reasonable proof of a lower value of the income tax advantage.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 123, sec. 19, effective July 15, 1982. – Created 1974 Ky. Acts ch. 385, sec. 12, effective July 1, 1975.

304.39-130 Basic weekly limit on benefits for certain losses.

Basic reparation benefits payable for work loss, survivor's economic loss, replacement services loss, and survivor's replacement services loss arising from injury to one (1) person and attributable to the calendar week during which the accident causing injury occurs and to each calendar week thereafter may not exceed two hundred dollars ($200), prorated for any lesser period. If the injured person's earnings or work are seasonal or irregular, the weekly limit shall be equitably adjusted or apportioned on an annual basis.

Effective: July 1, 1975

History: Created 1974 Ky. Acts ch. 385, sec. 13, effective July 1, 1975.

304.39-140 Optional additional benefits.

(1) On and after July 1, 1975, each reparation obligor of the owner of a vehicle required to be registered in this Commonwealth shall, upon the request of a reparation insured, be required to provide added reparation benefits for economic loss in units of ten thousand dollars ($10,000) per person subject to the lesser of:

   (a) Forty thousand dollars ($40,000) in added reparation benefits; or

   (b) The limit of security provided for liability to any one (1) person in excess of the requirements of KRS 304.39-110(1)(a).

(2) Each basic reparation obligor shall be permitted to incorporate in added reparation benefits coverage such terms, conditions and exclusions as may be consistent with premiums charged. The amounts payable under added reparation benefits may be duplicative of benefits received from collateral source benefits, or may provide for reasonable waiting periods, deductibles or coinsurance provision. The added reparation obligor shall be subrogated, subject to KRS 304.39-070 and 304.39-300, to the injured person's right of recovery against any responsible third party.

(3) If the injured person, or injured persons, is entitled to damages under KRS 304.39- 060 from the liability insurer of a second person, a self-insurer or an obligated government, collection of such damages shall have priority over the rights of the subrogee for its reimbursement of basic or added reparation benefits paid to or in behalf of such injured person or persons.

(4) Basic reparation insurers shall make available upon request deductibles in

the amounts of two hundred fifty dollars ($250), five hundred dollars ($500) and one thousand dollars ($1,000) from all basic reparation benefits otherwise payable, except that if two (2) or more basic reparation insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them. Any person who is a basic reparation insured under an insurance policy issued with no deductible or with a deductible of a lesser amount than that under which he receives basic reparation benefits payments, shall be entitled to be paid under such policy the difference between the benefits he is actually paid and the benefits which would have been paid had his benefits been payable under such policy.

(5) Reparation obligors shall make available upon request to those persons who have rejected their tort limitations, in accordance with KRS 304.39-060(4), basic reparation benefits coverage and added reparation benefits.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 215, sec. 3, effective June 17, 1978. – Created 1974 Ky. Acts ch. 385, sec. 14, effective July 1, 1975.

304.39-150 Approval of terms and forms.

Terms and conditions of contracts and certificates or other evidence of insurance coverage sold or issued in this Commonwealth providing motor vehicle tort liability, basic reparation, and added reparation insurance coverages, and of forms used by insurers offering these coverages, are subject to approval and regulation by the commissioner of insurance. The commissioner shall approve only terms and conditions consistent with the purposes of this subtitle and fair and equitable to all persons whose interests may be affected.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1529, effective July 15, 2010. – Created 1974 Ky. Acts ch. 385, sec. 15, effective July 1, 1975.

304.39-160 Assigned claims.

(1) A person entitled to basic reparation benefits because of injury covered by this subtitle may obtain them through the assigned claims plan established pursuant to the provisions relating thereto and in accordance with the provisions on time for presenting claims under the assigned claims plan if:

(a) Basic reparation insurance is not applicable to the injury for a reason

other than those specified in the provisions on converted vehicles and intentional injuries;

(b) Basic reparation insurance applicable to the injury cannot be identified;

(c) Basic reparation insurance applicable to the injury is inadequate to provide the contracted for benefits because of financial inability of a reparation obligor to fulfill its obligations; or

(d) A claim for basic reparation benefits is rejected by a reparation obligor for a reason other than that the person is not entitled under this subtitle to the basic reparation benefits claimed.

(2) If a claim qualifies for assignment under paragraphs (c) or (d) of subsection (1), the assigned claims bureau or any reparation obligor to whom the claim is assigned is subrogated to all rights of the claimant against any reparation obligor, its successor in interest or substitute, legally obligated to provide basic reparation benefits to the claimant, for basic reparation benefits provided by the assignee.

(3) Except in case of a claim assigned under subsection (1)(d), if a person receives basic reparation benefits through the assigned claims plan, all benefits or advantages he receives or is entitled to receive as a result of the injury, other than by way of succession at death, death benefits from life insurance, or in discharge of familial obligations of support, are subtracted in calculating net loss.

(4) A person who sustains injury while occupying a motor vehicle owned by such person and with respect to which security is required by the provisions on security and who fails to have such security in effect at the time of an accident in this Commonwealth causing such injury, shall not obtain through the assigned claims plan basic reparation benefits, including benefits otherwise due him as a survivor, unless such person's failure to have such security in effect at the time of such accident was solely occasioned by the failure of the reparation obligor of such person to provide the basic reparation benefits required by this subtitle.

Effective: July 1, 1975

History: Created 1974 Ky. Acts ch. 385, sec. 16, effective July 1, 1975.

304.39-190 Converted motor vehicles.

A person who converts a motor vehicle is disqualified from basic or added reparation benefits, including benefits otherwise due him as a survivor, from any source other than an insurance contract under which the converter is a basic or added reparation insured, for injuries arising from maintenance or use of the converted vehicle. If

the converter dies from the injuries, his survivors are not entitled to basic or added reparation benefits from any source other than an insurance contract under which the converter is a basic reparation insured. For the purpose of this section, a person is not a converter if he uses the motor vehicle in the good faith belief that he is legally entitled to do so.

Effective: July 1, 1975

History: Created 1974 Ky. Acts ch. 385, sec. 19, effective July 1, 1975.

304.39-200 Intentional injuries.

A person intentionally causing or attempting to cause injury to himself or another person is disqualified from basic or added reparation benefits for injury arising from his acts, including benefits otherwise due him as a survivor. If a person dies as a result of intentionally causing or attempting to cause injury to himself, his survivors are not entitled to basic or added reparation benefits for loss arising from his death. A person intentionally causes or attempts to cause injury if he acts or fails to act for the purpose of causing injury. A person does not intentionally cause or attempt to cause injury merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of causing injury or if the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person.

Effective: July 1, 1975

History: Created 1974 Ky. Acts ch. 385, sec. 20, effective July 1, 1975.

304.39-210 Obligor's duty to respond to claims.

(1) Basic and added reparation benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as work loss, replacement services loss, or medical expense is incurred. Benefits are overdue if not paid within thirty (30) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding thirty-one (31) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, and pays them within fifteen (15) days after the period of accumulation. Notwithstanding any provision of this chapter to the contrary, benefits are not overdue if a reparation obligor has not made payment to a provider of services due to the request of a secured person when the secured person is directing the payment of benefits among the different elements of loss. If reasonable proof is supplied as to only part of a claim, and the part totals one hundred dollars ($100) or more, the part is overdue if not paid within the time provided by this section. Medical expense benefits may be paid by the reparation obligor directly to persons supplying products, ser-

vices, or accommodations to the claimant, if the claimant so designates.

(2) Overdue payments bear interest at the rate of twelve percent (12%) per annum, except that if delay was without reasonable foundation the rate of interest shall be eighteen percent (18%) per annum.

(3) A claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who actually receives the payments.

(4) A reparation obligor may bring an action to recover benefits which are not payable, but are in fact paid, because of an intentional misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of medical expense. The action may be brought only against the person providing the item of medical expense, unless the insured has intentionally misrepresented the facts or knows of the misrepresentation. An insurer may offset amounts he is entitled to recover from the insured under this subsection against any basic or added reparation benefits otherwise due.

(5) A reparation obligor who rejects a claim for basic reparation benefits shall give to the claimant prompt written notice of the rejection, specifying the reason. If a claim is rejected for a reason other than that the person is not entitled to the basic reparation benefits claimed, the written notice shall inform the claimant that he may file his claim with the assigned claims bureau and shall give the name and address of the bureau.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 200, sec. 2, effective July 15, 1998. – Created 1974 Ky. Acts ch. 385, sec. 21, effective July 1, 1975.

304.39-220 Fees of claimant's attorney.

(1) If overdue benefits are recovered in an action against the reparation obligor or paid by the reparation obligor after receipt of notice of the attorney's representation, a reasonable attorney's fee for advising and representing a claimant on a claim or in an action for basic or added reparation benefits may be awarded by the court if the denial or delay was without reasonable foundation. No part of the fee for representing the claimant in connection with these benefits is a charge against benefits otherwise due the claimant.

(2) In any action brought against the insured by the reparation obligor, the court

may award the insured's attorney a reasonable attorney's fee for defending the action.

Effective: July 1, 1975

History: Created 1974 Ky. Acts ch. 385, sec. 22, effective July 1, 1975.

304.39-230 Limitations of actions.

(1) If no basic or added reparation benefits have been paid for loss arising otherwise than from death, an action therefor may be commenced not later than two (2) years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four (4) years after the accident, whichever is earlier. If basic or added reparation benefits have been paid for loss arising otherwise than from death, an action for further benefits, other than survivor's benefits, by either the same or another claimant, may be commenced not later than two (2) years after the last payment of benefits.

(2) If no basic or added reparation benefits have been paid to the decedent or his or her survivors, an action for survivor's benefits may be commenced not later than one (1) year after the death or four (4) years after the accident from which death results, whichever is earlier. If survivor's benefits have been paid to any survivor, an action for further survivor's benefits by either the same or another claimant may be commenced not later than two (2) years after the last payment of benefits. If basic or added reparation benefits have been paid for loss suffered by an injured person before his or her death resulting from the injury, an action for survivor's benefits may be commenced not later than one (1) year after the death or four (4) years after the last payment of benefits, whichever is earlier.

(3) If timely action for basic reparation benefits is commenced against a reparation obligor and benefits are denied because of a determination that the reparation obligor's coverage is not applicable to the claimant under the provisions on priority of applicability of basic reparation security, an action against the applicable reparation obligor or the assigned claims bureau may be commenced not later than sixty (60) days after the determination becomes final or the last date on which the action could otherwise have been commenced, whichever is later.

(4) Except as subsections (1), (2), or (3) of this section prescribe a longer period, an action by a claimant on an assigned claim which has been timely presented may be commenced not later than sixty (60) days after the claimant received written notice of rejection of the claim by the reparation obligor to which it was assigned.

(5) If a person entitled to basic or added reparation benefits is under legal dis-

ability when the right to bring an action for the benefits first accrues, the period of his or her disability is a part of the time limited for commencement of the action.

(6) An action for tort liability not abolished by KRS 304.39-060 may be commenced not later than two (2) years after the injury, or the death, or the date of issuance of the last basic or added reparation payment made by any reparation obligor, whichever later occurs. For the purposes of determining the date of issuance of the last basic or added reparation payment made by a reparation obligor, a replacement payment does not extend the date beyond the date of the original payment. For the purposes of this section, "replacement payment" means a payment in the same amount as the original payment, but which is issued as a replacement for the original payment for reasons including but not limited to the original payment being lost, stolen, or not delivered. A reparation obligor shall provide to a claimant or the claimant's attorney upon written request information on whether any payment is a replacement payment.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 34, sec. 4, effective June 29, 2017. – Created 1974 Ky. Acts ch. 385, sec. 23, effective July 1, 1975.

304.39-270 Mental or physical examinations.

(1) If the mental or physical condition of a person is material to a claim for past or future basic or added reparation benefits, the reparation obligor may petition the circuit court for an order directing the person to submit to a mental or physical examination by a physician. Upon notice to the person to be examined and all persons having an interest, the court may make the order for good cause shown. The order shall specify the time, place, manner, conditions, scope of the examination, and the physician by whom it is to be made.

(2) If requested by the person examined, the reparation obligor causing a mental or physical examination to be made shall deliver to the person examined a copy of a detailed written report of the examining physician setting out his findings including results of all tests made, diagnoses, and conclusions, and reports of earlier examinations of the same condition. By requesting and obtaining a report of the examination ordered or by taking the deposition of the physician, the person examined waives any privilege he may have, in relation to the claim for basic or added reparation benefits, regarding the testimony of every other person who has examined or may thereafter examine him respecting the same condition. This subsection does not preclude discovery of a report of an examining physician, taking a deposition of the physician, or other discovery procedures in accordance with any rule of court

or other provision of law. This subsection applies to examinations made by agreement of the person examined and the reparation obligor, unless the agreement provides otherwise.

(3) If any person refuses to comply with an order entered under this section the court may make any just order as to the refusal, but may not find a person in contempt for failure to submit to a mental or physical examination.

Effective: July 1, 1975

History: Created 1974 Ky. Acts ch. 385, sec. 27, effective July 1, 1975.

304.39-290 Kentucky Insurance Arbitration Association – Creation – Membership – Powers – Duties.

(1) There is created a nonprofit unincorporated legal entity to be known as the Kentucky Insurance Arbitration Association to provide a mechanism for the reimbursement, among reparation obligors of losses paid as basic or added reparation benefits, based solely on the law of torts without regard to subsections (1), (2), and (3) of KRS 304.39-060.

(2) All basic reparation obligors shall be and remain members of the association as a condition of their authority to transact business in this Commonwealth.

(3) The association shall perform its functions under a plan of operation established and approved under subsection (5) and shall exercise its powers through a board of directors established under subsection (4) hereof.

(4) The board of directors of the association shall consist of not less than five (5) nor more than ten (10) persons serving terms as established in the plan of operation. They shall be selected by member obligors subject to the approval of the commissioner. If no members have been selected and approved prior to July 1, 1974, the commissioner shall appoint the initial members of the board. In approving selections to the board, the commissioner shall consider, among other things, whether all member obligors are fairly represented. Each member of the board shall designate qualified experienced claimspersons from the member's company, who upon approval by the commissioner, may serve as his or her alternates for the purpose of claims arbitration.

(5) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary, or suitable to assure the fair, reasonable, and equitable administration of the association. The plan shall become effective upon approval in writing by the commissioner:

(a) All reparation obligors shall comply with the provisions of the plan of operation;

(b) The plan of operation shall:

1. Establish procedures whereby all the powers and duties of the association will be performed;

2. Establish minimum requirements for the initial submission of a case for reimbursement or arbitration;

3. Establish minimum requirements beneath which reimbursements shall not be made in order that there be fair allocation of significant losses and the elimination of unnecessary costs in the reimbursement mechanism;

4. Encourage voluntary reimbursement procedures between reparation obligors so that resort to arbitration shall be as infrequent as possible;

5. Recognize that fair allocation of loss between commercial and noncommercial motor vehicles may require different minimum requirements than when the loss is between two (2) or more noncommercial vehicles;

6. Establish regular places and times for meetings;

7. Establish procedures for records to be maintained on all cases presented for arbitration and dispositions thereof;

8. Establish procedures for compensation to reparation obligors for travel related expense and the fair value of the time devoted by their employees as a director or alternate in performance of duties for the association;

9. Establish procedures for adequately and equitably financing the cost of the association among members; and

10. Contain additional provisions necessary or proper for execution of the powers and duties of the association.

(6) The association shall be subject to examination and regulation by the commissioner:

(a) The board of directors shall submit to the commissioner, not later than March 30 of each year, a report on its activities for the preceding calendar year;

(b) The board of directors shall promptly notify the commissioner whenever it appears that any member insurer has failed or refused to comply with an arbitration decision or has shown a protracted tendency to decline a significant number of meritorious claims presented to it prior to initiation of arbitration proceedings.

(7) The association shall be exempt from payment of all fees, licenses, and tax-

es levied by this Commonwealth or any of its subdivisions except taxes on real or personal property.

(8) There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his or her representative for any action taken by them in the performance of their powers and duties under this section.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1531, effective July 15, 2010. – Amended 1996 Ky. Acts ch. 326, sec. 2, effective July 15, 1996. – Created 1974 Ky. Acts ch. 385, sec. 29, effective July 1, 1975.

304.39-310 Certificate of coverage – Rights and obligations of owner or registrant.

(1) All reparation obligors shall be obligated to provide to a reparation insured or an insured person who has rejected his tort limitations as provided in KRS 304.39-060 a certificate or other evidence of insurance whenever coverage required by KRS 304.39-110 is issued or renewed upon policy anniversary date;

(2) An owner or registrant of a motor vehicle with respect to which security is required under KRS 304.39-110, who fails to have such security when the motor vehicle is involved in an accident shall have all the rights and obligations of a reparation obligor, and any other reparation obligor which has paid or may become obligated to pay basic or added reparation benefits to an injured person under a basic or added reparation contract or under the terms of the assigned claims plan shall be subrogated to the rights of the injured person against such owner or registrant.

Effective: July 1, 1975

History: Created 1974 Ky. Acts ch. 385, sec. 31(2), (3), effective July 1, 1975.

304.39-320 Underinsured motorist coverage – Effect of settlement of claims.

(1) As used in this section, "underinsured motorist" means a party with motor vehicle liability insurance coverage in an amount less than a judgment recovered against that party for damages on account of injury due to a motor vehicle accident.

(2) Every insurer shall make available upon request to its insureds underinsured

motorist coverage, whereby subject to the terms and conditions of such coverage not inconsistent with this section the insurance company agrees to pay its own insured for such uncompensated damages as he may recover on account of injury due to a motor vehicle accident because the judgment recovered against the owner of the other vehicle exceeds the liability policy limits thereon, to the extent of the underinsurance policy limits on the vehicle of the party recovering.

(3) If an injured person or, in the case of death, the personal representative agrees to settle a claim with a liability insurer and its insured, and the settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an underinsured motorist claim, then written notice of the proposed settlement must be submitted by certified or registered mail to all underinsured motorist insurers that provide coverage. The underinsured motorist insurer then has a period of thirty (30) days to consent to the settlement or retention of subrogation rights. An injured person, or in the case of death, the personal representative, may agree to settle a claim with a liability insurer and its insured for less than the underinsured motorist's full liability policy limits. If an underinsured motorist insurer consents to settlement or fails to respond as required by subsection (4) of this section to the settlement request within the thirty (30) day period, the injured party may proceed to execute a full release in favor of the underinsured motorist's liability insurer and its insured and finalize the proposed settlement without prejudice to any underinsured motorist claim.

(4) If an underinsured motorist insurer chooses to preserve its subrogation rights by refusing to consent to settle, the underinsured motorist insurer must, within thirty (30) days after receipt of the notice of the proposed settlement, pay to the injured party the amount of the written offer from the underinsured motorist's liability insurer. Thereafter, upon final resolution of the underinsured motorist claim, the underinsured motorist insurer is entitled to seek subrogation against the liability insurer to the extent of its limits of liability insurance, and the underinsured motorist for the amounts paid to the injured party.

(5) The underinsured motorist insurer is entitled to a credit against total damages in the amount of the limits of the underinsured motorist's liability policies in all cases to which this section applies, even if the settlement with the underinsured motorist under subsection (3) of this section or the payment by the underinsured motorist insurer under subsection (4) of this section is for less than the underinsured motorist's full liability policy limits. The term "total damages" as used in this section means the full amount of damages determined to have been sustained by the injured party, regardless of the amount of underinsured motorist coverage. Nothing in this section, including any payment or credit under this subsection, reduces or affects the total amount of underinsured motorist coverage available to the injured party.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 564, sec. 1, effective July 15, 1998. – Amended 1990 Ky. Acts ch. 103, sec. 2, effective December 1, 1990. – Amended 1988 Ky. Acts ch. 180, sec. 1, effective July 15, 1988. – Created 1974 Ky. Acts ch. 385, sec. 32, effective July 1, 1975.

367.220 Action for recovery of money or property – When action may be brought.

(1) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by KRS 367.170, may bring an action under the Rules of Civil Procedure in the Circuit Court in which the seller or lessor resides or has his principal place of business or is doing business, or in the Circuit Court in which the purchaser or lessee of goods or services resides, or where the transaction in question occurred, to recover actual damages. The court may, in its discretion, award actual damages and may provide such equitable relief as it deems necessary or proper. Nothing in this subsection shall be construed to limit a person's right to seek punitive damages where appropriate.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of the court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

(3) In any action brought by a person under this section, the court may award, to the prevailing party, in addition to the relief provided in this section, reasonable attorney's fees and costs.

(4) Any permanent injunction, judgment or order of the court made under KRS 367.190 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by KRS 367.170.

(5) Any person bringing an action under this section must bring such action within one (1) year after any action of the Attorney General has been terminated or within two (2) years after the violation of KRS 367.170, whichever is later.

History: Amended 1974 Ky. Acts ch. 308, sec. 62. – Created 1972 Ky. Acts ch. 4, sec. 12.

411.188 Notification of parties holding subrogation rights – Collateral source payments and subrogation rights admissible.

(1) This section shall apply to all actions for damages, whether in contract or tort, commenced after July 15, 1988.

(2) At the commencement of an action seeking to recover damages, it shall be the duty of the plaintiff or his attorney to notify, by certified mail, those parties believed by him to hold subrogation rights to any award received by the plaintiff as a result of the action. The notification shall state that a failure to assert subrogation rights by intervention, pursuant to Kentucky Civil Rule 24, will result in a loss of those rights with respect to any final award received by the plaintiff as a result of the action.

(3) Collateral source payments, except life insurance, the value of any premiums paid by or on behalf of the plaintiff for same, and known subrogation rights shall be an admissible fact in any civil trial.

(4) A certified list of the parties notified pursuant to subsection (2) of this section shall also be filed with the clerk of the court at the commencement of the action.

Effective: July 15, 1988

History: Created 1988 Ky. Acts ch. 224, sec. 4, effective July 15, 1988.

413.090 Action upon judgment, contract, or bond – Fifteen-year limitation – Action for child support arrearages – Time to commence action tolled until obligations cease as to last child on order.

Except as provided in KRS 396.205, 413.110, 413.220, 413.230 and 413.240, the following actions shall be commenced within fifteen (15) years after the cause of action first accrued:

(1) An action upon a judgment or decree of any court of this state or of the United States, or of any state or territory thereof, the period to be computed from the date of the last execution thereon;

(2) An action upon a recognizance, bond, or written contract, except that actions upon written contracts executed after July 15, 2014, shall be governed by KRS 413.160;

(3) An action upon the official bond of a sheriff, marshal, clerk, constable, or any other public officer, or any commissioner, receiver, curator, personal representative, guardian, conservator, or trustee appointed by a court or authority of law;

(4) An action upon an appeal bond or bond given on a supersedeas, attachment,

injunction, order of arrest or for the delivery of property or for the forthcoming of property, or to obey or perform an order or judgment of court in an action, or upon a bond for costs, or any other bond taken by a court or judge or by an officer pursuant to the directions of a court or judge, in an action or after judgment or decree, or upon a replevin, sale, or delivery bond taken under execution or decree, upon an indemnifying bond taken under a statute, or upon a bond to suspend a proceeding, or upon a bond or obligation for the payment of money or property or for the performance of any undertaking; and

(5) An action to recover unpaid child support arrearages, which may be initiated as one (1) cumulative action for all child support arrearages owed under a court order, with the time to commence an action under this subsection being tolled until all current child support obligations cease as to the last child covered by that order.

Effective: July 15, 2014

History: Amended 2014 Ky. Acts ch. 142, sec. 2, effective July 15, 2014. – Amended 2008 Ky. Acts ch. 21, sec. 4, effective July 15, 2008. – Amended 1988 Ky. Acts ch. 90, sec. 30, effective July 15, 1988. – Amended 1982 Ky. Acts ch. 141, sec. 130, effective July 1, 1982. – Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 417, effective January 2, 1978. – Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 2514.

Legislative Research Commission Note (2/15/91). The prior reference to KRS 396.025 near the beginning of this statute was the result of an apparent inadvertent transposition of digits in codifying. See 1988 Ky. Acts Ch. 90, §§ 30 and 26. Pursuant to KRS 7.136, the text of this statute has been corrected to reflect the appropriate cross reference to KRS 396.205.

Note: 1980 Ky. Acts ch. 396, sec. 141 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.

413.120 Actions to be brought within five years.

The following actions shall be commenced within five (5) years after the cause of action accrued:

(1) An action upon a contract not in writing, express or implied.

(2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.

(3) An action for a penalty or forfeiture when no time is fixed by the statute prescribing it.

(4) An action for trespass on real or personal property.

(5) An action for the profits of or damages for withholding real or personal property.

(6) An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.

(7) An action upon a bill of exchange, check, draft or order, or any endorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange.

(8) An action to enforce the liability of a steamboat or other vessel.

(9) An action upon a merchant's account for goods sold and delivered, or any article charged in such store account.

(10) An action upon an account concerning the trade of merchandise, between merchant and merchant or their agents.

(11) An action for relief or damages on the ground of fraud or mistake.

(12) An action to enforce the liability of bail.

(13) An action for personal injuries suffered by any person against the builder of a home or other improvements. This cause of action shall be deemed to accrue at the time of original occupancy of the improvements which the builder caused to be erected.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 121, sec. 3, effective June 24, 2015. – Amended 1998 Ky. Acts ch. 196, sec. 25, effective July 15, 1998. – Amended 1988 Ky. Acts ch. 224, sec. 6, effective July 15, 1988. – Amended 1964 Ky. Acts ch. 124, sec. 1. – Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 2515, 2518.

II. TABLE OF CASES

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