



November 18, 2010

Re: RECENT KENTUCKY SUPREME COURT DECISION ON EXCESS INSURANCE CLAUSES

The Kentucky Supreme Court recently decided the case of [*Kentucky Farm Bur. Mut. Ins. Co. v. Shelter Mut. Ins. Co.*](#) This decision addressed “excess insurance clauses” in policies, which will have a significant repercussion in determining which policy is the “primary” policy in a motor vehicle accident.

This case stems from a two (2) car accident in which the at fault driver, a Kentucky Farm Bureau insured, was a permissive user. The motor vehicle was insured by Shelter. Shortly after the accident, Shelter paid damages to the injured party and requested reimbursement from Kentucky Farm Bureau.

Both policies contained what is known as an “excess insurance clause” purporting only to provide coverage in excess of the other’s coverage. The issue became which policy was the primary, which was excess and how the damages should be pro-rated.

The Supreme Court determined in cases where there is an insurer of a vehicle and an insurer of the non-owner permissive driver, the insurer of the vehicle will at all times be the primary insurer, regardless of the policy language. The Court goes on to state that this is in line with the spirit of the Motor Vehicle Reparations Act.

Obviously, this decision needs to be taken into consideration when determining whether or not your policy is a primary or secondary policy when there are competing excess insurance clauses. Should you have any further questions regarding this Decision or its implications, please do not hesitate to contact our firm.

Sincerely yours,

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