



January 20, 2011

Re: RECENT KENTUCKY SUPREME COURT DECISION ON BASIC REPARATIONS BENEFITS

The Kentucky Supreme Court recently decided the case of [*Progressive Max Insurance Company v. National Car Rental Systems, Inc., 2009-SC-000577-DG*](#). This decision addressed whether the vehicle owner's insurance should take priority over the driver's insurance when basic reparation benefits are owed to an injured third party as a result of a motor vehicle accident.

In this case, a Progressive insured rented a motor vehicle from National, however, he declined to purchase any extended insurance coverage for the use of the vehicle. He was subsequently involved in a motor vehicle accident in which his passenger was injured. National paid BRB's to the injured passenger and then requested reimbursement from Progressive. The issue then became what policy was the primary for purposes of BRB payments to an injured third party.

The Supreme Court, relying on their decision in *Kentucky Farm Bureau v. Shelter* and the policies established in the MVRA, held that the priority lies with the vehicle owner.

This decision also addresses the remedies of an insurance carrier seeking reimbursement for payment of BRB's. Ultimately, the court held that a reparations obligor having paid BRB's must seek subrogation under KRS 304.39-070. Because National did not employ this statute as a vehicle for recovery, and instead attempted to use KRS 304.39-050, their action for subrogation was dismissed.

Obviously, this decision needs to be taken into consideration when determining whether or not your policy is a primary or secondary policy in regards to the basic reparation benefits paid to injured third parties. Further, please note KRS 304-39.070 is the only legal avenue for subrogation recovery regarding payments of BRB's as KRS 304.39-050 applies to secondary insurers. 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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