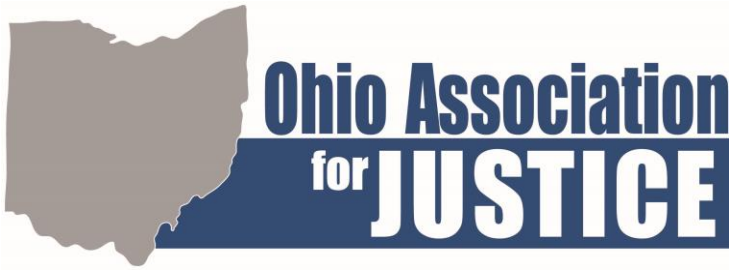

2014 Navigating Through Statutes, Insurance Policies, and Regulations

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Maximizing Recovery in Ohio and Kentucky

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1. Coverage Issues
    a. Minimum Liability Limits
        i. Ohio
            1. $25,000/$50,000/$25,000, for a combined single limit of $100,000, which is $25,000 per person in bodily injury coverage, subject to an aggregate of $50,000 bodily injury coverage for all persons injured in one accident, and $25,000 available to cover property damage. O.R.C. § 4509.51
        ii. Kentucky
            1. $25,000/$50,000/$10,000, for a combined single limit of $85,000, which is $25,000 per person in bodily injury coverage, subject to an aggregate of $50,000 bodily injury coverage for all persons injured in one accident, and $10,000 available to cover property damage. K.R.S. § 304.39-110
    b. Uninsured Motorist (UM) Coverage/Underinsured Motorist (UIM) Coverage
        i. Uninsured Motorist Coverage: Uninsured Motorist insurance (UM) pays for the insured's injuries and losses negligently caused by a driver who has no liability insurance. *Black's Law Dictionary* 1242 (7th ed. 2000). UM insurance also protects you and your passengers if struck by a hit-and-run driver.
        ii. Underinsured Motorist Coverage: Underinsured Motorist insurance (UIM) pays for losses caused by a driver who negligently damages the insured but does not have enough liability insurance to cover the damages. *Black's Law Dictionary* 1238 (7th ed. 2000). UIM coverage pays for injuries, such as medical expenses, lost wages and pain and suffering.
        iii. Ohio
            1. O.R.C. § 3937.18 – Uninsured and underinsured motorist coverage
            2. Effective October 31, 2001, an insurer no longer has a duty to offer UM/UIM coverage to its insured with the sale of a policy. As a result, there is no longer any requirement that a rejection or reduction in coverage be in writing. O.R.C. § 3937.18(A)
            3. An insured has a three-year statute of limitations to assert a UM/UIM claim, assuming they did not destroy the insurer's right of subrogation. O.R.C. § 3937.18(H)

4. A vehicle available for the regular use of the insured, a family member, or a fellow household member can be deemed an uninsured vehicle. O.R.C. § 3937.18(I)(1)

i. Kentucky

1. Uninsured Vehicle Coverage: K.R.S. § 304.20-020
2. Underinsured Motorist Coverage: K.R.S. § 304.39-320
3. No automobile insurance policy shall be issued unless it provides coverage for injuries caused by the owners or operators of uninsured motor vehicles. An insured shall have the right to reject such coverage in writing. The term "uninsured motor vehicle" shall 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 due to insolvency. K.R.S. §§ 304.39.040, 304.20-020(2)
4. UM/UIM coverage is required to be offered by insurers but an insured may elect not to have either. K.R.S. § 304.20-020

c. Excess coverage

i. Ohio

1. UIM coverage provides protection for an insured where the total limits of coverage under all applicable liability bonds and insurance policies covering the tortfeasor are less than the insured's UIM coverage limit. Hence, UIM coverage is not excess coverage and provides the insured with an amount of protection no greater than that which would be available under the insured's UM coverage if the tortfeasor was uninsured at the time of the accident. O.R.C. § 3937.18(C).

ii. Kentucky

1. A tortfeasor's liability insurance is the primary coverage and the underinsured motorist coverage insurance is the secondary or excess coverage. Therefore, UIM coverage is payable only to the extent that judgment exceeds the tortfeasor's liability coverage. *Kentucky Farm Bureau Mut. Ins. Co. v. Rogers*, 179 S.W.3d 815, 818 (Ky. 2005).

d. Set-off

i. Set-off: a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed by the creditor. *Black's Law Dictionary* 1104-5 (7th ed. 2000).

ii. Ohio

1. Pursuant to O.R.C. § 2307.28(A), a release reduces the claim against the other tortfeasors by the amount of the consideration paid in exchange for the release. A person is liable in tort when he or she acted tortiously and thereby caused harm; the determination may be a jury finding, a judicial adjudication, stipulations of the parties, or the release language itself.
2. An insured's policy limit for UIM coverage shall be reduced by those amounts available for payment under all applicable

liability bonds and insurance policies covering the tortfeasor. O.R.C. § 3937.18(C)

iii. Kentucky

1. Although the Kentucky no-fault statute provides that an injured party may not collect from more than one "reparation obligor," the statute does not include insurers who are not providing insurance under the no-fault statute. K.R.S. § 304.39-050(3). The statute defines "reparation obligor" as an insurer, self-insurer, or obligated government (see section 2(b) "Kentucky No-Fault" below) providing basic or added reparation benefits under the statute. K.R.S. § 304.39-020(13).
    a. Basic reparation obligors…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. K.R.S. § 304.39-040(2)
    b. Because the United States is neither an insurer, self-insurer, or obligated government under Kentucky's no fault scheme, it is not a reparation obligor. Instead, the United States is a "secured person" against whom subrogation is not available and insurance company's claim had to be dismissed. *Safeco Ins. Co. of Am. v. Brown*, 887 F. Supp. 974, 1995 U.S. Dist. LEXIS 8464 (W.D. Ky. 1995).
2. Accordingly, basic reparation benefits shall be paid without deduction or set-off. K.R.S. § 304.39-250. The only authorized deductions in basic reparation benefits are those arising from social security or workers' compensation. K.R.S. § 304.39-120

e. Stacking

i. Stacking is the process of obtaining benefits from a second policy on the same claim when recovery from the first policy alone would be inadequate. *Black's Law Dictionary* 1134-5 (7th ed. 2000).

ii. Ohio

1. An insurance policy that includes UM/UIM coverage may include terms and conditions that preclude stacking of coverages including:
    a. Interfamily Stacking: aggregation of the limits of policies by the same or two or more persons who are not members of the same household. O.R.C. § 3937.18(F)(1)
    b. Intrafamily Stacking: aggregation of limits of policies purchased by the same person or two or more family members of the same household. O.R.C. § 3937.18(F)(2)

iii. Kentucky

1. The source of much litigation in UM cases is whether multiple coverages may be "stacked" to increase available limits. The Supreme Court of Kentucky has held that underinsured motorist coverages may be stacked even where there is an anti-stacking provision on the face of the policy. *Allstate Ins. Co. v. Dicke,* 862 S.W.2d 327 (Ky. 1993).
2. As in the case with UM, UIM coverages may be stacked where the insured has multiple policies with multiple insurance companies, despite a clause in the policy that purports to exclude coverage while one is occupying a family-owned vehicle not insured under the policy. *Hamilton Mut. Ins. Co. v. U.S. Fidelity & Guar. Co.* 926 S.W.2d 466 (Ky. Ct. App. 1996).

f. Coots vs. Allstate

i. A plaintiff wishing to settle with an underinsured motorist must send a written notice of the proposed settlement by certified or registered mail to all applicable UIM carriers. The UIM carrier then has thirty (30) days to either consent or refuse to consent to the settlement.
ii. If the UIM carrier either consents or fails to respond, the injured party may then finalize the settlement, releasing both the underinsured motorist tortfeasor and his liability carrier, without prejudice to the UIM claim, even if the settlement was for less than the liability limits.
iii. The purpose of the option given to the UIM carrier is to allow it to avoid the release of the underinsured motorist and his liability carrier, if it so chooses. If the UIM insurer refuses to consent to the settlement, it thereby preserves its subrogation claim against the liability carrier and/or the underinsured motorist. To do so, however, it must self-pay the injured party the amount of the underlying settlement, reserving the subrogation matters until the UIM claim is finally resolved. It may then pursue both the underinsured motorist and his liability carrier. This comes into play when the UIM carrier believes the tortfeasor has substantial personal assets from which to collect, it can preserve its subrogation rights by substituting its own payment for the policy limits payment tendered by the liability carrier. *Coots v. Allstate Insurance Company*, 853 S.W.2d 895 (Ky. 1993).

2. Damages
   a. Caps on damages
      i. Ohio
         1. There are no limits on economic compensatory damages in Ohio; however, there is a cap on non-economic damages set forth in O.R.C. § 2315.18:
            a. $250,000 or three times the amount of economic damages, not to exceed $350,000 for each plaintiff or a maximum of $500,000 for each occurrence.
            b. Cap does not apply if the injury involves permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system or permanent

physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities.

c. Tort actions against the state in the court of claims, tort actions against political subdivisions and wrongful death actions are excluded from these limits.

2. The caps on punitive damages are limited to two times the amount of compensatory damages awarded to the plaintiff. O.R.C. § 2315.21(D)

a. If the defendant is a small employer or individual, damages are capped at the lesser of: 1) two times the amount of compensatory damages; or 2) ten percent of the employer's or individual's net worth when the tort was committed up to a max of $350,000. O.R.C. § 2315.21(D)

ii. Kentucky

1. Kentucky does not impose a statutory cap on damages

b. Kentucky No-fault

i. Enacted in 1975, Kentucky's Motor Vehicle Reparations Act (MVRA), K.R.S. § 304.39 (sometimes referred to as the No-Fault Law) has two components: personal injury protection (PIP) coverage and limitations on an individual's right to sue and be sued (tort rights).

ii. The MVRA requires that owners, registrants and operators of motor vehicles procure "no-fault" insurance coverage (basic reparation benefits) as well as legal liability coverage for claims arising out of ownership, operation or use of such motor vehicles. KRS § 304.39-110. Non-residents are entitled to benefits and are subject to the MVRA. KRS § 304.39-030.

1. Under 806 KAR 39:040, governmental units are not subject to the MVRA unless they take affirmative action and elect to become an "obligated government" by:

a. Providing security by acquiring a contract of insurance, or

b. By providing security merely by obligating itself to pay basic reparation benefits in accordance with K.R.S. § 304.39.

iii. The MVRA abolishes liability for economic losses, including lost wages and medical expenses, against the party who causes such injuries to the extent that the losses do not exceed amounts payable to the injured party as basic reparations benefits. KRS § 304.39-060(2)(a). Since the MVRA limits the amount payable as basic reparation benefits to $10,000, tort liability for economic damages is abolished to the extent that they do not exceed that amount. *Stone v. Montgomery*, 618 S.W.2d 595 (Ky. App. 1981).

iv. These rules apply regardless of whether basic reparation benefits are actually paid to the injured party, so long as they were entitled to such benefits. *Henson v. Fletcher*, 957 S.W.2d 281 (Ky. App. 1997).

However, if it elects to do so, the injured party's insurer or other reparation obligor may intervene as the real party of interest to recover from the responsible party or its insurer the sums paid as reparations benefits. *Carta v. Dale*, 718 S.W.2d 126 (Ky. 1986).

v. The MVRA does authorize tort suits for non-economic damages, such as pain and suffering and inconvenience, provided that the medical expenses incurred from the accident exceed $1,000.00 or the injuries result in permanent disfigurement, fracture to a bone, loss of a body member, permanent injury, or death. KRS § 304.39-060(2)(b). Additionally, the MVRA only applies to personal injury and, therefore, does not affect liability for resulting property damage. *McGrew v. Stone*, 998 S.W.2d 5 (Ky. 1999)

vi.

c. Diminished value and Loss of Use
    i. Kentucky
        1. The owner of a vehicle which was damaged by the negligence of another party is entitled to recover either the difference in the vehicle's market value before and after the accident or the cost to repair the car, whichever is appropriate. *American Premier Insurance Co. v. McBride*, 159 S.W.3d 342, 348 (Ky. App. 2004). For instance, if one has a $400.00 automobile and sustains damages that would cost $1,000.00 to repair, the vehicle is a total loss and an insurer, or tortfeasor, must pay only the total value.
        2. Loss of use of a motor vehicle is a distinct measure of recovery from property damage to a motor vehicle. A claim can be made to recover the reasonable value of the loss of use of the car during the time reasonably necessary to repair the damage. Loss of use of a motor vehicle, regardless of the type of use, shall be recognized as an element of damage in any property damage liability claim. Such a claim for loss of use of a motor vehicle shall be limited to reasonable and necessary expenses for the time necessary to repair or replace the motor vehicle. KRS § 304.39-115.
d. Pre/Post-Judgment Interest
    i. Ohio
        1. Pre-Judgment Interest
            a. In tort actions, prejudgment interest will be awarded under O.R.C § 1343.03(C)(1), after a post-judgment hearing, the trial court determines both:
                i. the party that lost failed to make a good-faith effort to settle; AND
                ii. that the party who won did make a good-faith effort to settle.
            b. Pursuant to O.R.C. § 1343.03 the statutory rate of recovery in O.R.C. § 5703.47 is linked to the annual federal rates rounded up to the nearest whole number plus 3%

c. O.R.C. § 1343.03(C)(1)(c)(i)-(ii): In all other actions, interest runs for the longer of the following:
    i. from the date when the winning party gave the first notice to the losing party to the date on which the judgment, order, or decree was retendered, but only if the winning party made a reasonable attempt to determine if the losing party had insurance coverage for liability for the tortious conduct and gave to the losing party's insurer, as nearly simultaneously as practicable, written notice in person or by certified mail that the cause of action had accrued; OR
    ii. from the date on which the winning party filed the pleading on which the judgment, decree, or order was based to the date on which the judgment, decree, or order was rendered.
d. O.R.C § 1343.03(C)(2): No interest may be awarded on future damages.

2. Post-Judgment Interest:
    a. O.R.C § 1343.03(A) & (B) Post-judgment interest and interest on a settlement runs from the date of the judgment or settlement until the judgment or settlement is satisfied. See, also, *Hartmann v. Duffy*, 95 Ohio St.3d 456 (2002).

ii. Kentucky
1. Pre-Judgment Interest
    a. The longstanding rule is that pre-judgment interest is awarded as a matter of right on a liquidated demand, and is a matter within the discretion of the trial court or jury on unliquidated demands. *Nucor Corp. v. General Electric Company*, 812 S.W.2d 136, 141 (Ky. 1991). Liquidated means made certain or fixed by agreement of the parties or by operation of law. Unliquidated damages are damages which have not been determined or calculated, not yet reduced to a certainty in respect to amount. Kentucky does not have a statute allowing pre-judgment interest in tort cases.
2. Post-Judgment Interest
    a. A judgment shall bear twelve percent (12%) interest, compounded annually from its date. KRS § 360.040.

3. Defenses
    a. Statute of Limitations
        i. Ohio
            1. Personal Injury: 2 years. O.R.C. § 2305.10;
            2. Personal Property Damage: 2 years. O.R.C. § 2305.10;

3. Wrongful Death: 2 years. O.R.C. § 2125.02;
4. Breach of Oral Contract: 6 years. O.R.C. § 2305.07
5. Breach of Written Contract: 8 years. O.R.C. § 2305.06
6. Legal Malpractice: 1 year. O.R.C. § 2305.11;

ii. Kentucky

1. Personal Injury (motor vehicle accident): 2 years after the injury, or the death, or the last basic reparations payment (PIP), whichever is later. K.R.S. § 304.39-230(6);
    a. The statute of limitations is two years from last PIP payment, even when first PIP payment is more than two years after the date of the accident. *Crenshaw v. Weinberg*, 805 S.W.2d 129 (Ky. 1991).
2. Personal Injury (non motor vehicle accident): 1 year after cause of action accrued. K.R.S. § 413.140; *Michaels v. Baxter Health Corp., et al.,* 289 F.3d 402, 406 (6th Cir. 2002);
3. Personal Property Damage: 2 years from the date the cause of action accrued. K.R.S. § 413.125;
4. Wrongful Death: 1 year. The estate of the deceased has 1 year from the date of death to appoint a personal representative. The personal representative then has 1 year from the date of his appointment to file suit. K.R.S. §§ 413.140; 413.180; *Connor v. George W. Whitesides Co.,* 834 S.W.2d 652 (Ky. 1992);
5. Breach of Oral Contract: 5 years. K.R.S. § 413.120;
6. Breach of Written Contract: 15 years. K.R.S. § 413.090;
7. Professional Malpractice: 1 year from the date that the injury is first discovered or in the exercise of reasonable care should have been discovered, but in any case not later than 5 years from the date on which the alleged negligent act or omission occurred. K.R.S. § 413.140 (physician, surgeon, dentist or hospital); K.R.S. § 413.245 (all others);

b. Seatbelt Defense

i. Ohio

1. Failure to use a seatbelt is not admissible to prove negligence or comparative negligence, but such failure may be used as evidence that it contributed to the harm and it may diminish recovery of compensatory damages that represent non-economic loss. O.R.C. §4513.263(F)(1).
2. Under O.R.C. §4513.263(F)(2), failure to wear a seatbelt is admissible if the claim for relief satisfies all of the following apply:
    a. It seeks to recover damages for injury or death to the occupant;
    b. The defendant in question is the manufacturer, designer, distributor, or seller of the passenger car;
    c. The claim for relief against the defendant in question is that the injury or death sustained by the occupant was enhanced or aggravated by some design defect in the passenger car or that the passenger car was not

crashworthy;

ii. Kentucky

1. Failure of any person to wear a seatbelt shall not constitute negligence per se. KRS § 189.125(5).
2. If there is relevant and competent evidence that the plaintiff was contributorily at fault by failing to wear an available seatbelt and that such fault was a substantial factor in contributing to or enhancing the plaintiff's injuries, then the issue of the plaintiff's fault is submitted to the jury for determination. *Geyer v. Mankin*, 984 S.W.2d 104 (Ky. Ct. App. 1998).

c. Comparative negligence

i. Ohio

1. Ohio recognizes a form of comparative negligence where a claimant's contributory fault only bars recovery if it exceeds the combined fault of all other persons, whether or not they have been sued. Otherwise, recovery is simply diminished in proportion to the claimant's fault. O.R.C. § 2315.33

ii. Kentucky

1. Kentucky is a pure comparative negligence state, so a claimant's negligence does not bar recovery. Any damage award must be reduced by the claimant's percentage of fault. Thus, a plaintiff who is 99% negligent can still collect 1% of their damages awarded by a jury or the court. KRS § 411.182

4. Evidentiary issues

a. Collateral source rule

i. Ohio

1. Under O.R.C. § 2315.20 – in any tort action the defendant may introduce evidence of any amounts payable to the plaintiff as a benefit, except if the source of the collateral benefit has:
    a. A mandatory self-effectuating federal right of subrogation, or
    b. A contractual right of subrogation; or
    c. A statutory right of subrogation; or
    d. The source pays the plaintiff a benefit that is in the form of a life insurance payment or disability payment. However, evidence of the life insurance or disability payment may be introduced if plaintiff's employer paid for the policy and the employer is a defendant
2. If the defendant introduces evidence of a collateral benefit, the plaintiff may introduce evidence of any amount plaintiff has paid to secure plaintiff's right to receive the collateral benefit. O.R.C. § 2315.20(B)
3. A provider or source of collateral benefits of which evidence is introduced shall not recover any amount against the plaintiff or be subrogated to the rights of the plaintiff against

the defendant. O.R.C. § 2315.20(C)

4. *Robinson vs. Bates*
    a. Holds that the Collateral Source Rule does not bar evidence at trial of the amount *accepted* by a medical provider from an insurer as full payment for medical or hospital treatment. *Robinson v. Bates*, 112 Ohio St.3d 17 (2006).
    b. Evidence of write-offs by the billing entity are admissible. *Jaques v. Manton,* 125 Ohio St.3d 342 (2010).

ii. Kentucky
1. The Collateral Source Rule provides that benefits received by an injured party for his injuries from a source wholly independent of, and collateral to, the tortfeasor will not be deducted from or diminish the damages otherwise recoverable from the tortfeasor. *Schwartz v. Hasty*, 175 S.W.3d 621, 626 (Ky. Ct. App. 2005).

5. Bad Faith
    a. Kentucky
        i. Kentucky recognizes both the common law bad faith claim and a statutory bad faith claim under the Unfair Claims Settlement Practices Act (UCSPA).
        ii. Kentucky has both a statute (KRS § 304.12-230) and an administrative regulation (806 KAR 12:095) dealing with unfair claims settlement practices.
        iii. KRS § 304.12-230, provides, in part, that it is an unfair claims settlement practice for any person to commit or perform any of the following acts or omissions:
            1. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
            2. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
            3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
            4. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
            5. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
            6. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
            7. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

8. Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
9. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;
10. Making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made;
11. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
12. Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
13. Failing to promptly settle claims, where liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;
14. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

iv. Insurers and agents shall not misrepresent or conceal from first party claimants any pertinent benefits, coverage, or other provisions of any insurance policy. 806 KAR 12:095, Section 4(1).
v. Every insurer, upon receiving notification of a claim, shall within 15 days acknowledge the receipt of the notice unless payment is made within that period of time. 806 KAR 12:095, Section 5(1).
vi. An insurer shall affirm or deny any liability on claims within a reasonable time and shall offer any payment due within 30 calendar days of receipt of due proof of loss. 806 KAR 12:095, Section 6(1)(a).
vii. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within 30 calendar days after receipt of the proof of loss, giving the reasons more time is needed. 806 KAR 12:095, Section 6(2)(a). If the investigation remains incomplete, the insurer shall, 45 calendar days from the date of the initial notification and every 45 calendar days thereafter, send to the first party claimant a letter stating the reasons additional time is needed for investigation. 806 KAR 12:095, Section 6(2)(b).
viii. Insurers shall not continue negotiations for settlement of a claim directly with a first party claimant who is not legally represented if the first party claimant's rights may be affected by a statute of limitations

or a time limit in a policy, certificate, or contract, unless the insurer has given the first party claimant written notice at least 30 calendar days before the date on which the time limit expires. 806 KAR 12:095, Section 6(4).

ix. Bifurcation of Bad Faith Claims in Kentucky

1. Claims for violation of the Unfair Claims Settlement Practices Act against an insurance company should be bifurcated from the negligence claims which are the basis of the underlying litigation. It is reversible error for the court to not bifurcate any bad faith or Unfair Claims Settlement Practices Act claims from the negligence claims in an underlying case. *Wittmer v. Jones*, 864 S.W.2d 885 (Ky. 1993).

b. Ohio

i. The concept of a first party bad faith claim in Ohio was created in *Said v. Motorists Mut. Ins. Co.*, 63 Ohio St.3d 690 (1992), (overruled by *Zoppo* below). The Court held that there must be either no "reasonable basis in law or fact for refusing to satisfy a claim", coupled with actual knowledge of that fact or "an intentional failure to determine whether there was any lawful basis for such refusal" to support such a claim.

ii. In *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552 (1994), the Ohio Supreme Court overruled the specific intent requirement of *Said* and clarified the standard to be applied. The *Zoppo* court held that "[a]n insurer fails to exercise good faith in the processing of a claim of its insured where its refusal to pay the claim is not predicated upon circumstances that furnish reasonable justification therefore."

iii. Liability for bad faith must be strictly tied to the implied-in-law covenant of good faith and fair dealing arising out of an underlying contractual relationship. Based on the relationship between an insurer and its insured, an insurer has the duty to act in good faith in the handling and payment of the claims of its insured, and a breach of this duty will give rise to a cause of action against the insurer. This cause of action lies in tort irrespective of any liability arising from a breach of the underlying contract. However, the insurer's duty of good faith and fair dealing derives from and exists solely because of its contractual relationship with its insured. *Eastham v. Nationwide Mut. Ins. Co.,* 66 Ohio App. 3d 843, 845, (Ohio Ct. App., Hamilton County 1990).

i. Ohio's Unfair Property/Casualty Claims Settlement Practices

1. An insurer shall fully disclose to first party claimants all pertinent benefits, coverages, or other provisions of an insurance contract under which a claim is presented. OAC 3901-1-54(E)(1).
2. An insurer shall acknowledge the receipt of a claim within 15 days of receiving notice. OAC 3901-1-54(F)(2).
3. An insurer shall respond within 15 days to any

communication from the claimant when that communication suggested that a response is appropriate. OAC 3901-1-54 (F)(3).

4. An insurer shall decide whether to accept or deny a claim within 21 days of the receipt of a properly executed proof of loss. If more time is needed to investigate the claim, the insurer shall notify the claimant, within the 21 day period, and provide an explanation of the need for more time. If an extension of time is needed, the insurer has a continuing obligation to notify the claimant, in writing, at least every 45 days of the status of the investigation and the continued time for the investigation. OAC 3901-1-54(G)(1).
5. If the insurer reasonably believes that the claimant has fraudulently caused or contributed to the loss, as represented by a properly and documented proof of loss, such information shall be presented to the fraud division of the Ohio Department of Insurance within 60 days of receipt of the proof of loss. OAC 3901-1-54(G)(1).
6. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial letter. OAC 3901-1-54(G)(2).
7. Notice shall be given to claimant at least 60 days before the expiration of any statute of limitation or contractual time limit, where the insurer has not been advised that the claimant is represented by legal counsel. OAC 3901-1-54(G)(5).
8. Although case law holds that this code does not provide a private cause of action to an insured, some courts have utilized it to determine whether a breach has occurred. *Furr v. State Farm Mut. Auto. Ins. Co.*, 128 Ohio App. 3d 607.