COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY

ADVISORY OPINION
2020-01

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance (the "Department") on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: All Admitted Insurers and Licensed Adjusters Authorized to Adjudicate Property Claims in Kentucky.

FROM: Sharon P. Clark, Commissioner
Kentucky Department of Insurance

RE: Depreciation of Labor Expense in the Adjustment of Property Claims

DATE: February 7, 2020

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This Advisory Opinion is offered to clarify the Department's interpretation of 806 KAR 12:095 Section 9(1), and it's applicability to the depreciation of labor expenses in the adjustment of property loss claims in light of the recent holding presented in Hicks v. State Farm Fire & Casualty Co., 751 Fed. Appx. 703 (6th Cir. 2018). 806 KAR 12:095 Section 9 (1) states in part:

> *"...Standards for Prompt, Fair, and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage. (1) If the policy, contract, or certificate authorizes the adjustment and settlement of first party losses based on replacement cost, the following shall apply:*
> *(a) If a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making the repair or replacement not otherwise excluded by the policy shall be included in the loss...."*

The Department's interpretation of 806 KAR 12:095 Section 9(1) allows an insurer to draft loss payable provisions within an insurance policy to satisfy the indemnification obligation between contracting parties. If the policy defines in a clear and unambiguous manner the practice of withholding labor depreciation in the adjudication of a property claim payment, then the Kentucky Insurance Code does not prohibit it.

This position shall not apply to motor vehicle claims specified in 806 KAR 12:095 Section 7 et seq.

If you have questions about this Advisory Opinion, please contact Russ Hamblen at (502) 564-1936.

Signature on file

Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 7th day of February, 2020.