

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.

Kentucky Department of Insurance

Advisory Opinion 2002-06

In re: Application of Basic Reparation Benefit Deductibles

RELEVANT FACTS AND STATUTES: This advisory opinion is being issued to inform carriers of how the basic reparation benefits ("BRB") deductible provided for by KRS 304.39-140 is to be applied when paying claims.

It has come to our attention that some carriers might be relying on a May 5, 1998, letter from one of the Department's staff attorneys in response to a specific question to misapply BRB deductibles (see attached). This letter contemplated a BRB claim of \$10,000 or less, and under those circumstances the opinion contained in the letter is accurate. However, some carriers are using the letter as authority to subtract the amount of the deductible from the *limits*, rather than from the *claim*. We support the idea that if an insured has purchased a policy with a BRB deductible of \$500.00, and he has a total claim of \$9,000, then the insurer must only pay the claim less the deductible, or \$8,500.00. However we have received complaints where insurers have had claims where the insured has a deductible of \$1,000.00 and has suffered \$11,000 or more in eligible BRB losses and the insurer steadfastly refuses to pay more than \$9,000, claiming that the deductible comes from the limits and that our May 5, 1998 letter supports this interpretation. We find that it does not support such an interpretation, and could not given the statutory environment in which the BRB deductible is found.

KRS 304.39-140(4) establishes that 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)...."

KRS 304.39-040 (2) states that "basic reparation obligors and the assigned claims plan shall pay basic reparations benefits, under the terms and conditions stated in this subtitle, for loss from injury arising out of maintenance or use of a motor vehicle.

KRS 304.39-110(1)(c) specifies that minimum mandatory tort liability coverage must include basic reparation benefits "as defined in KRS 304.39-020(2)" which states that the maximum amount of BRB payable shall be \$10,000. KRS 304.39-030 (1) makes clear that 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..."

Finally, KRS 304.39-100(1) stresses the fact that an "insurance contract which purports to provide coverage for basic reparation benefits, or is sold with representation that it provides security covering a motor vehicle has the legal effect of including all coverages required by this subtitle.

Read together it is clear that the minimum limits of basic reparation benefits that must be provided are \$10,000; and that even if the insurance contract attempts to provide something less, it must be construed as "including all coverages required by this subtitle."

These statutes coupled with the unbroken line of Kentucky cases in which the courts have refused to "dilute the minimum limits", makes it clear that the policy limits for basic reparation benefits must be \$10,000, and that a deductible cannot lower the policy limits.

THE DEPARTMENT'S POSITION: The Department stands behind the May 5, 1998 letter, but stresses that this letter cannot be relied upon as an opinion that the deductible may be subtracted from the mandated BRB policy limits of \$10,000. It is the Department's position that the deductible should be applied to the amount of the claim, rather than the limits of coverage.

The Motor Vehicle Reparations Act provisions are set forth in KRS 304.39, et. seq. (See doi.ppr.ky.gov for full text of these statutes).

Questions regarding this Advisory Opinion may be directed to Vicky Horn, counsel for the Department, at (502) 564-6032.

Janie A. Miller, Commissioner

Kentucky Department of Insurance

Date