1987


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Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol75/iss4/6

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**INTRODUCTION**

An insurance policy is a contract whereby an insurer promises to compensate the insured on the occurrence of a particular event. The insurer retains the right to insert in the policy any reasonable provision exempting it from certain liability. The insured’s compliance with the terms of the insurance contract is a condition precedent to the right of recovery. Of course, utmost good faith is required in the relationship between the insurer and the insured.

An insurer who unreasonably delays settling a pending claim may be liable for damages. Traditionally, an insured plaintiff’s recovery for an insurer’s wrongdoing has been limited to damages obtainable in an action for breach of contract—the amount of payments due under the policy plus legal interest.

Until 1983, Kentucky courts uniformly followed this traditional view by holding that damages for breach of a first party insurance policy were limited to the amount due under the policy.
contract. In *Feathers v. State Farm Fire & Casualty Co.*, however, the Kentucky Court of Appeals recognized, for the first time, the tort of first party bad faith. After *Feathers*, an insurer wrongfully withholding payment of policy proceeds from the insured could be liable to the insured for punitive damages under a tort theory regardless of contractual damages. This decision placed Kentucky in the mainstream of states addressing this issue.

The Kentucky Supreme Court recently addressed the issue of first party bad faith in *Federal Kemper Insurance Co. v. Hornback*. In a surprising decision, the Kentucky Supreme Court overruled *Feathers*, thrusting Kentucky into a minority position among those states that have considered the tort of first party bad faith.

This Comment first discusses the development of the tort of first party bad faith in Kentucky and examines its current status.
after *Federal Kemper.* Second, it suggests alternative remedies for the unjustified denial of an insured's claim by an insurance company including sanctions imposed by the Kentucky Motor Vehicle Reparations Act 15 and the Unfair Claims Settlement Practice section of the Kentucky Insurance Code. 16 Finally, this Comment discusses the possible private right of action derived from the Kentucky Unfair Claims Settlement Practices statute.

I. THE TORT OF FIRST PARTY BAD FAITH

Under the traditional rule of contractual recovery, damages for an insurer's breach of the insurance contract cannot exceed the policy limits plus legal interest. 17 Proponents of the traditional rule assert that awards are not excessive 18 when recovery is limited to the amount under contract and insurers are more likely to defend questionable claims. 19 In theory, the resulting savings are passed on to the consumers through lower premiums. 20

The disadvantages of the traditional rule, however, outweigh any limited economic benefits. 21 The insured is purchasing security and peace of mind with the reasonable belief that he or she will be compensated for losses covered under an insurance agreement. 22 Under the traditional rule, however, insurance companies economically are encouraged to deny or delay payment of valid claims. 23 Because damages for the insurer's breach cannot exceed the policy limits plus legal interest, 24 insurers can

17 Insurance Co. v. Piaggio, 83 U.S. 378, 386 (1872); General Accident Fire & Life Assurance Corp. v. Judd, 400 S.W.2d 685, 687 (Ky. 1966); Clark v. Life & Casualty Ins. Co., 53 S.W.2d 968, 969 (Ky. 1932).
19 Id.
21 See infra notes 22-26 and accompanying text.
24 See *supra* note 17 and accompanying text.
maximize their profits by reinvesting wrongfully withheld funds.\textsuperscript{25} The unsophisticated insured is likely to settle with the insurer for an amount well below what he is entitled. If the insured brings suit on the insurance contract and prevails, the insurer's only added costs are legal interest and attorneys' fees.\textsuperscript{26}

In response to this severe inequity favoring liability insurers, a majority of states now recognize a "bad faith" tort action in first party insurance contract cases.\textsuperscript{27} The theory underpinning the tort of bad faith is that insurance companies have an implied duty of good faith and fair dealing.\textsuperscript{28} Although the duty grows out of the insurance contract, "[i]t is independent of the contract and attaches over and above the terms of the contract."\textsuperscript{29} The tort of first party bad faith imposes liability on an insurer who breaches this implied covenant of good faith and fair dealing.\textsuperscript{30}

\section*{II. Development of First Party Bad Faith in Kentucky}

Kentucky courts have followed the national trend\textsuperscript{31} by recognizing the duty of good faith with respect to third party liability

\begin{footnotesize}
\begin{enumerate}
\item[25] Note, \textit{supra} note 22, at 580.
\item[26] Harvey and Wiseman, \textit{supra} note 18, at 168.
\item[29] \textit{Id.} at 1040 (emphasis in original).
\item[30] \textit{Id.} at 1037. The \textit{Gruenberg} court held that in every insurance contract there is an implied covenant of good faith and fair dealing. The duty to so act is imminent in the contract whether the company is attending to the claims of third persons against the insured or the claims of the insured itself. Accordingly, when the insurer unreasonably and in bad faith withholds payment of the claim of its insured, it is subject to liability in tort. \textit{Id.} at 1038.
\item[31] \textit{See supra} note 27.
\end{enumerate}
\end{footnotesize}
claims ("third party bad faith").

Until 1983, however, Kentucky courts refused to recognize the same fiduciary relationship with regard to first party claims in which the insured himself or herself is seeking policy benefits. Kentucky courts uniformly had held to the traditional rule that damages for breach of a first party insurance policy were limited to the amount due under the contract. Punitive damages could not be imposed on the insurer.

In 1983, the Kentucky Court of Appeals, in *Feathers v. State Farm Fire & Casualty Co.*, recognized for the first time the tort of first party bad faith. In *Feathers* the court held that, when an insurer wrongfully withholds payment of proceeds under an insurance policy, the insured may recover punitive damages for the *tortious* conduct of the insurer in breaching the implied covenant of good faith. This decision moved Kentucky into the mainstream of states recognizing the tort of first party bad faith. In two first party bad faith cases following *Feathers,*

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32 The Kentucky Supreme Court *has* recognized a fiduciary relationship attaching to insurance policies in excess-of-the-policy-limits cases (those cases where "the insurer's failure to settle expose[s] the insured to an unreasonable risk of having a judgment rendered against him in excess of the policy limits.") *Manchester Ins. & Indem. Co. v. Grundy,* 531 S.W.2d 493, 501 (Ky. 1975), *cert. denied,* 429 U.S. 821 (1975). *Id.* Good faith is required of the insurance company in settling third-party claims against the insured within the limits of policy coverage. *Id.* An insurer's breach of *this* duty of good faith with regard to third party insurance is known as "third-party bad faith." See Harvey and Wiseman, *supra* note 18, at 145 n.25 (A third-party insurance policy is one that protects the insured from liability claims by third persons.). Note, *supra* note 22, at 579 n.1.

33 See *infra* notes 34-35.


35 "[T]he measure of recovery for failure to pay money due under the contract is the amount agreed to be paid. Therefore, no recovery for punitive damages, as sought by the appellants, can be had, nor consequential damages such as attorney fees, witness fees, etc.") 548 S.W.2d at 164. See also 400 S.W.2d at 687-88; Clark v. Life & Casualty Co., 53 S.W.2d 968, 969-70 (Ky. 1932); Combs v. Southern Bell Tel. & Tel. Co., 38 S.W.2d 3, 5 (Ky. 1931); Cumberland Tel. and Tel. Co. v. Cartwright Creek Tel. Co., 108 S.W. 875, 878 (Ky. 1908).

36 667 S.W.2d 693 (Ky. Ct. App. 1983).

37 See *id.* at 696-97.

38 *Id.*

39 687 S.W.2d at 559. See *supra* notes 9, 27.
the Kentucky Court of Appeals further refined the doctrine by requiring proof that the insurer acted intentionally, willfully, or in reckless disregard of the insured’s rights before punitive damages could be awarded.\textsuperscript{40}

### III. \textit{Federal Kemper Insurance Co. v. Hornback}

The Kentucky Supreme Court recently addressed the issue of first party bad faith in \textit{Federal Kemper Insurance Co. v. Hornback}.\textsuperscript{41} In the first examination of the new tort since its recognition by the Kentucky Court of Appeals in \textit{Feathers},\textsuperscript{42} the Kentucky Supreme Court surprisingly overruled \textit{Feathers}.\textsuperscript{43}

The facts in \textit{Federal Kemper} are very similar to those in \textit{Feathers}. Both cases involved an insurer’s refusal to settle with its policyholder a fire loss claim, on the grounds of suspected arson.\textsuperscript{44} In \textit{Federal Kemper}, the Hornbacks’ house burned 35 days after they increased the amount of fire insurance coverage with the insurer.\textsuperscript{45} Although the evidence clearly indicated arson, there was little evidence suggesting that the Hornbacks had set the fire.\textsuperscript{46} After a jury trial, a verdict was returned in favor of the Hornbacks on the terms of the policy and for punitive

\begin{footnotesize}
\textsuperscript{40} 687 S.W.2d at 559 ("[w]e believe that an action for bad faith . . . requires something more than mere negligence. . . . Mere errors in judgment should not be sufficient to establish bad faith."); Grimes v. Nationwide Mut. Ins. Co., 705 S.W.2d 926, 932 (Ky. Ct. App. 1985).
\textsuperscript{41} 711 S.W.2d 844 (Ky. 1986).
\textsuperscript{43} 711 S.W.2d at 845.
\textsuperscript{44} The facts of \textit{Feathers} follow: On May 31, 1981, the Feathers’ home and personal belongings were destroyed by fire. The Feathers timely filed a proof of loss with their insurer, State Farm Fire & Casualty Co. This proof of loss was rejected by State Farm on the grounds that it contained misrepresentations. 667 S.W.2d at 694.

On May 28, 1982 the Feathers filed suit against State Farm to recover for their losses. The Feathers alleged, among other things, that State Farm owed “a duty to act in good faith in effecting a fair and reasonable settlement . . . without harassment or unreasonable delay” and that State Farm failed to meet this duty. Id. State Farm, in its answer, admitted its duty to act in good faith, but alleged the fire gave rise to a reasonable belief that the house had been burned intentionally by the Feathers, thereby constituting fraud and voiding the insurance policy. Id.
\textsuperscript{45} 711 S.W.2d at 844.
\textsuperscript{46} Id. at 844. The dissent in \textit{Federal Kemper} asserts that there was no evidence that the Hornbacks set the fire. Id. at 847.
\end{footnotesize}
damages. Federal Kemper appealed the judgment for punitive damages. The Kentucky Court of Appeals affirmed and upon discretionary review the Kentucky Supreme Court reversed.

In establishing the new tort of first party bad faith, the court of appeals in Feathers noted that cases cited by the insurer in support of the principle that one may not recover punitive damages for breach of contract were flawed because they contained modifiers such as "damages ordinarily are not recoverable," "usually not allowed," and "not recognized for mere breach." The court of appeals interpreted these modifiers to indicate that exceptions to this principle exist.

In Federal Kemper, however, the Kentucky Supreme Court quickly dismissed the Feathers analysis. The court found that "[Cumberland Telephone and Telegraph Co. v. Cartwright Creek Telephone Co.] stated unequivocally that punitive damages are not recoverable for a mere breach of contract." Furthermore, the court stated that "[General Accident Fire & Life Assurance Corp. v. Judd] gratuitously added ordinarily when it relied upon and cited Cumberland."

The court found that Judd did not diminish the rule that punitive damages are not available in contract cases.

On close reading of these cases, Federal Kemper's summary dismissal of the court of appeals' analysis in Feathers is unpersuasive. Cases, although standing for the proposition that punitive damages are not recoverable for breach of contract, do suggest that such damages might be recoverable under some circumstances. For example, in Cumberland, the court stated,

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47 Id. at 844.
48 Id.
49 667 S.W.2d at 695 (emphasis added).
50 Id.
51 108 S.W. 875 (Ky. 1908).
52 711 S.W.2d at 845.
53 400 S.W.2d 685 (Ky. 1966).
54 711 S.W.2d at 845 (emphasis in original).
55 Id.
"[e]xemplary damages have been almost universally denied in actions ex contractu," and gave an example of when exemplary damages would be allowed for breach of contract.

Regardless of whether or not the court of appeals in *Feathers* was justified in its reading of prior cases to find a basis for a tort action, the Kentucky Supreme Court in *Federal Kemper* went on to hold that "[t]he only fiduciary relationship we recognize attaching to insurance policies is the excess-of-the-policy-limits cases where good faith is required on the part of the insurance company." *Federal Kemper* flatly asserted that "[t]his principle of law is contract and not tort and has no application to insurance contracts generally. Above all, there is no suggestion that punitive damages would follow breach." The court then perfunctorily stated that "[s]anctions for a frivolous defense, as provided for by our rules, are deemed sufficient to deter insurance companies from refusing to pay according to the terms of the contract without cause."

In overruling *Feathers*, *Federal Kemper* leaves no doubt that Kentucky courts no longer will recognize the tort of first party bad faith. Punitive damages will not follow breach of contract, even when the insurer acts in bad faith. Regrettably, however, *Federal Kemper* failed to explain "why" the Kentucky Supreme Court chose not to join the decided majority of states that have

(Ky. Ct. App. 1978) ("Kentucky has long followed the general rule that punitive damages ordinarily are not recoverable for breach of contract. . . . Nevertheless, this rule permits a plaintiff to recover punitive damages if the breach of contract also involved tortious conduct."); Wahba v. Don Corlette Motors, Inc., 573 S.W.2d 357, 360 (Ky. Ct. App. 1978) ("Punitive damages are ordinarily not recoverable in a breach of contract action.") (emphasis added).

57 108 S.W. at 878 (emphasis added) (quoting 13 Cyclopedia of Law & Procedure 113 (1904); 2 J. Sutherland, A Treatise on the Law of Damages § 390 (3d ed. 1903)).

58 At the time *Cumberland* was decided, there existed "an exception to this general rule in the case of a breach of contract to marry, in which exemplary damages may be allowed." *Id.* at 878 (quoting 13 Cyclopedia of Law & Procedure 113).

59 711 S.W.2d at 845.

60 *Id.*

61 *Id.*

62 *Id.*

63 *Id.*
considered the issue and recognized the tort.\textsuperscript{64} Why is the duty to act in good faith and fairly in handling a fire loss claim of an insured held inferior to the duty to accept reasonable settlements from a third party?\textsuperscript{65} And why is the court in \textit{Federal Kemper} unwilling to recognize an independent duty of good faith attaching "over and above the terms of the contract?"\textsuperscript{66} The only apparent reason is a \textit{stare decisis} rationale. \textit{Cumberland} and \textit{Judd} represent over three-quarters of a century of precedent that the Kentucky Supreme Court is unwilling to abandon in favor of the modern concepts recognized in \textit{Feathers}.\textsuperscript{67} If the strong national trend toward recognition of the tort of first party bad faith persists,\textsuperscript{68} these questions will become even more compelling. First party bad faith in Kentucky may be only dormant rather than dead.

\textsuperscript{64} At oral argument in \textit{Federal Kemper}, counsel for the insurer admitted that in cases of recent vintage "without exception" every jurisdiction called upon to decide this question has recognized the principle that, given proper circumstances, an insured may pursue a tort claim against his own insurer for bad faith failure to pay first party benefits due and owing under the policy.

\textit{Id.} at 846 (Leibson, J., dissenting). \textit{But see supra} note 14.

\textsuperscript{65} The California Supreme Court in \textit{Gruenberg} held that "[t]hese are merely two different aspects of the same duty." \textit{Gruenberg v. Aetna Ins. Co.}, 510 P.2d 1032, 1037 (Cal. 1973). \textit{See supra} note 32 and accompanying text.

\textsuperscript{66} The California Supreme Court held in \textit{Gruenberg} that "[t]his duty of good faith and fair dealing is \textit{independent} of the contract and attaches over and above the terms of the contract. . . . A tort may grow out of or make a part of, or be coincident with a contract." 510 P.2d at 1040 (emphasis in original) (quoting \textit{Jones v. Kelly}, 280 P. 942, 943 (1929)).

\textsuperscript{67} 400 S.W.2d 685; Clark v. Life & Casualty Ins. Co., 53 S.W.2d 968 (Ky. 1932); 108 S.W. 875; Deaton v. Allstate Ins. Co., 548 S.W.2d 162 (Ky. Ct. App. 1977).

\textsuperscript{68} \textit{See supra} note 27. The California Supreme Court has even expanded the bad faith concept to noninsurance contracts.

In holding that a tort action is available for breach of the covenant of good faith and fair dealing in an insurance contract, we have emphasized the "special relationship" between insurer and insured, characterized by elements of public interest, adhesion, and fiduciary responsibility. . . . No doubt there are other relationships with similar characteristics and deserving of similar legal treatment.


The Court in \textit{Seamen's Direct} did not decide whether breach of the covenant of good faith and fair dealing in a noninsurance, commercial contract gave rise to a tort action. The court did hold, however, that a party who breaches a contract and then in bad faith denies its existence may incur tort remedies. \textit{Id.} at 1167.
IV. POSSIBLE ALTERNATIVE REMEDIES AFTER *Federal Kemper*

After *Federal Kemper*, the common law remedy for breach of a first party insurance policy is limited once again to the amount due under the contract. An insured may have limited statutory redress, however, in that sanctions may be imposed on insurers under the Kentucky Motor Vehicle Reparations Act and the Unfair Claims Settlement Practices section of Kentucky's Insurance Code. In addition, an insured might argue that a private right of action should be implied from the Unfair Claims Settlement Practices statute.

A. *Kentucky's Motor Vehicle Reparations Act*

Statutes of some states provide for recovery of special damages and reasonable attorneys' fees when an insurance company acts in bad faith or without reasonable grounds in refusing or unreasonably delaying payment of the amount due under the policy. The Kentucky Motor Vehicle Reparations Act provides for such relief. The Act provides that a reparations obligor may be liable for the payment of 18% interest and attorneys'...
fees\textsuperscript{77} if its delay in the payment of "overdue" benefits was "without reasonable foundation."\textsuperscript{78} Whether a payment is "overdue" is determined under the guidelines of the Act.\textsuperscript{79}

The Act is a significant step in the right direction to discourage the wrongful withholding of funds by insurers.\textsuperscript{80} The Act's interest and attorneys' fees provisions encourage prompt payment by making it uneconomical for insurers to engage in forbidden practices. Unfortunately, however, the Act only applies to overdue benefits payable by motor vehicle reparation insurers.\textsuperscript{81}

\section*{B. Kentucky's Unfair Claims Settlement Practices Statute}

As the tort of bad faith has gained acceptance throughout the nation, state legislatures have enacted statutes prohibiting

\textsuperscript{77} If overdue benefits are recovered in an action against the reparation obligor or paid by the reparation obligor after receipt of notice of the attorney's representation, a reasonable attorney's fee . . . may be awarded by the court if the denial or delay was without reasonable foundation. No part of the fee for representing the claimant in connection with these benefits is a charge against benefits otherwise due the claimant.

KRS § 304.39-220(1).


\textsuperscript{79} Benefits are overdue if not paid within thirty (30) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding thirty-one (31) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, and pays them within fifteen (15) days after the period of accumulation. If reasonable proof is supplied as to only part of the claim, and the part totals one hundred dollars ($100) or more, the part is overdue if not paid within the time provided by this section.

KRS § 304.39-210(1).

\textsuperscript{80} See, e.g., Kentucky Farm Bureau Mut. Ins. Co. v. McQueen, 700 S.W.2d 73 (Ky. Ct. App. 1985); Kentucky Farm Bureau Mut. Ins. Co. v. Roberts, 603 S.W.2d 498 (Ky. Ct. App. 1980); 575 S.W.2d at 493.

\textsuperscript{81} " 'Basic reparation benefits' mean benefits providing reimbursement for net loss suffered through injury arising out of the operation, maintenance or use of a motor vehicle. . . ." KRS § 304.39-020(2) (Michie/Bobbs-Merrill 1981 & Supp. 1986). On the other hand, the statutes of many other states provide interest and attorneys' fees penalties for all insurers, not just motor vehicle reparation insurers. See, e.g., Ark. Stat. Ann. § 66-3238 (1980) ("In all cases where loss occurs and the cargo, fire, marine, casualty, fidelity, surety, cyclone, tornado, life, health, accident, medical, hospital, or surgical benefit insurance company and fraternal benefit society or farmer's mutual aid association liable therefore shall fail to pay . . .").
specific unfair claims practices by insurance companies when dealing with policy holders.\textsuperscript{82} Most of such legislation is modeled after The National Association of Insurance Commissioners' (NAIC) Model Unfair Trade Practices Act\textsuperscript{83} and a successor Model Act\textsuperscript{84} adopted in 1971.\textsuperscript{85}

The Kentucky General Assembly enacted unfair claims settlement practices legislation in 1984.\textsuperscript{86} This statute lists fourteen acts, any of which is an unfair claims settlement practice if committed or performed "with such frequency as to indicate a general business practice."\textsuperscript{87} Prohibited practices include "[n]ot attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear,"\textsuperscript{88} "[c]ompelling 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,"\textsuperscript{89} and "[a]ttempting 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."\textsuperscript{90}

Unfortunately, the language (""with such frequency as to indicate a general business practice"") of the Kentucky statute
renders the statute virtually unenforceable.\textsuperscript{91} Regardless of how egregious the insurer’s conduct, no remedy exists unless the insured proves such conduct is more than an isolated incident.\textsuperscript{92} Furthermore, even if the insured can prove the existence of an unfair claims settlement practice, the statute provides no redress for the specific injuries of the insured. Instead, the statute merely empowers the state Insurance Commissioner to issue a cease and desist order.\textsuperscript{93} Such gross deficiencies have earned the statute the label “toothless.”\textsuperscript{94}

C. Private Right of Action Derived From Unfair Claim Settlement Practices Statute

In light of the deficient enforcement provisions of Kentucky’s Unfair Claims Settlement Practices Statute, a convincing argument can be made that a private cause of action should be implied.\textsuperscript{95} Kentucky’s Trade Practices and Fraud statutes explicitly state that “[n]o order of the commissioner . . . or order of court to enforce it shall in any way relieve or absolve any person affected by such order from any other liability, penalty, or forfeiture under law.”\textsuperscript{96} Furthermore, Kentucky Revised Statutes (KRS) section 446.070 provides that “[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.”\textsuperscript{97}

\textsuperscript{91} KRS § 304.12-230. See Underwood, supra note 84, at 412 & n.48 (discussion of the (then proposed) Kentucky Unfair Claims Settlement Practices statute and its apparent enforcement and remedial deficiencies).

\textsuperscript{92} It must be shown that the insurer has “commit[ted] or perform[ed] [such] acts with such frequency as to indicate a general business practice” before conduct can be defined as an unfair claims settlement practice. KRS § 304.12-230. Compare MASS. ANN. LAWS ch. 176D, § 3(9) (Law. Co-op. 1977) (Massachusetts Unfair Claim Settlement Practices statute does not include the language “with such frequency as to indicate a general business practice”).

\textsuperscript{93} “If, after a hearing thereon . . . the commissioner finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this subtitle, the commissioner shall order such person to desist from such act or practice.” KRS § 304.12-120(1) (Michie/Bobbs-Merrill 1981).

\textsuperscript{94} Underwood, supra note 84, at 412.

\textsuperscript{95} Id. at 413.

\textsuperscript{96} KRS § 304.12-120(4) (Michie/Bobbs-Merrill 1981).

\textsuperscript{97} KRS § 446.070 (Michie/Bobbs-Merrill 1985) (emphasis added). See, e.g., Allen
Arguably, the Kentucky Unfair Claims Settlement Practices Statute, read to create a private right of action by virtue of KRS sections 304.12-120(4) and 446.070, supplies a vital missing link to the first party bad faith analysis. In Federal Kemper, the court stated that "[t]he only fiduciary relationship we recognize attaching to insurance policies is the excess-of-the-policy-limits cases where good faith is required on the part of the insurance company." The Kentucky Unfair Claims Settlement Practices Statute provides that "[n]ot attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear" can constitute an unfair claims settlement practice. Kentucky courts should equate this statutory duty with the "fiduciary relationship" embraced in Feathers and denied in Federal Kemper to provide for punitive damages when an insurer wrongfully withholds or delays payment of the amount due under an insurance policy.

CONCLUSION

The Kentucky Supreme Court's decision in Federal Kemper Insurance Co. v. Hornback,103 overruling Feathers v. State Farm Fire & Casualty Co.,104 clearly indicates that Kentucky courts no longer will recognize the tort of first party bad faith. No fiduciary relationship between the insurer and the insured will be recognized in first party insurance policies.105 Punitive damages

v. Lovell's Adm'x, 197 S.W.2d 424 (Ky. 1946) (court recognized recovery of damages under KRS § 446.070 where defendant may have violated KRS § 434.280 in destroying a will).

100 See supra notes 88-90 and accompanying text.
102 Even if an implied private cause of action is recognized through the application of KRS § 446.070, such remedy would remain limited to plaintiffs injured by an insurer who commits unfair claims settlement practices with "such frequency as to indicate a general business practice," KRS § 304.12-230. A plaintiff harmed by an insurer's solitary incident of misconduct would be without relief under this theory.
103 711 S.W.2d 844 (Ky. 1986).
104 667 S.W.2d 693 (Ky. Ct. App. 1983).
105 See supra note 59 and accompanying text.
will not follow breach of contract, even where an insurer acts in bad faith.\textsuperscript{106}

Although \textit{Federal Kemper} has effectively eliminated the tort of first party bad faith in Kentucky, an injured policyholder may find limited statutory relief. The Kentucky Motor Vehicle Reparations Act requires an insurer wrongfully withholding funds to pay an interest penalty and attorneys' fees in some circumstances.\textsuperscript{107} In addition, the Kentucky Unfair Claims Settlement Practices Statute defines fourteen acts that, if committed with sufficient frequency, may prompt action by the state Insurance Commissioner.\textsuperscript{108} In light of the statute's deficient enforcement provisions and lack of redress for the specific injuries of the insured, a private right of action might be implied by its violation.\textsuperscript{109}

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\textsuperscript{106} \textit{See supra} notes 51-54, 60 and accompanying text.

\textsuperscript{107} \textit{See supra} notes 74-81 and accompanying text.

\textsuperscript{108} \textit{See supra} notes 82-94 and accompanying text.

\textsuperscript{109} \textit{See supra} notes 95-102 and accompanying text.