Today, in *Stull v Steffen, 2011-CA-000229-MR*, the Kentucky Appellate Court held the failure to pay the entirety of the PIP coverage prior to payment of the excess Medical Payments coverage did not extend the statute of limitations to bring a tort action for injuries in a motor vehicle accident. In this case the insurer paid all but Thirteen Dollars and Sixty-Nine Cents ($13.69) of the Ten Thousand Dollar ($10,000.00) PIP coverage and thereafter designated the remaining payments as paid under the One Thousand Dollar ($1,000.00) Medical Payments coverage of the policy. The Appellate Court stated under KRS 304.39-230 (6) the insurer was required to pay all PIP coverage BEFORE Medical Payments coverage. However, the insurer’s failure to do so did not convert all payments made under the Medical Payments coverage into PIP payments to extend the statute of limitations for the tort action. Instead, the internal designation by the insurer of which coverage the payment was made under is irrelevant. The Court held that all payments, whether internally designated as PIP or Medical Payments coverage, are deemed PIP payments until such time as the PIP coverage is exhausted. Therefore, once the insurer paid a total of Ten Thousand Dollars ($10,000.00) in benefits on behalf of the insured, no matter how they are designated by the insurance policy, the statute of limitations began to run on the tort action.

In a second case released today, *Hill v. State Farm, 2011-CA-001400-MR*, the Kentucky Appellate Court held the date of filing a motion to amend a complaint to name a new party was the date the amended complaint was commenced for purposes of the statute of limitations. In this case there was a two year suit provision contained in the insurance policy that required commencement of an action in tort within two years of the last PIP payment or the date of loss, whichever was later. The Plaintiff filed a motion to amend the Complaint to add the UIM insurer four days before that two year limitation expired but the motion to amend the Complaint was not heard until after the two year statute of limitation stated in the policy. The Court found since the Plaintiff had no control over when the motion would be heard to allow the amendment of the Complaint required a distinction between the strict application of the definition of commencement with an original Complaint and the more liberal commencement related to an amended Complaint.

Very truly yours,  

Patricia J. Trombeta