Transparency and Fairness in Kentucky's Civil Justice System

Kentucky has insurance affordability problems. Almost without exception, Kentucky's rankings on the cost of both auto and homeowners' insurance are higher than the states that surround us:

	Auto	Homeowners
Kentucky	36	36
Ohio	21	14
Illinois	22	24
Indiana	15	23
Tennessee	26	32
Missouri	29	37
West Virginia	39	28
Source: Insurance Resource Council		

Kentucky's ranking is even lower when you consider that its per capita income is on average, much less than most of these contiguous states. So, Kentuckians spend an even greater percentage of their income on insurance than these figures show. Why is this? There may be several reasons but the primary reasons are our civil justice system and specifically: phantom damages/collateral source rule, pure comparative fault and 3rd party private cause of action.

Big I Kentucky supports a civil justice system that fairly compensates people who have been injured while giving juries accurate information and maintaining reasonable standards for liability. Our goal is not to prevent legitimate claims. It is to help ensure that awards are based on actual damages, responsibility and proven misconduct.

1. Medical Damages Based on Billed Charges

The issue: In a personal injury case, a medical provider may bill one amount but accept a much lower amount from Medicare, Medicaid or a private health insurer as payment for the treatment.

Under Kentucky's collateral source rule, evidence that insurance or another source paid the medical expenses is generally excluded from the jury. Kentucky courts have also allowed plaintiffs to introduce the full amount billed as evidence of reasonable medical expenses, even when the provider accepted less. The Kentucky Supreme Court has treated the negotiated reduction as a benefit connected to the injured person's insurance rather than a benefit that should reduce the defendant's responsibility.

A simple example: A hospital bills $50,000 for treatment but accepts $18,000 from the patient and health insurer as payment in full.

The jury may hear evidence of the $50,000 bill without hearing that the provider accepted $18,000. This can make it difficult for jurors to evaluate the actual financial cost of the treatment.

Why it matters: Medical expenses are often used when evaluating the total value of an injury claim. When the amount presented to the jury is significantly higher than the amount paid or still owed, the award may not reflect the actual economic loss.

What we are asking:

- Allow juries to receive clear and complete information about:
- The amount originally billed
- The amount actually paid
- The amount the patient remains legally responsible for paying
- Any valid lien or reimbursement obligation
- The jury should then determine a fair award based on the complete picture.

Suggested message to a legislator

"We believe juries should have accurate information. An injured person should be fully compensated for medical costs, but an award for economic damages should reflect amounts that were paid, remain owed or must be reimbursed. Transparency helps juries make informed decisions."

2. Pure Comparative Fault

The issue: Kentucky uses a pure comparative fault system. A jury assigns each party a percentage of responsibility and a claimant's damages are reduced by the claimant's percentage of fault.

Under this system, a person may recover damages even when the person is primarily responsible for the accident.

A simple example: A jury determines that a claimant suffered $100,000 in damages but was 80% responsible for the incident.

Under pure comparative fault, the claimant may still recover $20,000 from a defendant who was found 20% responsible.

Under a modified comparative fault system with a 50% threshold, a claimant who was more than 50% responsible would generally not recover damages.

Why it matters: Supporters of pure comparative fault argue that every responsible party should pay a proportional share of the damages.

Supporters of modified comparative fault argue that a person who bears most of the responsibility should not recover from someone who was less responsible.

Big I Kentucky's concern is that claims involving primarily responsible plaintiffs may still require extensive investigation, legal defense, discovery and expert testimony. Those costs may exist even when the defendant's share of responsibility is relatively small.

What we are asking:

- Consider adopting a modified comparative fault standard under which:
- Damages would still be reduced by the claimant's percentage of fault
- A claimant who is 50% or less responsible could recover
- A claimant who is more than 50% responsible would not recover from a less-responsible defendant

Suggested message to a legislator

"Everyone should be accountable for the harm they cause. We also believe someone who is primarily responsible for an accident should not recover damages from a person who was less responsible. A modified comparative fault standard would preserve proportional responsibility while establishing a reasonable limit."

3. Third-Party Bad-Faith Claims

The issue: Kentucky allows claimants who are not the insured under a liability policy to bring a bad-faith claim against the other party's insurance company.

A simple example: After an automobile accident, an injured claimant may pursue a bad-faith claim against the at-fault driver's insurer even though the claimant is not that insurer's customer and doesn't have any contractual relationship with the insurer.

This is because more than 30 years ago, Kentucky courts said that 3rd parties can sue insurers for violations of the Unfair Claims Settlement Practices statutes that were passed by the General Assembly to apply to the policyholder and their insureds.

Why it matters: Bad-faith laws play an important role in holding insurers accountable for improper practices with their own insurance company, but were intended to be primarily enforced by the Kentucky Department of Insurance and not by 3rd parties in litigation. Third-party claims and the threat of such claims greatly affect negotiations and settlements because they may create additional litigation beyond the original dispute over fault and damages.

The possibility of a separate claim involving punitive damages, attorney fees, discovery and damages beyond the policy limit can affect settlement decisions. Insurers may feel pressure to settle disputed claims to avoid the expense and uncertainty of additional litigation that can result in a judgment far beyond policy limits.

What we are asking: Preserve strong protections for policyholders while considering whether statutory bad-faith lawsuits should be limited to individuals and businesses that have a contractual relationship with the insurer.

Third-party claimants would retain the right to:

- Pursue the person or business responsible for the injury
- Recover proven compensatory damages
- Report unfair claim practices to the Kentucky Department of Insurance

- Use existing court procedures to enforce judgments and settlements

Suggested message to a legislator

“Insurers should be held accountable when they mistreat their own policyholders or knowingly violate the law. At the same time, Kentucky should examine whether someone who is not a party to the insurance contract should be able to bring a separate bad-faith lawsuit against the insurer. We are asking for a balanced standard that protects consumers without encouraging unnecessary secondary litigation.”

4. Seatbelt Admissibility

The issue: Under current Kentucky court standards, juries are often **prohibited from hearing evidence** that an injured person was not wearing a seatbelt. Trial judges frequently demand "scientifically unachievable" expert testimony to identify exactly which specific injuries were caused by the lack of a seatbelt before allowing the jury to hear the facts. This creates a legal loophole where unbelted occupants are unfairly allowed to avoid the consequences of their decision to break the law and ignore their own safety.

A simple example: Imagine a driver is involved in a collision while **choosing not to wear a seatbelt**, which is a primary offense in Kentucky. The failure to buckle up causes them to suffer severe injuries that would have been prevented or mitigated by a seatbelt. In the resulting lawsuit, the court "keeps the jury in the dark," preventing them from knowing the driver wasn't buckled. The jury then awards full damages against the defendant, as if the plaintiff had followed the law and taken the simple step to protect themselves

Why it matters:

- **Skyrocketing Costs:** Nationally, the non-use of seatbelts costs society more than **$11 billion annually** in elevated medical care and lost productivity.
- **Injury Claim Severity:** Worsened injury outcomes from unbelted occupants contribute directly to Kentucky’s high injury claim severity of $6,000, which is significantly higher than the US average of $4,700.
- **The "Tort Tax":** These inflated costs are passed on to the 86% of Kentuckians who **do** buckle up through higher insurance premiums, contributing to the state's hidden **$970 "tort tax"** per person.
- **Accountability:** Current law can even allow a parent who fails to buckle a child into a safety seat to avoid accountability for their own negligence.

Suggested Message to a Legislator:

In Kentucky, buckling up is the law. Yet, in our courtrooms, the fact that someone broke that law and worsened their own injuries is often a 'secret' kept from the jury. We need to pass this bill to **let juries know the whole truth**. By allowing evidence of seatbelt non-use as a 'substantial factor' in an injury, we can restore fairness, promote personal accountability, and help lower the insurance costs that are burdening every Kentucky family.

The Overall Message

Big I Kentucky is not asking lawmakers to limit compensation for people who have been legitimately injured. We are asking for a system in which:

- **Juries receive accurate information about medical expenses,** ending the practice of basing awards on inflated "phantom" bills rather than actual costs paid.
- **Responsibility matters when damages are awarded**, ensuring that those primarily at fault for an accident cannot unfairly shift the financial burden to others.
- **Bad-faith claims target proven, serious misconduct**, preventing these claims from being used as mere leverage to force settlements that exceed policy limits.
- **Juries hear the "whole truth" about an accident**, including whether a claimant's choice to ignore life-saving seatbelt laws significantly contributed to their own injuries.
- **Legitimate claimants are compensated fairly** and efficiently without being caught in a system designed to maximize attorney fees.
- **Businesses, consumers, and insurance policyholders are protected from unnecessary legal costs** that currently impose a hidden $970 "tort tax" on every Kentuckian.

Fair compensation and legal transparency can exist together. Kentucky should strive for both by ensuring that our courts are venues for facts and personal accountability rather than legal loopholes

SOURCE GUIDE:

Below is a comprehensive list of the sources used to compile the data, legal analysis, and consumer sentiments for your "Mission September" materials. You can place this list at the bottom of your document to provide a solid evidentiary foundation for your advocacy efforts.

Source Guide

- Independent Insurance Agents & Brokers of America (Big "I"): Survey Report, *"Consumers Agree Legal System Abuse Drives Up Insurance Costs, Prompting Demand for Reform,"* Alexandria, VA (November 19, 2025).
- Insurance Research Council (IRC): *"Personal Auto Insurance: Variations in Affordability (State Rankings) from Key Cost Drivers,"* Malvern, PA (2023 Data).
- Insurance Research Council (IRC): *"Homeowners Insurance: Variations in Affordability (State Rankings) from Key Cost Drivers,"* Malvern, PA (2025 Data).
- The Perryman Group: *"The Economic Burden of Kentucky Tort Reform,"* 2026 Report, in coordination with Citizens Against Lawsuit Abuse.
- Insurance Information Institute (Triple-I) & Munich Reinsurance America, Inc.: Joint study on the economic and societal impacts of lawsuit abuse.
- Kentucky Revised Statutes (KRS): Including **KRS 411.182(2)** (Comparative Fault) and **KRS 189.125** (Passenger Restraint Systems).
- **National Association of Insurance Commissioners (NAIC)**: *Auto Insurance Database Report* and *Report on Profitability by Line by State* (2023).
- National Highway Traffic Safety Administration (NHTSA): Data on the economic and societal impacts of seatbelt non-use.
- U.S. Department of Transportation: Statistical studies on crash survival rates and seatbelt effectiveness.

- **Fast Track Monitoring System:** Source for state-level data on accident frequency, repair costs, and claim severity.
- **Federal Emergency Management Agency (FEMA)**: *National Risk Index*, used for evaluating weather and natural hazard risks.
- **Kentucky Court of Appeals**: Relevant case law regarding evidentiary and liability standards, including *Smith v. Turner* (2013), *Jones v. Sturdivant* (2021), and *Geyer v. Mankin* (1998).
- **Kentuckians Encouraged To Work Together To Save Lives on Roadways**