

**MATTHIESEN, WICKERT & LEHRER, S.C.**  
 1111 E. Sumner Street  
 P.O. Box 270670  
 Hartford, WI 53027  
 (262) 673-7850  
 (262) 673-3766 (Fax)  
 www.mwl-law.com

## 50 STATE DEDUCTIBLE REIMBURSEMENT CHART July 2007

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
<u>ALABAMA</u>			X	No applicable statute, Administrative Code provision or case law exists. Alabama's Dept. of Insurance advises this issue is generally governed by contract law to extent provided in the policy. Policy language can modify made whole rule. <i>Ex parte State Farm &amp; Casualty Co.</i> , 764 So.2d 543 (Ala. 2000).
<u>ALASKA</u>			X	<b><i>Alaska Admin. Code Tit. 3, § 26.080.</i></b> "Any person...must include first-party claimant's deductible, if any, in subrogation demand unless first-party claimant requests that it not be included or unless deductible has been otherwise recovered by first-party claimant; no deduction for expenses may be made from any deductible recovered unless an outside attorney or other outside expert witnesses have been retained and any deduction is no more than pro rata share of their cost less any attorney fees and costs recovered; any recovery of prejudgment or post-judgment interest shall be shared pro rata."
<u>ARIZONA</u>		X		<b><i>Ariz. Admin. Code § R20-6-801.</i></b> "Insurers shall, upon claimant's request, include first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on proportionate basis with first-party claimant, unless deductible amount has been otherwise recovered. No deduction for expenses can be made from deductible recovery unless outside attorney is retained to collect such recovery. The deduction may then be for only pro rata share of allocated loss adjustment expense."

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
<u>ARKANSAS</u>		X		<b>A.C.A. § 054 00 043.</b> "Insurers shall include first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on proportionate basis with first-party claimant, unless deductible amount has been otherwise recovered. No deduction for expenses can be made from deductible recovery unless outside attorney is retained to collect such recovery. The deduction may then be for only pro rata share of allocated loss adjustment expense."
<u>CALIFORNIA</u>		X		<b>10 Cal. Admin. Code § 2695.7.</b> "Every insurer that makes subrogation demand shall include in every demand first party claimant's deductible. Every insurer shall share subrogation recoveries on proportionate basis with first-party claimant, unless first-party claimant has otherwise recovered whole deductible amount. No insurer shall deduct legal or other expenses from recovery of deductible unless insurer has retained outside attorney or collection agency to collect that recovery. The deduction may only be for pro rata share of allocated loss adjustment expense."
<u>COLORADO</u>			X	No applicable statute, Administrative Code provision or case law exists. Colorado Dept. of Insurance advises that the standard practice is to reimburse insured for deductible on a comparative negligence basis.
<u>CONNECTICUT</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>DELAWARE</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>DISTRICT OF COLUMBIA</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>FLORIDA</u>		X		Automobile insurer will not be held to have violated made-whole doctrine where it returns to its contributorily negligent insured a properly calculated pro rated portion of insured's collision deductible after recovery in subrogation action. <i>Monte De Oca v. State Farm Fire &amp; Casualty Co.</i> , Consol Nos. 03-661, 03-1468 (Fla. 3d DCA Dec. 22, 2004).
<u>GEORGIA</u>	X (policy language may control)		X (policy language may control)	No applicable statute, Administrative Code provision or case law exists. Georgia Dept. of Insurance takes the position that policyholder should come first, but good customer service and insurance contract dictate.

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
<u>HAWAII</u>	X (if recovery more than \$2,500 from uninsured motorist)	X (if recovery less than \$2,500 from uninsured motorist)	X (if uninsured motorist is not involved)	<b>Haw. Stat. § 431:10C-305.5.</b> "If insured is involved in accident with uninsured motorist and insured paid deductible amount for damages incurred in that accident, and if insurer recovers any money from uninsured motorist, insurer shall reimburse insured, provided that: (1) amount recovered shall be divided equally between insured and insurer; (2) amount of insured's reimbursement shall not exceed deductible paid; and (3) if amount of damage exceeds \$2,500, insurer shall: (a) pay full amount of deductible to insured; or (b) initiate proceedings against uninsured motorist to recover damages."
<u>IDAHO</u>			X	No applicable statute, Administrative Code provision or case law exists. Idaho Dept. of Insurance expresses a preference that the insured be reimbursed its deductible first - no statutory support requires this.
<u>ILLINOIS</u>		X		<b>215 I.L.C.S. § 5/143(b).</b> "If the deductible amount is included in subrogated loss claim, insurance carrier shall pay full pro rata deductible share to its insured out of net recovery on subrogated claim. Administrative expenses of insurance carrier cannot be deducted from gross recovery, and only incurred expenses of carrier, such as attorney's fees, collection fees and adjuster's fees, may be deducted therefrom to determine net recovery. When insurance carrier is recovering directly from third-party a claim by means of installments, insured shall receive his full pro rata deductible share as soon as such amount is collected and before any part of such recovery is applied to any other use."
<u>INDIANA</u>			X	No applicable statute, Administrative Code provision or case law exists. Indiana Dept. of Insurance indicates that the common practice is for insurer to reimburse insured on pro rata basis based on percentage recovered.
<u>IOWA</u>		X		<b>Iowa Code § 191-15.43 (507B).</b> "Insurer shall, upon claimant's request, include first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on proportionate basis with first-party claimant, unless deductible amount has been otherwise recovered. No deduction for expenses shall be made from deductible recovery unless outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of allocated loss adjustment expense."
<u>KANSAS</u>			X	No applicable statute, Administrative Code provision or case law exists.

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
<u>KENTUCKY</u>		X		<b>806 Ky. Admin. Reg. 12.</b> "If requested by claimant, insurers shall include first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with first-party claimant, unless deductible amount has been otherwise recovered. Deduction for expenses shall not be made from deductible recovery unless outside attorney is retained to collect recovery. The deduction shall then be for only pro rata share of allocated loss adjustment expense."
<u>LOUISIANA</u>	X (if tortfeasor has insufficient insurance or assets)		X	<b>L.S.A.-C.C. Art. 1826, 1827.</b> "Under this and the preceding Article, a subrogee who has made only partial payment to obligee yields in ranking to the latter when obligor's assets are insufficient to afford them both a full recovery."
<u>MAINE</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>MARYLAND</u>			X	No applicable statute, Administrative Code provision or case law exists. Insurer can collect even if insured has not been made whole. <i>Stancil v. Erie Ins. Co.</i> , 740 A.2d 46 (Md. App. 1999).
<u>MASSACHUSETTS</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>MICHIGAN</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>MINNESOTA</u>		X		<b>M.S.A. § 72A.201.</b> "Subrogation recovery must be shared at least on proportionate basis with insured, unless deductible amount has been otherwise recovered by insured, except when insurer is recovering directly from uninsured third-party by means of installments, insured must receive full deductible share as soon as amount is collected and before any part of total recovery is applied to any other use. No deduction for expenses may be made from deductible recovery unless attorney is retained to collect recovery, in which case deduction may be made only for pro rata share of cost of retaining attorney. An insured is not bound by any settlement of its insurer's subrogation claim with respect to deductible amount, unless insured receives, as a result of subrogation settlement, full amount of deductible. Recovery by insurer and receipt by insured of less than insured's deductible amount does not affect insured's rights to recover any unreimbursed portion of deductible from parties liable for loss."
<u>MISSISSIPPI</u>			X	No applicable statute, Administrative Code provision or case law exists.

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
<u>MISSOURI</u>		X		<i>Mo. Code Regs. Ann. Tit. 20, § 100-1.050(2)(c). "Insurers, upon claimant's request, shall include first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on proportionate basis with first-party claimants, unless deductible amount has been otherwise recovered. No deduction for expenses can be made from deductible recovery unless outside attorney is retained to collect this recovery. The deduction may then be for only pro rata share of allocated loss adjustment expense."</i>
<u>MONTANA</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>NEBRASKA</u>		X		<i>210 Neb. Admin. Code Ch. 60, § 009. "Insurers shall include first-party claimant's deductible, if any, in subrogation demands, unless requested not to by first-party claimant. Subrogation recoveries shall be shared on proportionate basis no less than yearly with first-party claimant, unless first-party claimant has otherwise recovered deductible amount. No deduction for expenses can be made from deductible recovery unless outside attorney is retained to pursue such collection and then only expenses shared, on pro rata basis, shall be legal expenses."</i>
<u>NEVADA</u>		X		<i>Nev. Admin. Code § 686A.680. "An insurer shall, upon claimant's request, include first-party claimant's deductible, if any, in subrogation demands. A subrogation recovery must be shared on proportionate basis with first-party claimant, unless deductible amount has been otherwise recovered. No deduction for expenses may be made from deductible recovery unless an outside attorney is retained to collect recovery. The deduction may then be for no more than pro rata share of allocated loss adjustment expense."</i>
<u>NEW HAMPSHIRE</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>NEW JERSEY</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>NEW MEXICO</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>NEW YORK</u>		X		<i>N.Y. Ins. Reg. 64, § 216.7(g)(1). "Where insured has received payment under physical damage coverage that is subject to a deductible, insured shall share, pro rata, with insurer any net recovery received by insurer from third parties. Within 30 calender days of such recovery, insurer must mail or hand-deliver to insured its payment for insured's pro rata share of the recovery."</i>
<u>NORTH CAROLINA</u>	X			Insurer is required to pay the deductible first out of any subrogation recovery absent some alternate agreement. <i>St. Paul Fire &amp; Marine v. Rhodes</i> , 198 S.E.2d 482, cert. denied 2000 S.E.2d 655 (1973).

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
<u>NORTH DAKOTA</u>			X	No applicable statute, Administrative Code provision or case law exists. North Dakota's Dept. of Insurance indicates generally, insured is paid pro rata amount based on percentage recovered, but reimbursement is a courtesy to insured.
<u>OHIO</u>		X		<b>Ohio Admin. Code § 3901-1-54I(H)(10).</b> "An insurer shall include first-party claimants' deductible, if any, in subrogation demands. The insurer shall share any subrogation recovery received on proportionate basis with first-party claimant, unless first-party claimant's deductible has been paid in advance or recovered. The insurer shall not deduct expenses from this amount except unless an outside attorney or collection agency is retained to collect such recovery. The insurer may then be paid only pro rata share of his expenses for collecting this amount."
<u>OKLAHOMA</u>		X		<b>Okla. Admin. Code § 365:15-3-8.</b> "Including deductible in subrogation demands. Insurers shall, upon claimant's request, include first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on proportionate basis with the first-party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from deductible recovery unless outside attorney is retained to collect such recovery. The deduction may then be for only pro rata share of allocated loss adjustment expense."
<u>OREGON</u>		X		<b>Or. Admin. Code § 836-080-0240.</b> "An insurer shall, upon first-party claimant's request, include claimant's deductible in insurer's demands under its subrogation rights. Subrogation recoveries shall be shared at least on proportionate basis with first-party claimant, unless deductible amount has been otherwise recovered by claimant. No deduction for expenses may be made from deductible recovery unless outside attorney is retained to collect such recovery, in which case deduction may be made only for pro rata share of the cost of retaining attorney."
<u>PENNSYLVANIA</u>		X		<b>31 Pa. Code § 146.8.</b> "Insurers shall, upon request of claimant, include first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on proportionate basis with first-party claimant, unless deductible amount has been otherwise recovered. A deduction for expenses cannot be made from deductible recovery unless outside attorney is retained to collect recovery. The deduction may then be for only pro rata share of allocated loss adjustment expense."

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
<u>RHODE ISLAND</u>	X  (less pro rated share of subrogation expenses, if any)			<i>R.I. Code. R. 02 030 073. "Subrogation. An Insurer shall include First-Party Claimant's deductible, if any, in subrogation demands. Upon settlement of subrogation claim, First-Party Claimant's Insurer shall pay its Insured full deductible or amount collected if less than full deductible, less Insured's pro rata share of subrogation expenses, if any. The subrogation expenses, as opposed to Insured's deductible, are subject to pro rating based on percentage of fault."</i>
<u>SOUTH CAROLINA</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>SOUTH DAKOTA</u>			X	No applicable statute, Administrative Code provision or case law exists. Insurer can collect even if insured has not been made whole. <i>Julson v. Federated Mut. Ins. Co.</i> , 562 N.W.2d 117 (S.D. 1997).
<u>TENNESSEE</u>			X	No applicable statute, Administrative Code provision or case law exists.
<u>TEXAS</u>			X	No applicable statute, Administrative Code provision or case law exists. Texas Dept. of Insurance indicates reimbursement of insured's deductible in third-party claim is usually dictated by level of recovery. Generally, insured receives pro rated reimbursement of deductible based on percentage of recovery. The carrier must be consistent on its deductible reimbursement policy.
<u>UTAH</u>		X		<i>Utah Admin. Code § R590-190. "Insurers shall include first-party claimant's deductible, if any, in subrogation demands initiated by insurer. Subrogation recoveries may be shared on a proportionate basis with first-party claimant when an agreement is reached for less than full amount of loss, unless the deductible amount has been otherwise recovered. The recovery shall be applied first to reimburse first-party claimant for amount or share of deductible when full amount or share of deductible has been recovered. No deduction for expenses can be made from deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense. If subrogation is initiated but discontinued, the insured shall be advised."</i>
<u>VERMONT</u>			X	No applicable statute, Administrative Code provision or case law exists. Vermont's Dept. of Insurance advises its policy is to require pro rata distribution of recovered monies between insurer and insured.

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
<u>VIRGINIA</u>		X		<b>14 Va. Admin. Code § 5-400-80.</b> “Insurers shall, upon claimant's request, include first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on proportionate basis with first-party claimant, unless deductible amount has been otherwise recovered. No deduction for expenses can be made from deductible recovery unless outside attorney is retained to collect such recovery. The deduction may then be for only pro rata share of allocated loss adjustment expense.”
<u>WASHINGTON</u>	X			No applicable statute or Administrative Code provision exists. Washington's Dept. of Insurance advises it relies on case law to establish that insured must be made whole before insurer can collect any excess. <i>Theringer v. American Motors Ins.</i> , 91 Wn.2d 215, 855 P.2d 191 (1978).
<u>WEST VIRGINIA</u>		X		<b>W. Va. Code Ann. § 114-14-7.</b> “Insurers shall include insured's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on proportionate basis with insured, unless deductible amount has been otherwise recovered. No deduction for expenses can be made from deductible recovery unless outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of allocated loss adjustment expense.”
<u>WISCONSIN</u>	X (with some indication of proportionate reduction for comparative negligence)			No applicable statute or Administrative Code provision exists. Wisconsin's Office of the Commissioner of Insurance advises it relies on case law to establish if insured is entitled to the first dollar collected. <i>Rimes v. State Farm Mut. Auto. Ins. Co.</i> , 106 Wis.2d 263 (1982). It is important to note the Commissioner indicates it would not object if insurer reduced reimbursement by percentage of comparative negligence of insured – assuming insurer's subrogation efforts to collect money from at-fault driver also included same reduction.
<u>WYOMING</u>	X			<b>Wy. Stat. § 26-13-113.</b> “If insurer pays loss claim to its insured and insurer decides to subrogate insured's loss claim, deductible amount shall be included in subrogated loss claim and insurance carrier shall pay deductible amount to its insured, without any deduction for expenses of collection, out of any recovery on subrogated claim, before any part of recovery is applied to any other use. If amount of deductible exceeds recovery, insurer shall pay only amount of recovery to insured.”

These materials and other materials promulgated by Matthiesen, Wickert & Lehrer, S.C. may become outdated or superseded as time goes by. If you should have questions regarding the current applicability of any topics contained in this publication or any publications distributed by Matthiesen, Wickert & Lehrer, S.C., please call Gary Wickert at (800) 637-9176. This publication is intended for the clients and friends of Matthiesen, Wickert & Lehrer, S.C. This information should not be construed as legal advice concerning any factual situation and representation of insurance companies and/or individuals by Matthiesen, Wickert & Lehrer, S.C. on specific facts disclosed within the attorney/client relationship. These materials should not be used in lieu thereof in anyway.