

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
gwickert@mwl-law.com

50 STATE DEDUCTIBLE REIMBURSEMENT CHART

Last Updated: 6/1/09

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
ALABAMA			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 & Casualty Co.</i> , 764 So.2d 543 (Ala. 2000).
ALASKA			X	Alaska Admin. Code tit. 3, § 26.080. "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's fees and costs recovered; any recovery of prejudgement or post-judgment interest shall be shared pro rata."
ARIZONA		X		A.R.S. § R20-6-801. "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
ARKANSAS		X		A.C.A. § 054 00 043. <i>“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.”</i>
CALIFORNIA		X		Cal. Code of Regs. tit. 10, § 2695.7. <i>“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.”</i>
COLORADO			X	No applicable statute, Administrative Code provision or case law exists. Colorado’s Department of Insurance advises that the standard practice is to reimburse insured for deductible on a comparative negligence basis.
CONNECTICUT		X		Public Act No. 09-72, §2. <i>“Effective January 1, 2010. Except as prohibited by §38a-336b of the general statutes, if an insurer chooses to exercise its right of subrogation pursuant to the terms of an automobile liability insurance policy, such insurer shall included in such subrogation demand the amount of any collision deductible paid by such insured, unless such insured requests such insurer not to include such amount. The insurer shall share subrogation recoveries with the insured on a proportionate basis.”</i>
DELAWARE			X	No applicable statute, Administrative Code provision or case law exists.
DISTRICT OF COLUMBIA			X	No applicable statute, Administrative Code provision or case law exists.
FLORIDA		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 & Cas. Co.</i> , Consol Nos. 03-661, 03-1468 (Fla. 3d DCA, Dec. 22, 2004).
GEORGIA	X (policy language may control)		X (policy language may control)	No applicable statute, Administrative Code provision or case law exists. Georgia’s Department of Insurance takes the position that the 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
HAWAII	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)	Haw. Stat. § 431:10C-305.5. <i>“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.”</i>
IDAHO			X	No applicable statute, Administrative Code provision or case law exists. Idaho’s Department of Insurance expresses a preference that the insured be reimbursed its deductible first - no statutory support requires this.
ILLINOIS		X		215 I.L.C.S. § 5/143(b). <i>“If the deductible amount is included in subrogated loss claim, the insurance carrier shall pay full pro rata deductible share to its insured out of net recovery on the subrogated claim. Administrative expenses of the insurance carrier cannot be deducted from the gross recovery, and only incurred expenses of the carrier, such as attorney’s fees, collection fees and adjuster’s fees, may be deducted therefrom to determine the net recovery. When the insurance carrier is recovering directly from a third-party a claim by means of installments, the 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.”</i>
INDIANA			X	No applicable statute, Administrative Code provision or case law exists. Indiana’s Department of Insurance indicates that the common practice is for insurer to reimburse insured on pro rata basis based on percentage recovered.
IOWA		X		I.C.A. § 191-15.43 (507B). <i>“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.”</i>
KANSAS			X	No applicable statute, Administrative Code provision or case law exists.
KENTUCKY		X		806 Ky. Admin. Reg. 12. <i>“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.”</i>

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
LOUISIANA	X (if tortfeasor has insufficient insurance or assets)		X	L.S.A.-C.C. Art. 1826, 1827. <i>“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.”</i>
MAINE			X	No applicable statute, Administrative Code provision or case law exists.
MARYLAND			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).
MASSACHUSETTS			X	No applicable statute, Administrative Code provision or case law exists.
MICHIGAN			X	No applicable statute, Administrative Code provision or case law exists.
MINNESOTA		X		M.S.A. § 72A.201. <i>“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, the full amount of deductible. Recovery by insurer and receipt by the insured of less than the insured’s deductible amount does not affect insured’s rights to recover any unreimbursed portion of deductible from parties liable for loss.”</i>
MISSISSIPPI			X	No applicable statute, Administrative Code provision or case law exists.
MISSOURI		X		Mo. Code Regs. Ann. Tit. 20, § 100-1.050(2)(c). <i>“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 the first-party claimants, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless outside attorney is retained to collect this recovery. The deduction may then be for only pro rata share of the allocated loss adjustment expense.”</i>
MONTANA			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
NEBRASKA		X		210 Neb. Admin. Code, Ch. 60, § 009. <i>“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>
NEVADA		X		Nev. Admin. Code § 686A.680. <i>“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>
NEW HAMPSHIRE			X	No applicable statute, Administrative Code provision or case law exists.
NEW JERSEY			X	No applicable statute, Administrative Code provision or case law exists.
NEW MEXICO			X	No applicable statute, Administrative Code provision or case law exists.
NEW YORK		X		N.Y. Ins. Reg. 64, § 216.7(g)(1). <i>“Where insured has received payment under physical damage coverage that is subject to a deductible, insured shall share, pro rata, with the insurer any net recovery received by insurer from third parties. Within thirty calendar days of such recovery, insurer must mail or hand-deliver to the insured its payment for the insured’s pro rata share of the recovery.”</i>
NORTH CAROLINA	X			Insurer is required to pay the deductible first out of any subrogation recovery absent some alternate agreement. <i>St. Paul Fire & Marine v. Rhodes</i> , 198 S.E.2d 482, <u>cert. denied</u> , 2000 S.E.2d 655 (N.C. 1973).
NORTH DAKOTA			X	No applicable statute, Administrative Code provision or case law exists. North Dakota’s Department of Insurance indicates generally, the insured is paid pro rata amount based on the percentage recovered, but reimbursement is a courtesy to the insured.

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
OHIO		X		Ohio Admin. Code § 3901-1-54(H)(10). "An insurer shall include first-party claimant's deductible, if any, in subrogation demands. The insurer shall share any subrogation recovery received on proportionate basis with the first-party claimant, unless the first-party claimant's deductible has been paid in advance or recovered. The insurer shall not deduct expenses from this amount except that 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."
OKLAHOMA		X		Okla. Admin. Code § 365:15-3-8. "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."
OREGON		X		Or. Admin. Code § 836-080-0240. "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."
PENNSYLVANIA		X		31 Pa. Admin. Code § 146.8. "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."
RHODE ISLAND	X (less pro rated share of subro expenses, if any)			R.I. Admin. 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 the full deductible or the amount collected if less than the full deductible, less the insured's pro rata share of subrogation expenses, if any. The subrogation expenses, as opposed to the insured's deductible, are subject to pro rating based on percentage of fault."
SOUTH CAROLINA			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
SOUTH DAKOTA			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).
TENNESSEE			X	No applicable statute, Administrative Code provision or case law exists.
TEXAS		X		<p>Tex. Ins. Code § 2053.203. <i>“Payment of Claims; Reimbursement. (a) An insurance company issuing a deductible policy under this subchapter shall service all claims that arise during the policy period, including those claims payable, wholly or partly, from the deductible amount. (b) A deductible policy must provide that: (1) the insurance company issuing the policy shall pay all benefits that are payable from the deductible amount; and (2) the policyholder shall make reimbursements periodically, rather than at the time claim costs are incurred. (c) The commissioner shall adopt rules to provide for adequate security for reimbursement of the amount paid by an insurance company that is payable from the deductible amount.”</i></p> <p>Tex. Ins. Code § 2053.204. <i>“Rate Reduction. (a) The department shall perform an actuarial analysis to determine the amount of rate reduction applicable to a deductible policy under this subchapter as compared to a standard workers’ compensation insurance policy without a deductible. (b) In years subsequent to the year in which the actuarial analysis described by Subsection (a) is performed, the department shall determine the amount of rate reduction according to rating procedures adopted by the commissioner. (c) When establishing procedures for the computation of experience modifiers, the commissioner may allow the exclusion of any claim amount paid under a deductible by an employer.”</i></p> <p>Tex. Ins. Code § 542.204. <i>“Action to Recover Deductible. (a) Notwithstanding any other provision of this code and except as provided by Subsection (b), if an insurer is liable to an insured for a claim that is subject to a deductible payable by the insured and a third-party may be liable to the insurer or the insured for the amount of the deductible, the insurer shall: (1) take action to recover the deductible against the third-party not later than the first anniversary of the date the insured’s claim is paid; or (2) pay the amount of the deductible to the insured. (b) An insurer is not required to take action or pay the amount of the deductible as required by Subsection (a) if, not later than the earlier of the first anniversary of the date the insured’s claim is paid or the 90th day before the date the statute of limitations for a negligence action expires, the insurer: (1) notifies the insured in writing that the insurer does not intend to take further collection actions against the third-party; and (2) authorizes the insured to take further collection actions. (c) This section applies regardless of whether the third-party who may be liable for the amount of the deductible is insured or uninsured.” Note: This code only applies to private passenger automobile policies.</i></p>

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
UTAH		X		Utah Admin. Code § R590-190. <i>“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>
VERMONT			X	No applicable statute, Administrative Code provision or case law exists. Vermont’s Department of Insurance advises its policy is to require pro rata distribution of recovered monies between the insurer and insured.
VIRGINIA		X		14 Va. Admin. Code § 5-400-80. <i>“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.”</i>
WASHINGTON	X			No applicable statute or Administrative Code provision exists. Washington’s Department of Insurance advises it relies on case law to establish that the insured must be made-whole before the insurer can collect any excess. <i>Thiringer v. American Motors Ins.</i> , 91 Wn.2d 215, 855 P.2d 191 (1978).
WEST VIRGINIA		X		W. Va. Code Ann. § 114-14-7. <i>“Insurers shall include the insured’s deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on proportionate basis with the insured, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the 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.”</i>

STATE	DOLLAR ONE (INSURED MADE WHOLE) STATES	PRO RATA STATES	UNDECIDED/ PRO RATA DEFAULT	CITATION/COMMENT
WISCONSIN	X (with some indication of proportionate reduction for comparative negligence)	X (if written consent is obtained from insured)		No applicable statute or Administrative Code provision exists. Wisconsin's Office of the Commissioner of Insurance (OCI) advises it relies on case law to establish if the insured is entitled to the first dollar collected. <i>Rimes v. State Farm Mut. Auto. Ins. Co.</i> , 316 N.W.2d 348 (Wis. 1982). Note: the Commissioner indicates that it would not object if the insurer reduced reimbursement by the percentage of comparative negligence of insured – assuming insurer's subrogation efforts to collect money from at-fault driver also included same reduction. The Commissioner "recommends" a written agreement with the insured regarding reimbursement of the deductible, including possible pro rata reduction for collection costs.
WYOMING	X			Wyo. Stat. § 26-13-113. <i>"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."</i>

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 contact Gary Wickert at gwickert@mwl-law.com. 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.