

WORKERS' COMPENSATION SUBROGATION IN ALL 50 STATES

Gary L. Wickert
 Matthiesen, Wickert & Lehrer, S.C.
 1111 E. Sumner Street
 P.O. Box 270670
 Hartford, WI 53027
 (262) 673-7850
 (262) 673-3766 (Fax)
gwickert@mwl-law.com
<http://www.mwl-law.com>

State	Main Statute	Carrier Sue 3P Directly?	Intervention	UM/UIM Recovery	Med Mal As 3P?	Legal Mal As 3P?	Recovery Limitations	Employer Negligence	Attorney's Fees	Future Credit	Auto No-Fault	PI Statute of Limitations
Alabama	§25-5-11	Yes, 6 Months after SOL	Yes	No	Yes	No	None	No	Pro Rata. <i>Fitch</i> Formula	Yes	No	2 Years
Alaska	§23.30.015	Yes, after 1 Year	Yes	Undecided	Undecided	Yes	None	Only if 100%	Pro Rata. Past and Future	Yes	No	2 Years
Arizona	§23-1023(d)	Yes, after 1 Year	Yes	No	Yes	No	None	Proportional. Only if Verdict	No	Yes	No	2 Years
Arkansas	§11-9-410	Yes	Must	Employer's Policy Only	Undecided	Undecided	Made Whole Doctrine	No	Pro Rata	Yes	No	3 Years
California	Labor Code §3852	Yes	Yes	No	No	Undecided	None	Proportional. Only if Verdict	Apportion, if Active	Yes	No	2 Years
Colorado	§8-41-203	Yes	Yes	No	Yes	Undecided	None	No	Pro Rata	Yes	Not After 7/01/03	2 Years
Connecticut	§31-293	Yes	Must be Within 30 Days	No	Yes	No	None	No	Arguably, No	No. Must Recover in 3P	No	2 Years
Delaware	§19 Del. C. 2363	Yes, after 260 Days	Yes	Employer's Policy Only	Yes	No	None	No	Pro Rata	Yes	No	2 Years

State	Main Statute	Carrier Sue 3P Directly?	Intervention	UM/UIM Recovery	Med Mal As 3P?	Legal Mal As 3P?	Recovery Limitations	Employer Negligence	Attorney's Fees	Future Credit	Auto No-Fault	PI Statute of Limitations
District of Columbia	§32-1535	6 Months after Award	Yes	No	Yes	Undecided	None	No	None, unless agreed upon by carrier.	Yes. May recover in 3P	Yes	3 Years
Florida	§440.39	Yes, after 1 Year	No	No	Yes	Undecided	<i>Manfredo</i> Formula: Failure to file Notice of Payment bars recovery	No	Pro Rata	Yes. May also recover in 3P	Yes	4 Years
Georgia	§34-9-11.1	Yes, after 1 Year	Yes	No	Undecided	Undecided	Made Whole Doctrine	No	Pro Rata	No	No	2 Years
Hawaii	§386-8	Yes, after 9 Months	Yes	Yes?	Undecided	Undecided	None	No	Apportion	Yes	Yes	2 Years
Idaho	§72-211	Yes	Yes	Undecided	Yes	Undecided	None	Reduces Lien Recovery	Apportion	Yes	No	2 Years
Illinois	§820 I.L.C.S. 305/5(b)	Yes, 3 Months before SOL	Yes	No	Yes	No	None	No. <i>Kotecki</i> Contribution Only.	Pro Rata. Limited to 25%	Yes. 25% of future benefits owed as atty's fees	No	2 Years
Indiana	§22-3-2-13	Yes, 1 Year after SOL	Yes	Employer's Policy Only	Yes	Undecided	Lien Reduction Statute §34-51-2-19	No	Pro Rata	Yes	No	2 Years
Iowa	§85.22	Yes, 90 Days Notice	Yes, if timely	No	No	No	§85.35. Settlement of Comp Claim Bars Subro	No	Pro Rata	Yes. May also recover in 3P	No	2 Years
Kansas	§44-504	Yes, after 18 Months	Yes	Only to Substitute Payment	Yes	Undecided	<i>Brabander</i> Formula	Yes. <i>Brabander</i> Formula	Apportion, if active.	Yes	Yes	2 Years
Kentucky	§342.700	Yes	Must	No	Yes	Undecided	None	Yes	Pro Rata	Yes, only if lien exceeds fees	Yes	1 Year 2 Years for Auto

State	Main Statute	Carrier Sue 3P Directly?	Intervention	UM/UIM Recovery	Med Mal As 3P?	Legal Mal As 3P?	Recovery Limitations	Employer Negligence	Attorney's Fees	Future Credit	Auto No-Fault	PI Statute of Limitations
Louisiana	§23:1101, et. seq.	Yes	Must	Employer's Policy Only	Yes	No	Plaintiff's Contributory Reduction 50% of Recovery Limit	Yes	Moody Fees. Pro Rata	Yes. May also recover in 3P	No	1 Year
Maine	39-A §107	Yes, after 30-Day Demand	Yes	Yes	Yes?	Undecided	None	No	Pro Rata	Yes	No	6 Years
Maryland	§9-901-903	Yes, first 2 Months	Yes	No	Yes?	Undecided	None	No	Pro Rata, Unless Intervention Necessary.	Yes	No	3 Years
Massachusetts	152 §15	Yes, after 7 Months	No	No	Yes	Undecided	None	No	Apportion	Yes	Yes	3 Years
Michigan	§418.827	Yes, after 1 Year	Yes	UM - Yes UIM - No	Yes	No	None	No	Pro Rata	Yes	Yes	3 Years
Minnesota	§176.061	Yes	Yes	No	Yes	Yes	Subrogable Elements Only. Naig Settlement	Lambertson Reduction	Pro Rata	Yes	Yes	6 Years
Mississippi	§ 71-3-71	Yes	Yes	No	Yes	Undecided	None	No	No	Yes	No	3 Years
Missouri	§287.150	Yes	Yes	Yes?	Yes	Undecided	Ruediger Formula	No	Pro Rata	Yes	No	5 Years
Montana	§39-71-412	Yes, after 1 Year	Yes?	Yes	Undecided	Undecided	Made Whole Doctrine	No	Pro Rata, Unless Waive 50%	No More 30% Reduction	No	3 Years
Nebraska	§48-118	Yes	Yes	Employer's Policy Only	Yes	Undecided	Fair and Equitable	No	Pro Rata	Yes	No	4 Years
Nevada	§616C.215	Yes	Yes	Employer's Policy Only	Yes	Undecided	None	No	Breen Formula	Yes	No	2 Years
New Hampshire	§281-A:13	Yes, after 9 Months	Yes	Yes	Undecided	Undecided	None	No	"As Justice May Require"	Yes	No	3 Years
New Jersey	§34:15-40	Yes, after 1 Year	No	Yes, only to prevent double recovery.	Yes	Undecided	None	No	Pro Rata	Yes	Yes	2 Years

State	Main Statute	Carrier Sue 3P Directly?	Intervention	UM/UIM Recovery	Med Mal As 3P?	Legal Mal As 3P?	Recovery Limitations	Employer Negligence	Attorney's Fees	Future Credit	Auto No-Fault	PI Statute of Limitations
New Mexico	§52-5-17	No. Reimbursement Only	Yes	Employer's Policy Only	Yes?	Undecided	Modified Made Whole Doctrine - Subrogable Elements Only	Yes	Pro Rata	Yes	No	3 Years
New York	Work Comp §29	Yes, 30 Days Notice	Depends	No	Yes	Yes	None	"Grave Injury" Contribution	Kelly Formula	Yes	Yes	3 Years
North Carolina	§97-10.2	Yes, after 1 Year	Yes	After 10/1/99	Undecided	No	"Discretionary Reduction"	Yes. §97-10.2(e).	Pro Rata	No. Must Recover in 3P	No	3 Years
North Dakota	§65-01-09	Yes, after 60 Days	Yes	Undecided	Yes	No	Up to 50% of 3P Recovery	No	25% - 33 1/3%, if suit filed.	Yes	Yes	6 Years
Ohio	§4123.931	Yes	Yes	Yes	Probably	Probably	Proportional. No. Trust Account.	No	Yes	Yes	No	2 Years
Oklahoma	85 OSA §44	Yes	Yes	No	Yes	Undecided	Equitable Apportion	No	Pro Rata	Only if Recovery More Than Lien	No	2 Years
Oregon	§656.593	Yes, 90 Days after Election	No	No	Yes?	Yes	None	No	No. Off the Top	No. Must Recover in 3P	No	2 Years
Pennsylvania	77 P.S. §671	Yes	Yes	Employer: Yes Employee: No Other Person: Yes	Causes of Action Prior to 3/20/03	No	None	No	Pro Rata	Yes	Yes	2 Years
Rhode Island	§28-35-58	No	Yes	No	Yes	Undecided	None	No	Pro Rata	Yes	No	3 Years
South Carolina	§42-1-560	Yes, after 1 Year	Yes	No	Undecided	Undecided	Equitable Reduction	No	Set by Commission. F2 1/3	Yes	No	3 Years
South Dakota	§62-4-38, 39, 40	Yes	Yes	Employer's Policy Only	Undecided	Undecided	None	No	Pro Rata, Up to 35%	Yes	No	3 Years
Tennessee	§50-6-112	Yes, after 1 Year	Yes	No	Yes	Undecided	None	No	Pro Rata	Yes	No	1 Year

State	Main Statute	Carrier Sue 3P Directly?	Intervention	UM/UIM Recovery	Med Mal As 3P?	Legal Mal As 3P?	Recovery Limitations	Employer Negligence	Attorney's Fees	Future Credit	Auto No-Fault	PI Statute of Limitations
Texas	§§ 417.001-417.004	Yes	Yes	Employer's Policy Only	Yes	Yes	None	After 1/1/03 Proportional Reduction	Apportion	Yes. May recover in 3P	No	2 Years
Utah	§34 A-2-106	Yes	Yes	No	Yes	Undecided	None	40% Rule	Pro Rata	Yes	Yes	4 Years
Vermont	Title 21§ 624	Yes, after 1 Year	Yes	Only if Plaintiff is made whole	Undecided	Undecided	None	No	Pro Rata	Yes	No	3 Years
Virginia	§65.2-309	Yes	Yes	Employer's Policy Only	Yes	Undecided	None	No	Pro Rata	Yes	No	2 Years
Washington	§51.24.030	Yes	Yes	Employer's Policy Only	Yes?	Yes	Made Whole Doctrine	No	Pro Rata	Yes	No	3 Years
West Virginia	§23-2A-1	Undecided	Probably	Employer's Policy Only	Yes?	Undecided	50% of 3P Recovery Limit	No	Statutory Reduction. §23-2A-1(b)	No	No	2 Years
Wisconsin	§102.29	Yes	Yes	No	Yes	No	None	No	No	Yes. May also recover in 3P	No	3 Years
Wyoming	§ 27-14-105	Yes, 15 Days Notice	Yes	Undecided	Undecided	Undecided	None	No	No	No. Must Recover in 3P	No	4 Years

"WORKERS' COMPENSATION SUBROGATION IN ALL 50 STATES"
 AVAILABLE AT <http://www.jurispub.com/books.asp?id=13>

These materials and other materials promulgated by Matthesen, 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 of the publications distributed by Matthesen, Wickert & Lehrer, S.C., please call Gary Wickert at (800) 637-9176. This publication is intended for the clients and friends of Matthesen, Wickert & Lehrer, S.C. This information should not be construed as legal advice concerning any legal advice concerning any factual situation and representation of insurance companies and/or individuals by Matthesen, Wickert & Lehrer, S.C. on specific facts disclosed within the attorney\client relationship. These materials should not used in lieu thereof in anyway.

