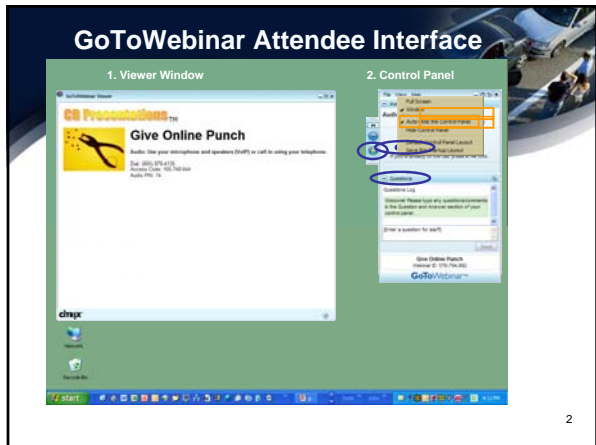


AUTOMOBILE SUBROGATION: In All 50 States

Presented By:
Gary L. Wickert
Matthiesen, Wickert & Lehrer, S.C.



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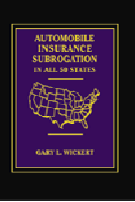
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AUTOMOBILE SUBROGATION: The View From 35,000 Feet

Presented By:
Gary L. Wickert
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AUTOMOBILE INSURANCE SUBROGATION: IN ALL 50 STATES



"Automobile Insurance Subrogation in All 50 States is like every subrogation or insurance-related resource I've ever wanted, tediously compiled, organized, and explained, in one convenient place." - Jon Coscia, Latitude Subrogation Services, Chief Operating Officer, Bloomfield Hills, Michigan

"This book is the 'Bible' on auto subrogation. Any insurance company with an auto line - personal or commercial - needs this book." - Jacqueline Guffin, Motors Insurance Company, Subrogation Manager, Atlanta, Georgia



"Automobile Insurance Subrogation in All 50 States is the most ambitious subrogation treatise I've ever seen. Matthiesen, Wickert & Lehrer has done it again!" - Gary Uhl, Sedgwick CMS, Operations Manager/Assistant Vice President, Des Moines, Iowa

To purchase or obtain more information on this book, please visit www.jurispub.com

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EFFECTIVE AUTO SUBROGATION IS CRITICAL BECAUSE...

- 275 Million Cars In The U.S. (More Than Any Other Country)
- Over 7 Million Auto Accidents In U.S. Annually
- Financial Toll: \$300 Billion
- 3 Million People Injured
- 45,000 People Killed (115 Per Day)
- 10 Will Die During This Webinar
- For Every 100 Insured Cars In 2010, There Were 5.67 Collision Claims And 2.61 Comprehensive Claims
- \$70 Billion In Annual Passenger Auto Liability Claims
- \$40 Billion In Annual Passenger Auto Collision Claims

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PERSONAL AUTOMOBILE COVERAGE

- **Liability**
 - Bodily Injury
 - Property
 - 25/50/25
- Medical Payments (Med Pay)
- Personal Injury Protection (PIP)
- Uninsured/Underinsured Motorist (UM/UIM)
- Collision/Comprehensive
 - Reasonable Repair
 - Cash Value vs. Replacement Value





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ADDITIONAL COMMERCIAL AUTO COVERAGE

- Hired And Non-Owned Coverage
- Drive Other Vehicle Coverage
- Garage Liability Coverage
- Garagekeeper's Liability Coverage





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NO-FAULT INSURANCE

- Personal Injury Protection (PIP)
- Thresholds
- Limited Tort
- Loss Transfer
- Modified No-Fault
- Add-on No-Fault
- Voluntary (Choice) No-Fault
- Future of No-Fault




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SUBROGATING MEDICAL AND PROPERTY CLAIMS

- Auto Subrogation Rights Generally
 - Contractual (Conventional) Subrogation
 - Policy Language
 - Subrogation Agreements
 - Equitable (Legal) Subrogation
 - Made Whole Doctrine
 - Common Fund Doctrine
 - Statutory Subrogation/Reimbursement
 - PIP And Med Pay Subrogation
 - Workers' Compensation
 - Medicare/Medicaid





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CONTRACTUAL SUBROGATION – POLICY LANGUAGE

A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right.

B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

- 1. Hold in trust for us the proceeds of the recovery; and*
- 2. Reimburse us to the extent of the recovery.*




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STATUTORY SUBROGATION

Wis. Stat. Ann. § 632.32 (c). Unless an insurer waives the right to subrogation, insurers making payment under any of the coverages under this subsection shall, to the extent of the payment, be subrogated to the rights of their insureds.

- Rare - Most Statutes Provide Only Reimbursement Rights
- Case Law - Pronounces Common Law Subrogation Rights
- Anti-Subrogation Statutes



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SUBROGATION OPTIONS

- **Settle With Third Party**
 - Don't Let Case Go Stale
 - Made Whole Issues
 - Waiting On BI Claims
 - Offer Of Settlement Statutes
- **Arbitration**
- **Filing Subrogation Suit**
 - Fees/Costs/Cost-Effectiveness
- **Intervention**
 - Mandatory/Discretionary/Prohibited
- **Notice Of Liens/Notice Of Subrogation**
 - Last Resort – Only If Necessary Or Sensible To Do



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MED PAY AND PIP SUBROGATION

- **Medical Payment (Med Pay) Coverage:** Pays for medical expenses of insured and passengers in auto accident or as pedestrians, regardless of fault. Usually includes coverage while insured is driving somebody else's vehicle.
- **Personal Injury Protection (PIP) Coverage:** Pays first party medical expenses, lost wages, and funeral benefits for insured and passengers. PIP required in AR, DE, FL, HI, KS, KY, MD, MA, MI, MN, NJ, NY, ND, OR, PA, and UT. It is often associated with no-fault insurance.
- Some states provide for Med Pay benefits but not PIP, and vice-versa.

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MED PAY AND PIP SUBROGATION

- **No-Fault Auto Insurance:** Pays first party medical expenses and lost wages damages to insured and passengers, without regard to fault, in exchange for insured/passenger limiting their right to sue tortfeasor for certain types of damages.
 - No State Has Absolute No-Fault (Gives Up Right To Sue Completely)



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MED PAY AND PIP SUBROGATION


- **Auto Insurance Laws Today Fall Into 4 Categories:**
 - **Traditional Tort System:** No PIP; No Restrictions On Suing
 - **Add-On State:** Optional PIP Paid; No Restrictions On Suing
 - 9 States (AR, DE, MD, OR, SC, SD, TX, VA, WA)
 - **Modified No-Fault:** First Party Benefits Paid Without Regard To Fault; Must Meet *Monetary Or Verbal* Threshold To Sue.
 - 12 States (FL, MI, NJ, NY, PA Have Verbal Threshold) (HI, KS, KY, MA, MN, ND, UT Have Monetary Threshold)
 - **Choice No-Fault:** Choice Of Pure No-Fault (No Suit For Non-Economic) Or Modified No-Fault (Can Sue Modified Driver).
 - 3 States (NJ, PA, KY)

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MED PAY AND PIP SUBROGATION

- **Med Pay Subrogation:**
 - Depends Heavily On Applicable State Law
 - Most States (29) Allow Med Pay Subro And/Or Reimbursement
 - Some Allow Only Reimbursement (CA)
 - Some Require Subro Language In Policy (AL, IL, LA)
 - Some Prohibit Direct Subro – Allow Perfection Of Lien (AZ)
 - Med Pay Subro Rights In Some States Are In Question (CO)
 - Some Allow Subro Only If Statute (§38a-334-7) Authorizes (CT)
 - Some Prohibit Payment Of Med Pay Benefits (DC)




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MED PAY AND PIP SUBROGATION


- **No-Fault (PIP) Subrogation (Non-No-Fault States):**
 - Lien, Reimbursement Right, And Credit (AR)
 - Reimbursement Rights Against 3P Carrier Only (DE)
 - Reimbursement If One Non-passenger Vehicle (DC)
 - No Limitations (IA)





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MED PAY AND PIP SUBROGATION


- **No-Fault (PIP) Subrogation (No-Fault States):**
 - Lien, Reimbursement Right, And Credit (AR)
 - If Commercial Vehicle Involved Or Uninsured 3P (FL)
 - Reimbursement If One Non-Passenger Vehicle (DC)
 - After 18 Months And \$2,000 Threshold Met (KS)
 - If 3P Uninsured. If Insured, Only BRB From 3P Carrier (KY)
 - Can Recover From 3P Carrier (110% If Files Subro Suit) (MA)
 - If Parked, Building, Out-of-state Accident Or 3P Uninsured (MI)
 - Reimbursement If 3P Not Required To Have PIP Or Commercial Vehicle (NJ)
 - Intercompany Arbitration If One Vehicle Over 6,500 Lbs. (NY)




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UNINSURED/UNDERINSURED MOTORIST SUBROGATION

- **Uninsured/Underinsured (UM/UIM) Coverage:** Covers Insured, Family And Passengers' Damages Caused By At-fault UM/UIM Motorist.
 - Most States Allow UM/UIM Subro (e.g., CT Does Not)
 - Consent-To-Settle Clause:
 - Protects Carriers' Subrogation Rights
 - Substituted Payment
 - UIM Carrier Can Substitute Its \$\$ For 3P Carrier's Limits
 - Protects Subrogation Against UIM's Assets
 - Usually Can't Subrogate Against 3P Liability Limits








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COLLISION SUBROGATION

- Collision Subrogation Recovers Average 13% Of Paid Losses (NASP Benchmark Study)
- Subrogation Rights Usually Established By Common Law/Reported Case Law
- Collision Subrogation Normal Even In No-Fault States: NY, NJ
 - Anti-subrogation Statutes Don't Apply: NY, NJ
 - Michigan Mini-Tort (3P 50% At Fault And All Damages Not Covered By No-Fault)
 - Allows Easy Recovery Of Deductible By Insured
- Basic Negligence Subrogation Claims


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COLLISION SUBROGATION

- Damages
 - Difference In Market Value Before And After: NJ, TN, VT
 - Reasonable Cost Of Repair Only: None
 - Whichever Is Lower: MD, ND
 - Repair Cost Plus Diminution In Value After Repair: NY, SC, WV
 - Cost Of Repair; Loss Of FMV If Can't Restore: LA, NE, NM, OK, SD
 - Plaintiff's Choice (Repair Or FMV): MS, NH, PA, TX, VA
 - FMV If Total Loss; Repair Cost If Not Total Loss: WA,
 - Difference In FMV Before And After, Plus Salvage: OH




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COLLISION SUBROGATION

- **Owner Can Usually Testify As To FMV, Not Repairs**
- **Loss Of Use**
 - Reasonable Rental Value: KY, MT, OR, TX, UT
 - Actual Rental Required: ME (Statute)
 - Statutory Right Of Recovery: MN
 - Cost Of Repair And Loss Of Use Combined Can't Exceed FMV: IA, KS
 - Reasonable Rental Cost OR Loss Of Use Value To Owner: IN
- **Replacement Value vs. Actual Cash Value (ACV)**
 - (RV) New Car Optional Coverage (4-5 Years)
 - Kelley Blue Book
- **Splitting Cause Of Action Prohibition**
 - E.G., Missouri. Allowed For Property Subro





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MADE WHOLE DOCTRINE

When there is a limited pool of third-party dollars for which the subrogated carrier and the insured must compete, the carrier cannot subrogate against or participate in those funds until the insured has been made whole.




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MADE WHOLE DOCTRINE

- **Applied Differently From State To State**
 - Does The Doctrine Apply?
 - When Is Insured "Made Whole"?
 - Can Made Whole Doctrine Be Overridden By Policy Terms?
 - **Equitable, Contractual vs. Statutory Subrogation**
 - Effect Of Contributory Negligence?
 - Do You Include Insurance Benefits In Calculation?
 - Must Insured Be Made Whole For Same Damage Elements?
 - **Property Loss vs. Bodily Injury**
 - **Economic vs. Non-Economic Damages**
 - Are Attorney's Fees Included In Calculation?





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MADE WHOLE DOCTRINE


- **Does The Made Whole Doctrine Apply?**
 - Arizona: No - However, must compromise Med Pay lien in fair and equitable manner. *Section 20-259.01(j)*.
 - Massachusetts: No - However, must prove recovery of same elements of damages. *Frost v. Porter Leasing, Inc.*
 - Mississippi: Yes - Insured must recover all damages before subrogation is allowed. *Federated Mutual v. McNeal*.
 - North Dakota: No - Doctrine never adopted.
 - Vermont: No - In fact, subrogation requires that the insurer be "made whole." *Norfolk v. Dedham Fire Ins. Co.*





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MADE WHOLE DOCTRINE


- **When Is Insured "Made Whole"?**
 - Georgia: When insured goes unpaid to some extent.
 - Nebraska: Must recover amount exceeding all damages.
 - Tennessee: Must recover ALL damages; insured has burden.
 - Texas: Burden of proof on party which files suit to contest made whole status.
 - Washington: If insured settles for less than policy limits; only for elements of damages paid by insurance.
 - Wisconsin: Must recover ALL damages.





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MADE WHOLE DOCTRINE

- **Can Made Whole Doctrine Be Negated by Policy Terms?**
 - Alabama, California, Connecticut, D.C., Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, Ohio, Oklahoma, South Dakota, Utah, Virginia, Washington, West Virginia allow contract language to override the Made Whole Doctrine.
 - In many cases simple subrogation language is sufficient to accomplish this.




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TIPS FOR AVOIDING THE MADE WHOLE DOCTRINE

- Good Policy Language Refuting The Made Whole Doctrine
- Intervene Into Third-Party Cases
- Participate In Settlement Negotiations
- Use Of Similar Injury/Jury Verdict Resources
- Solicit Opinion Of Defense Counsel During Litigation
- Engage Subrogation Counsel
- Determine Policy Limits And That Settlement Was For Less



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COMMON FUND DOCTRINE


A litigant who creates, discovers, increases, or preserves a fund to which others also have a claim is entitled to recover litigation costs and attorney's fees from that fund. That doctrine is an equitable doctrine designed to prevent unjust enrichment.



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COMMON FUND DOCTRINE


- Applied Differently From State To State
 - Does the made whole doctrine apply?
 - What proportion of attorney's fees/costs are owed?
 - What if the carrier "assists" in effecting recovery?
 - Can the Common Fund Doctrine be avoided?
 - Must notice be given to carrier or plaintiff's counsel?
 - Must insured be made whole for same damage elements?
 - Property Loss vs. Bodily Injury
 - Economic vs. Non-Economic Damages
 - Are attorney's fees included in calculation?




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COMMON FUND DOCTRINE

- **Does The Common Fund Doctrine Apply?**
 - **Arkansas:** Yes, by statute. Carrier must contribute in proportion it benefits from recovery. *Section 23-79-146.*
 - **Connecticut:** No - Not discussed in Connecticut law.
 - **Indiana:** Yes - Section 34-53-1-2 allows for CFD fees in personal injury cases. Undetermined in property claims.
 - **Iowa:** Yes - Section 668.5 requires pro rata contribution.
 - **Massachusetts:** Not yet applied to auto subrogation.
 - **Mississippi:** Not yet applied to auto subrogation.
 - **North Dakota:** No - Doctrine never adopted.




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COMMON FUND DOCTRINE


- **What Proportion Of Fees/Costs Are Owed?**
 - **Hawaii:** Two Different Methods Are Applied
 - **Lodestar Approach**
 - **Percentage Method**
 - **Maine:** Left To Discretion of Court. Section 2910-A Requires Pro-rata Share In Med Pay Subrogation.
 - **Maryland:** Divide Total Recovery Into Total Attorney's Fees And Multiply By Total Subrogation Interest.
 - **Minnesota:** Factors. 20%-30% Is Benchmark. No Hard Rule.





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COMMON FUND DOCTRINE


- **Can The Common Fund Doctrine Be Avoided?**
 - **Arkansas:** Yes, if carrier negotiates and tries to settle directly. *Commercial Standard Ins. Co. v. Combs.*
 - **Florida:** Yes, if the carrier provides "substantial assistance" to the insured. *Schwab v. Town of Davie.*
 - **Illinois:** Yes, if insurer participates in creation of the fund. No attorney's fees from unwilling recipient.
 - **Maryland:** Yes, if carrier intervenes and is represented.
 - **Texas:** Yes, if the carrier "participates" or "assists".
 - **Utah and Tennessee:** Yes - CFD only applies to "passive" beneficiaries.





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COMMON FUND DOCTRINE


- **Must Notice Be Given?**
 - **Idaho:** Yes – If no notice, no attorney’s fees or costs may be deducted from reimbursement. *Section 20-259.01(j)*.
 - **Louisiana:** Yes – Notice is an important prerequisite for application of the CFD – known as “Moody Fees”.
 - **Tennessee:** Yes – Insured’s attorney can be considered a volunteer.
 - **Vermont:** Trial court must be consulted to see if CFD is equitable based on the facts of the particular case involved.





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TIPS FOR AVOIDING COMMON FUND DOCTRINE


- Immediately Send Demand For Subrogation
- Try To Negotiate Subrogated Claim And Assign Same
- Get Subrogation Counsel Involved (Hourly)
- Demand Proof Of Plaintiff’s Counsel’s Time
- Keep Record Of Plaintiff’s Counsel’s Efforts To Destroy Lien
- Demonstrate A Need For Protection Of Lien By Own Counsel
- If Plaintiff’s Attorney Represents You:
 - Waive Fee If Tries To Defeat Your Interest
 - Conflict Of Interest





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STATUTE OF LIMITATIONS

- **Auto Collision Subrogation Claims**
 - Follows State’s Personal Property SOL Statute
 - Runs From Date Of Accident
- **Med Pay/PIP Subrogation Claims**
 - Follows State Personal Injury Negligence SOL Statute
 - Runs From Date Of Accident – (Most States)
 - Runs From Date COA Accrues - MD
 - Special SOL If BI Claim Involves Automobile
 - Runs From Date Of Accident – CO
 - Runs From Date Of Final PIP Payment – HI, KY
 - Follows State SOL For Breach Of Contract
 - Runs From Date Of Final PIP Payment – DE
 - Runs From Most Recent PIP Payment – DC, MN
 - Different Sol’s For Subrogation vs. Reimbursement – NM




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RELEASE OF TORTFEASOR BY INSURED

- **If Third Party And Its Insurer Settle With Insured**
 - WITH 3P Knowledge Of Subro – Can Still Pursue Subro
 - WITHOUT 3P Knowledge Of Subro – Barred From Pursuing Subro
- **The Latter Is True Even If Settlement Before Claim Payment**
- **What Constitutes Proper Notice Varies**
- **Statutory Right Of PIP Subro Can't Be Waived – NJ, ND**
- **Some States Have Specific Notice Letter Requirements – OH**
- **Pursuit Of Reimbursement Rights Still Available**





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REIMBURSEMENT OF DEDUCTIBLES


- **FACT And FICTION: The Made Whole Doctrine**
 - MWD Does Not Require Reimbursement Of Deductible
 - MWD Is Only A Defense To Protect Insured's Direct Recovery
 - MWD Applies Only When Simultaneous Pursuit Of Third Party
 - Subrogee Can Keep Recovery Even If Insured Not Made Whole
 - MWD Doesn't Mean Insured Entitled To 100% Of Deductible Before Carrier Can Subrogate

Fact or Fiction


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REIMBURSEMENT OF DEDUCTIBLES

- **Only 22 states have applicable case or administrative code law.**
 - <http://www.mwl-law.com/CM/Resources/50-STATE-DEDUCTIBLE-CHART.PDF>
 - Of other 28 states, 21 have no applicable law.
- **Alabama:** 3P tortfeasor lacks standing to argue that insured is not made whole. *Nationwide v. DPF Architects*, 792 So.2d 369 (Ala. 2000).
- **Florida:** 50% reduction of deductible reimbursement where insured 50% at fault is fine. *Monte de Oca v. State Farm*, 897 So.2d 471 (Fla. App. 2004).
- **Utah:** Insured reduced deductible based on recovery of only depreciated value. *Birch v. Fire Ins. Exchange*, 122 P.3d 696 (Utah App. 2005).


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REIMBURSEMENT OF DEDUCTIBLES

- **California:** All subrogation demands must include deductible. Pro-rata reimbursement of deductible. 10 Cal. A.D.C. § 2695.7.
- **New York:** Pro-rata deductible reimbursement required within 30 days after recovery. N.Y. Ins. Reg. 64, § 216.7(g)(1).
- **Texas:** Auto insurer must "take action" to recover deductible within 1 year from date claim is paid or 90 days before SOL. If not, must pay back deductible to insured. Tex. Ins. Code § 542.204. (Pro-Rata).
- **Wyoming:** Entire deductible must be reimbursed in full before insurer gets any part of subrogation recovery. Wyo. Stat. § 26-13-113.


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CONTRIBUTORY NEGLIGENCE/COMPARATIVE FAULT

- **Pure Contributory Negligence (1% Bar):** AL, DC, MD, NC, VA
- **Pure Comparative Fault: 13 States**
 - Plaintiff Recovers Even If 99% At Fault – Damages Reduced
 - AK, AZ, CA, FL, KY, LA, MS, MO, NM, NY, RI, SD, WA
- **Modified Comparative Fault**
 - 50% Bar – Plaintiff Can't Recover If 50% At Fault: 12 States
 - AR, CO, GA, ID, KS, MA, NE, ND, OK
 - 51% Bar – Plaintiff Can't Recover If 51% At Fault: 21 States
 - CT, DW, HI, IL, IN, IA, MA, MI, MT, NV, NH, NJ, OH, OR, PA, SC, TX, VT, WI, WY



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SUDDEN EMERGENCY DOCTRINE


- **Sudden Emergency:** A person is not liable for a reasonable response to a sudden emergency, so long as the person did not create the emergency.
 - Examples
 - Driver is surprised by pedestrian who steps out from between two parked cars, swerves to miss the pedestrian but then hits another car.
 - The defendant suffers an unexpected medical crisis or was confronted with an unexpected mechanical breakdown or road condition.
 - Where allowed, the emergency must truly be "sudden" and truly create an emergency.
 - If defendant knows of dangerous condition (temperature) he can't be surprised by patch of black ice.
 - It is foreseeable that a car in line of traffic will stop suddenly.
 - Medical emergency – defendant must have no reason to anticipate.


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UNAVOIDABLE ACCIDENT


- **Unavoidable Accident:** A person cannot be held liable for an accident that cannot be foreseen or anticipated in the exercise of ordinary care, *i.e.*, caused by a non-human condition and not the negligence of any party to the incident.
 - Over Half The States Have Rejected This Doctrine
 - It Merely Restates The Law Of Negligence And Confuses Juries
 - Subsumed By Foreseeability Instruction
 - Unavoidable Accident Is Extremely Rare
 - Overemphasizes The Defendant's Case
 - Focuses On The Incident, Not The Actor




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SEAT BELT DEFENSE



- Every State Except New Hampshire Requires Seat Belt Usage
- "First Collision"/"Second Collision"
- 33 States Have No Seat Belt Defense: DE, ID, IL, IN, KS, KY, LA, ME, MD, MA, MN, MT, NE, NH, NM, NC, OK, PA, RI, SC, TN, TX, UT, VT, VA, WA, WY
- 15 States Have Some Form Of Seat Belt Defense: AK, AZ, CA, CO, FL, GA, IA, MI, MO, NJ, NY, OH, OR, WV, WI
- 2 States Are Considering It: HI, ND





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SEAT BELT DEFENSE



- Usually Applied Via Comparative Negligence (FL)
- Sometimes Failure To Mitigate Theory (NY)
- Some Limit Percentage
 - MO: Only 1%
 - MI/OR: Maximum Is 5%
- Most Litigated And Clearly Defined Seat Belt Defense: WI
- Section 895.045: Jury Can Apportion Up To 15%






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BAILMENT

- A legal relationship created when the vehicle owner (bailor) entrusts the vehicle to a parking lot attendant, repair shop, dealership (bailee) for some purpose. If the vehicle is returned in damaged condition or not at all, the bailee may be liable for the damages if negligent.
 - **KEY:** Most states have some sort of a presumption of negligence on the part of the bailee which must be rebutted. Some simply switch the burden of going forward with evidence.
 - Simply showing the vehicle was stolen or destroyed in a fire isn't enough to defeat liability. The defendant must show no negligence.


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NEGLIGENT ENTRUSTMENT


- One who places or entrusts a vehicle in the hands of a person he knows, or should know, is incompetent or unfit to drive, may be held liable for injuries or damages resulting by the unfit driver provided that the injury was caused by the driver's incompetency, inexperience, or recklessness.
 - Entrusting Defective Vehicle/Vehicle In Disrepair Also Qualifies
 - Requires Combined Negligence Of Owner And Driver
 - Pleading It Allows Driving Record Into Evidence
 - FL Has "Dangerous Instrumentality Doctrine"




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GUEST STATUTES


- Law which provides that an auto owner or driver has a duty of care to a non-paying passenger in his or her auto different than the duty owed to the general public.
 - Passenger Can Sue Driver - Unless There Is A Guest Statute
 - **Purpose:** Prevent Fraud, Protect Against Frivolous Litigation
 - Adopted Widely In The 1920s And 1930s
 - 1970s And 1980s - Constitutional Challenges
 - **Alabama** - Only State Left With Comprehensive Guest Statute
 - **Alaska** - Never Had One (Wasn't State In 1920s/1930s)
 - **Texas** - GLW Handled Case Declaring Statute Unconstitutional


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FAMILY PURPOSE DOCTRINE


- **Imposes liability for the negligent operation of vehicle by another on the owner provided:**
 - the operator was a member of the family of the owner and living at home;
 - the vehicle was provided for the general use, pleasure and convenience of the family; and
 - the vehicle was being used with express/implied consent of the owner.
- **AZ, CO, GA, NC, NM, NV, OR, WA - Apply The Doctrine**
- **AL, CA, OH, TX, VT, VA - Do Not Apply The Doctrine**





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ECONOMIC LOSS DOCTRINE

- **Prohibits a tort recovery (negligence, strict liability, etc.) when a product defect or failure causes damage to itself, resulting in only economic loss, but does not cause personal injury or damage to any other property.**
 - Vehicle Burns While Parked In Garage
 - \$300,000 Luxury Motor Home Burns Up While Travelling
 - Direct Economic Loss Vs. Consequential Economic Loss
 - New Concept - Originated In CA And NJ In 1965. Purposes:
 - Maintain Distinction Between Tort And Contract Law
 - Protects Freedom Of Commercial Parties To Allocate Risk





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ECONOMIC LOSS DOCTRINE

- **Majority, Intermediate, And Minority Rules**
- **Exceptions (Varies From State To State):**
 - Damage To Property Other Than Product
 - Component Parts
 - Consumer Transactions
 - Fraud-In-The-inducement And Misrepresentation
 - Service Contracts
 - Warranty Claims (Contract Claim)
 - Negligent Repair Claims
- <http://www.mwl-law.com/CM/Resources/ELD-CHART.PDF>




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INTERSTATE SUBROGATION/ CONFLICT OF LAWS

- **Examples:**
 - New Jersey (No-Fault) Driver Involved In Accident In Texas
 - Texas Driver Involved In Accident In New Jersey (No-Fault)
 - Wisconsin (Allows Med Pay Subro) Driver Involved In Accident In California (No Med Pay Subro)
- **Traditional Conflict of Law Rules**
 - *Lex Loci Delecti, Restatement, Most Significant Contacts Rules*
 - State Insurance Statutes
 - New Jersey – Out-Of-State Vehicle Deemed To Provide NJ Coverage If Carrier Authorized To Do Business In NJ
 - New York – Out-Of-State Drivers May Be Deemed “Covered Persons”. Might Be Able To Subrogate Out-Of-State Accidents.


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DRAM SHOP LIABILITY

- **Law governing the liability of taverns, liquor stores and other commercial establishments that serve alcoholic beverages.**
 - Majority: Liable If Apparent That Patron Was Intoxicated (TX)
 - Most States Find Liability If Bar Serves Minor
 - Gross Negligence Sometimes Required (NM)
 - Minority (Growing): May Be Misdemeanor To Serve Minor Or Intoxicated Person, No Liability. The Negligence Is By Intoxicated Person – Not Establishment (CA)


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COMING SOON: AUTO SUBROGATION IN TEXAS

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- Co-presented by MWL subrogation counsel and our most knowledgeable local counsel in the state being covered.


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