



**WORKERS' COMPENSATION SUBROGATION IN ALL 50 STATES**

| State      | Main Statute             | Can Carrier Sue Third Party Directly             | Intervene   | Recovery From UM/UIM Benefits                | Subro Against Med Mal | Subro Against Legal Mal | Recovery Allocation/Equitable Limitations   | Employer Contribution Employer Negligence  | Attorney's Fees/Costs  | Future Credit  | Auto No-Fault    | PI SOL                    |
|------------|--------------------------|--|---|--|-----------------------|-------------------------|---|--|--|--|------------------|---------------------------|
| Alabama    | Ala. Stat. § 25-5-11     | Yes, 6 months after SOL.                         | Yes, if shown it could make substantial contribution. | <u>Employer:</u> Yes?<br><u>Employee:</u> No | Yes                   | No                      | (1) Carrier Reimbursed, Less Attorney's Fees.<br>(2) Balance to Plaintiff.                                  | No, employer immune even if intentional.   | Pro-Rata.<br><i>Fitch</i> Formula.<br>Carrier can recover fees if it files suit.               | Yes, carrier owes fees on value of future benefits. Use <i>Miller</i> Formula. | No               | 2 Yrs.                    |
| Alaska     | Alaska Stat. § 23.30.015 | Yes, after 1 year.                               | Yes   | Undecided                                    | Undecided             | Yes                     | (1) Litigation Costs<br>(2) Employer Reimbursed<br>(3) Balance to Plaintiff                                 | No, employer reimbursement reduced by % of fault.  | <i>Cooper</i> Rule.<br>Pro-Rata. Past and Future.<br>Active vs. Passive<br><i>English</i> Rule | Yes, reduced by employer's negligence.   | No               | 2 Yrs.                    |
| Arizona    | A.R.S. § 23-1023(D)      | Yes, after 1 year.                               | Yes   | No   | Yes                   | No                      | (1) Litigation Costs<br>(2) Employer Reimbursed<br>(3) Balance to Plaintiff                                 | No, contribution lien reduced by % of employer's fault determined by jury (trial, not settlement). | No, lien not subject to reduction for atty's fees.   | Yes, also reduced by employer's % of fault.                                    | No               | 2 Yrs.                    |
| Arkansas   | A.C.A. § 11-9-410        | Yes, party must give 3 days' notice of settling. | Must Intervene in reasonable time after notice.       | Employer's Policy Only                       | Undecided             | Undecided               | (1) Costs/Fees<br>(2) 1/3 to Worker<br>(3) 2/3 to Carrier<br>(4) Balance to Plaintiff<br>Made Whole Applies | No   | Pro-Rata   | Yes  | No               | 3 Yrs.                    |
| California | Labor Code § 3852        | Yes, with notice by certified mail.              | Yes   | No   | No                    | Undecided               | (1) Costs/Fees Based on Services by Both<br>(2) Carrier Reimbursed<br>(3) Balance to Plaintiff              | Proportional Only if Verdict   | Apportion, if carrier actively participates.   | Yes, in amount of employee's net recovery. Should file petition with W.C.A.B.  | No               | 2 Yrs.                    |
| Colorado   | C.R.S. § 8-41-203        | Yes  | Yes, even after SOL runs.                             | No   | Yes                   | No?                     | Economic Damages Only. No recovery from non-economic damages.   | No   | Pro-Rata   | Yes  | Not after 7/1/03 | 2 Yrs.<br>3 Yrs. if auto. |

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| Connecticut          | C.G.S.A. § 31-293        | Employer can bring suit. C.G.S.A. § 31-293. Carrier can bring suit pursuant to equitable subrogation. | Must intervene or give notice of lien within 30 days after notice of filing suit. | No   | Yes                   | No                      | (1) Fees, Expenses<br>(2) Carrier Reimbursed<br>(3) Balance to Plaintiff<br>If suit brought by carrier, may be subject to equitable defenses, including Made Whole Doctrine. | No  | Lien Automatically Reduced By 1/3. If suit brought by carrier, may be subject to equitable defenses, including Common Fund Doctrine. | Yes   | No            | 2 Yrs. |
| Delaware             | 19 Del. C. § 2363        | Yes, if no plaintiff suit by 260 days. 30 days' notice by all.  | Yes   | Employer's Policy Only                       | Yes                   | No                      | (1) Fees, Expenses<br>(2) Carrier Reimbursed, Less Pro-Rata Fees<br>(3) Balance to Plaintiff   | No  | Pro-Rata   | Yes   | No            | 2 Yrs. |
| District of Columbia | D.C. Code Ann. § 32-1535 | 6 months after award.   | Carrier must intervene if plaintiff files suit.                                   | No   | Yes                   | Undecided               | Formula applies when carrier files suit. Otherwise, carrier has only equitable lien.   | No  | None, unless agreed to by carrier.   | Yes, may recover in third-party suit directly if carrier files. | Yes           | 3 Yrs. |
| Florida              | F.S.A. § 440.39          | Year:<br>1: Plaintiff<br>2: Carrier<br>3: Plaintiff   | No, MUST file Notice of Lien.   | No   | Yes                   | No                      | Carrier gets lien, less pro-rata fees, unless plaintiff shows <i>Manfredo</i> Formula.   | No  | Pro-Rata   | Yes, may recover in third-party suit if carrier files.          | Yes           | 4 Yrs. |
| Georgia              | O.C.G.A. § 34-9-11.1     | Yes, after 1 year.  | Yes   | No   | Undecided             | Undecided               | Made Whole Doctrine codified. No lien against non-economic damages.  | Plaintiff's recovery reduced by employer's negligence.          | Apportion based on services by carrier and plaintiff atty.   | No  | No            | 2 Yrs. |
| Hawaii               | Haw. Rev. Stat. § 386-8  | Yes, after 9 months.  | Yes   | Yes?   | Undecided             | Undecided               | (1) Fees, Expenses<br>(2) Carrier Reimbursed, Less Pro-Rata Fees<br>(3) Balance to Plaintiff   | No  | Apportion based on activity of each.   | Yes, with approval of Dept. of Labor                            | Yes           | 2 Yrs. |
| Idaho                | Idaho Code § 72-223      | Yes   | Yes   | Undecided                                    | Yes                   | Undecided               | Carrier gets first money dollar-for-dollar.  | No subro when employer is comparatively negligent.              | Apportion based on activity of each.   | Yes, carrier reimbursed atty's fees on each payment.            | No            | 2 Yrs. |
| Illinois             | 820 I.L.C.S. § 305/5(b)  | Yes, 3 months before SOL.   | Yes   | No   | Yes                   | No                      | Carrier gets first money off top, less atty's fees.  | No. <i>Kotecki</i> Contribution only, up to <i>Kotecki</i> cap. | Pro-Rata. Limited to 25%   | Yes, 25% of future benefits owed as atty's fees.                | No            | 2 Yrs. |
| Indiana              | I.C. § 22-3-2-13         | Yes, 1 year after SOL.  | Yes   | Employer's UM policy only, unless exclusion. | Yes                   | Undecided               | Carrier paid first, less fees. Lien Reduction Stat. §34-51-2-19 may apply.   | No  | Pro-Rata 25% and 1/3. Past and future benefits.  | Future obligations end with any third-party recovery.           | No            | 2 Yrs. |

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| Iowa          | I.C.A. § 85.22               | Yes, 90 days' notice. Plaintiff must give notice 10 days before trial.                  | Must intervene or file Notice of Lien within 30 days of receiving employer's notice or lose subro rights. | No   | No                                      | No                      | First money – past and future. § 85.35. Settlement of comp claim bars subro.   | No  | Pro-Rata. Future fees paid back as benefits paid.                          | Yes, may also recover in third-party suit.   | No            | 2 Yrs.                      |
| Kansas        | K.S.A. § 44-504              | Yes, after 1 year; 18 months if death.  | Yes   | Only to substitute payment.                                    | Yes                                     | Undecided               | <i>Brabander</i> Formula. Lien extends only to damages that duplicate medical and lost wages.  | Yes. <i>Brabander</i> Formula.  | Apportion, If active. No fee if gerrymandering.                            | Yes, reduced by employer's negligence.   | Yes           | 2 Yrs.                      |
| Kentucky      | K.R.S. § 342.700             | Yes, but only if employee has not filed suit.   | Must Intervene  | No   | Yes                                     | Undecided               | No reimbursement from non-economic damages. Modified Made Whole Doctrine applies.  | Yes, third-party can seek contribution from employer, which reduces plaintiff's recovery, lien, and credit. | Lien reduced by a pro rata-share of plaintiff's attorney's fees and costs. | Yes, lien must exceed plaintiff's atty's fees and costs or there's no credit. Credit is reduced by % of employee's and employer's fault. | Yes           | 1 Yr.<br>2 Yrs.<br>For Auto |
| Louisiana     | La. R.S. § 23:1101, et. seq. | Yes, with notice. Carrier must consent to settlement.                                   | Must Intervene  | Policy only, unless UM policy excludes benefits to WC carrier. | Yes                                     | No                      | First money reimbursed. Reduced by plaintiff's contributory negligence. If settled, carrier can recover max of 50% of lien.  | Yes, lien reduced by employer's % of fault.   | <i>Moody</i> Fees. Pro-Rata based on atty's activity.                      | Yes  | No            | 1 Yr.                       |
| Maine         | 39-A M.R.S.A. § 107          | Yes, after 30-day demand.   | <u>Employer Policy</u> : Yes<br><u>Employee Policy</u> : ?  | Yes  | Yes?                                    | Undecided               | Carrier gets first money, less fees and costs.   | No  | Pro-Rata, if plaintiff files.  | Yes  | No            | 6 Yrs.                      |
| Maryland      | Md. Lab. & Empl. § 9-901-903 | Exclusive right for 2 mths after first award of comp. Joint right to file after 2 mths. | Yes   | No   | Yes, if mal-practice aggravates injury. | Undecided               | Carrier gets first money, less fees and costs.   | No  | Pro-Rata, unless intervention is necessary.                                | Yes  | No            | 3 Yrs.                      |
| Massachusetts | M.G.L.A. 152 § 15            | Yes, after 7 months.  | No  | No   | Yes                                     | Undecided               | Carrier gets first money, less fees and costs. Subro possibly not allowed against pain and suffering ( <i>Curry</i> Allocation) or against loss of consortium ( <i>Eisner</i> Allocation). | No  | Apportion, depending on activity.  | <i>Hunter</i> offset. Pays only fraction of future benefits.   | Yes           | 3 Yrs.                      |

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| Michigan      | M.C.L.A. § 418.827                              | Yes, after 1 year.                             | Yes  | UM – Yes<br>UIM - No                 | Yes                   | NO                      | Carrier gets first money, less fees and costs. Subrogated to economic damages only if no-fault involved. No Subro for Med Expense if No-Fault.              | No  | Pro-Rata   | Franges Formula   | Yes           | 3 Yrs. |
| Minnesota     | M.S.A. § 176.061                                | Yes  | Yes, can also actively participate.  | No                                   | Yes                   | Yes                     | (1) Fees, Expenses<br>(2) 1/3 to Plaintiff<br>(3) Carrier Reimbursed, Less Pro-Rata Fees<br>(4) Balance to Plaintiff As (Credit).<br><i>Naig Settlement</i> | Lambertson Contribution/Reduction         | Pro-Rata. Court has discretion to determine reasonable fees. Carrier can't get fees.             | Yes, carrier pays % of future benefits because of reduction for costs/fees.   | Yes           | 6 Yrs. |
| Mississippi   | M.C.A. § 71-3-71                                | Yes, with reasonable notice.                   | Must intervene unless there is reimbursement agreement or the carrier files. | No                                   | Yes                   | Undecided               | (1) Fees, Expenses<br>(2) Carrier Reimbursed Fully - No Fees<br>(3) Balance to Plaintiff  | NO  | No   | Yes   | No            | 3 Yrs. |
| Missouri      | Mo. Rev. Stat. § 287.150                        | Yes  | Yes, but not required.   | UM - No<br>UIM - No                  | Yes                   | No                      | Ruediger Formula  | No  | Pro-Rata   | Yes   | No            | 5 Yrs. |
| Montana       | Mont. Stat. § 39-71-412                         | Yes, after 1 year. Plaintiff must give notice. | Yes?   | Yes                                  | Undecided             | Undecided               | First money lien, subject to Made Whole Doctrine.   | No  | Pro-Rata, unless carrier waives 50%.   | Future Credit Stat. repealed in 2005.   | No            | 3 Yrs. |
| Nebraska      | Neb. Rev. Stat. §§ 48-118; 48-118.01; 48-118.04 | Yes  | Yes, equal voice.  | Yes. Possibly Employer's Policy Only | Yes                   | Undecided               | (1) Fees, Expenses<br>(2) Carrier Reimbursed<br>(3) Balance to Plaintiff<br>Division must be agreed to or court approved as fair and equitable.             | No, only if contractual indemnity.        | Fees/costs recoverable and allocated if carrier is active. If not, pro-rata deduction.           | Yes   | No            | 4 Yrs. |
| Nevada        | N.R.S. § 616C.215                               | Yes  | Possibly   | Employer's Policy Only               | Yes                   | Undecided               | Lien may be limited to economic damages.  | No  | Breen Formula  | Yes. Credit arguably limited to economic damages and reduced by personal living expenses. No credit for non-economic damages. | No            | 2 Yrs. |
| New Hampshire | N.H. Rev. Stat. Ann. § 281-A:13                 | Yes, after 9 months.                           | Yes  | Yes                                  | Undecided             | Undecided               | Lien reimbursed off the top, less any fees owed.  | No  | "As Justice May Require". Carrier may recover fees. Fees/costs owed on past and future benefits. | Yes   | No            | 3 Yrs. |

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| New Jersey     | N.J.S.A. § 34:15-40                       | Yes, after 1 year.  | No        | Yes                              | Yes                   | Yes                     | Carrier reimbursed, less pro-rata share of fees/costs.   | No  | Pro-rata of 1/3 fees and up to \$750 in costs. | Yes   | Yes           | 2 Yrs. |
| New Mexico     | N.M.S.A. § 52-5-17                        | No. Reimbursement Only                                    | Yes       | Employer's Policy Only           | Yes?                  | Undecided               | Hybrid Made Whole Doctrine: Subrogable Elements Allocation Required. Employee has burden of proof. Court looks at percentage of each damage element recovered.   | Yes, reimbursement reduced by % of fault. | Pro-rata, up to discretion of court.           | Yes   | No            | 3 Yrs. |
| New York       | N.Y. Work Comp § 29                       | Yes, 30 days' notice.                                     | Depends   | No                               | Yes                   | Yes                     | (1) Fees, Expenses<br>(2) Carrier Fully Reimbursed<br>(3) Net to Plaintiff   | "Grave Injury" Contribution               | Kelly Formula                                  | Yes   | Yes           | 3 Yrs. |
| North Carolina | N.C.G.S.A. § 97-10.2                      | Yes, joint right after 1 year, ending 60 days before SOL. | Yes       | Yes, for policies after 10/1/99. | Undecided             | No                      | (1) Fees, Expenses<br>(2) Carrier Fully Reimbursed<br>(3) Net to Plaintiff<br>"Discretionary Reduction"  | Yes<br>N.C.G.S.A. § 97-10.2(e)            | Pro-Rata. Plaintiff Must Apply                 | No, must recover in third-party suit.                         | No            | 3 Yrs. |
| North Dakota   | N.D.C.C. § 65-01-09                       | Yes, after 60 days.                                       | Yes       | Undecided                        | Yes                   | No                      | Up to 50% of Third-Party Recovery  | No  | 25% / 1/3%                                     | Yes   | Yes           | 6 Yrs. |
| Ohio           | Ohio Rev. Code Ann. § 4123.931            | Yes   | Yes       | Yes                              | Probably              | Probably                | Statutory allocation formulas for trials and settlements.  | No  | Yes  | Yes, but trust set up in amount of futures.                   | No            | 2 Yrs. |
| Oklahoma       | 85 O.S. § 348<br>Accident Prior to 2/1/14 | Yes   | Yes       | No                               | Yes                   | Yes                     | (1) Fees - costs off top.<br>(2) If recovery is compromise settlement approval of court is needed. Balance apportioned as parties may agree. If no agreement, court can equitably apportion.<br>(3) If recovery is not "compromise settlement, <i>Prettyman</i> formula allowed. | No  | No   | Only if recovery is more than lien.                           | No            | 2 Yrs. |
|                | 85 O.S. § 43<br>Accident After 2/1/14     | Yes   | Must      | Yes                              | Yes?                  | Yes?                    | (1) Fees – costs off top.<br>(2) Carrier receives 2/3 of net recovery or its entire lien, whichever is less.<br>(3) Balance to plaintiff.  | No  | No   | No, must recover future payments in third-party recovery.     | No            | 2 Yrs. |
| Oregon         | O.R.S. § 656.593                          | Yes, 90 days after election.                              | No        | No                               | Yes?                  | Yes                     | (1) Fees, Expenses<br>(2) Carrier Reimbursed Fully for Past and Future Benefits  | No  | No<br>Off the Top                              | No, must recover in third-party suit. Credit if recovery made | No            | 2 Yrs. |

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|                |  |   |           |  |                                   |                         | (3) Carrier Reimbursed Fully<br>(4) Balance to P-Credit Possible "Just and Reasonable" Allocation   |  |  | before benefits paid.   |               |        |
| Pennsylvania   | 77 P.S. § 671                          | Yes?  | Yes       | Employer: Yes<br>Employee: No<br>Other Person: Yes | Causes of action prior to 3/20/03 | Yes                     | None  | None.<br>First Money Reimbursed                                      | Pro-Rata   | Yes   | Yes           | 2 Yrs. |
| Rhode Island   | R.I.G.L. § 28-35-58                    | Yes, if notice given 26 weeks before 2 years, 8 months anniversary of accident, can sue after 2 years, 8 months date. | Yes       | No   | Yes                               | Undecided               | None  | None.<br>First Money Reimbursed                                      | Pro-Rata   | Yes   | No            | 3 Yrs. |
| South Carolina | S.C. Code Ann. § 42-1-560              | Yes, after 1 year.  | Yes       | No   | Yes                               | Undecided               | First money less fees; but equitable reduction.   | No   | Set by Commission F2 1/3                                   | Yes   | No            | 3 Yrs. |
| South Dakota   | S.D.C.L. § 62-4-38, 39, 40             | Yes   | Yes       | Employer's Policy Only                             | Undecided                         | Undecided               | Subro limited to "like damages" (economic v. non-economic). Below is "Zoss Formula":<br>(1) Allocate recovery into "like damages" (hearing);<br>(2) Determine amount of "like damages" paid by carrier;<br>(3) Subtract pro-rata fees /costs (ratio of lien to gross recovery); and<br>(4) Balance paid to carrier. | No   | Pro-rata, up to 35%. Allocated between worker and carrier. | Yes, recovery and credit limited to "like damages".   | No            | 3 Yrs. |
| Tennessee      | T.C.A. § 50-6-112                      | Yes, after 1 year.<br>Carrier has additional 6 months to file for a total of 18 months.                               | Yes       | No   | Yes                               | Undecided               | No Special Formula<br>First Money   | No, defendant can introduce evidence to show employer cause in fact. | Pro-rata if no active participation by carrier.            | Yes, but no credit against unknown or incalculable future medical benefits, unless carrier proves likelihood and amount of future medicals. | No            | 1 Yr.  |
| Texas          | V.T.C.A. Labor Code §§ 417.001-417.004 | Yes   | Yes       | Employer's Policy Only                             | Yes                               | Yes                     | Carrier has first money right of recovery.  | After 1/1/03 proportional reduction.                                 | Apportionment  | Yes, may recover in third-party suit if carrier sues alone.   | No            | 2 Yrs. |

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| Utah          | U.C.A. § 34 A-2-106          | Yes                                  | Yes       | No  | Yes                   | Undecided               | (1) Fees, Expenses<br>(2) Carrier Reimbursed Fully, Less Pro-Rata Fees/Costs.<br>(3) Net to Plaintiff   | 40% Rule                                  | Pro-Rata                                     | Yes  | Yes           | 4 Yrs. |
| Vermont       | Vt. Stat. Ann. Tit. 21 § 624 | Yes, after 1 year.                   | Yes       | Only If Plaintiff Is Made Whole                                 | Undecided             | Undecided               | First dollar reimbursed to carrier, less pro-rata fees.   | No  | Pro-Rata                                     | Yes  | No            | 3 Yrs. |
| Virginia      | Va. St. § 65.2-309           | Yes                                  | Probably  | Employer's Policy Only  | Yes                   | Undecided               | First dollar reimbursed to carrier, less pro-rata fees.   | No  | Pro-Rata                                     | Yes, carrier reimbursed attorney's fees on each payment.         | No            | 2 Yrs. |
| Washington    | R.C.W.A. § 51.24.030         | Yes                                  | Yes       | Yes. Possibly Employer's Policy Only                            | Yes?                  | Yes                     | (1) Fees, Expenses<br>(2) 25% to Plaintiff<br>(3) Carrier Reimbursed Fully, Less Pro-Rata Fees/Costs.<br>(4) Net to Plaintiff<br>No recovery from pain and suffering damages. | No  | Pro-Rata                                     | Yes  | No            | 3 Yrs. |
| West Virginia | W.Va. Code § 23-2A-1         | Undecided                            | Yes       | <u>Employee Policy:</u> No<br><u>Employer Policy:</u> Undecided | Yes?                  | Undecided               | First dollar recovery after 2003 Amendment.   | No  | Statutory Reduction. W.Va. Code § 23-2A-1(b) | No   | No            | 2 Yrs. |
| Wisconsin     | Wis. Stat. § 102.29          | Yes                                  | Yes       | No  | Yes                   | No                      | (1) Atty's Fees/Costs<br>(2) 1/3 Balance to Plaintiff<br>(3) Carrier Reimbursed Fully<br>(4) Balance to Plaintiff's Credit  | No  | No   | Yes, carrier can recover futures if prosecutes third-party case. | No            | 3 Yrs. |
| Wyoming       | Wyo. Stat. § 27-14-105       | Yes, 15 days' notice.                | Yes       | Undecided   | Undecided             | Undecided               | First money right of recovery.  | No  | No   | No, must recover in third-party suit.                            | No            | 4 Yrs. |

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