

DEDUCTIBLE REIMBURSEMENT LAWS IN ALL 50 STATES

Most automobile insurance policies require their insured to pay a deductible when a claim is made. If the auto carrier is successful in subrogating a particular loss against a third party and makes a recovery of its claim payments, the issue often comes up as to what portion, if any, of the insured's deductible must or ought to be reimbursed to the insured. The law of each state differs with regard to the obligation of the insurer to reimburse its insured the deductible in a particular claim, as well as the amount to be reimbursed.

In the world of subrogation, the issue of how much of an insured's deductible must be reimbursed to the insured after a carrier makes a successful subrogation recovery, remains a perplexing and confusing issue for subrogation professionals. It rivals ERISA preemption in health insurance subrogation and the no-fault laws of certain states as being the most confusing and least understood area of subrogation. Even experienced subrogation professionals and lawyers simply get it wrong when it comes to understanding and employing the law surrounding the obligation of a subrogated carrier to reimburse an insured a deductible. Subrogation professionals often assume that if a state employs or recognizes the "Made Whole Doctrine," then the insured must be totally reimbursed for its out-of-pocket deductible and any uninsured losses, before a carrier can subrogate. Unfortunately, this over simplistic view and application of the Made Whole Doctrine is not only erroneous, but also results in reduced subrogation recoveries for carriers across the country. Surprisingly, the obligation of an insurer to reimburse some or all of its insured's deductible has little to do with the Made Whole Doctrine in most states.

The Made Whole Doctrine generally provides that under the common law subrogation principle of equity, an insured is entitled to be "made whole" before a subrogated insurer can participate in a recovery from a tortfeasor. *Insurance Co. of North Am. v. Lexow*, 602 So.2d 528 (Fla. 1992). An insured may argue that the Made Whole Doctrine prevents an insurer from subrogating or recovering anything on its subrogated interest whenever the insured has not been fully reimbursed for its deductible. Unfortunately, although observed and practiced by many subrogation professionals throughout our industry, this view is incorrect. While the specific law involved may change from state-to-state, the consensus is that the Made Whole Doctrine does not give an insured an affirmative right or cause of action against its insurer to be "made whole," beyond the payment of the insurance policy proceeds involved. *Schonau v. Geico General Ins. Co.*, 903 So.2d 285 (Fla. App. 2005). Rather, the Made Whole Doctrine may be used only as a defense by insureds to protect the insured's direct recovery from a tortfeasor, where the insured also lays claim to a limited amount of third-party proceeds based on subrogation. *Florida Farm Bureau Ins. Co. v. Martin*, 377 So.2d 827 (Fla. 2005).

Decisions from across the country applying the Made Whole Doctrine essentially hold that where an insurer and insured simultaneously attempt to recover all their damages from a tortfeasor who cannot (because of insolvency, limited insurance coverage, or other reasons) pay the full value of damages, the insured has priority of recovery over the insurer's subrogation interest. This is far different from an insured claiming it is entitled to 100% of its deductible before an insurer can subrogate on its own. Even the leading case in the country on the Made Whole Doctrine involved a

dispute over limited third-party insurance proceeds between an insured and its insurer. *Garrity v. Rural Mut. Ins. Co.*, 253 N.W.2d 512 (Wis. 1977). An insured always has the right to pursue a tortfeasor independently for its deductible, and that right alone is sufficient to allow the subrogee insurance company to keep its settlement, even if the insured is not made whole. *Paulson v. Allstate Ins. Co.*, 665 N.W.2d 744 (Wis. 2003). Even one of the leading treatises on insurance, in its very first statement on the Made Whole Doctrine, raises the threshold issue of insufficient funds: “*In many instances, the insurer and insured both have rights of recovery against the third party primarily liable for the loss, if the amount recoverable from the third party is insufficient to completely satisfy the claims of both.*” *Couch On Insurance*, § 223.133, at 223-145 (3d Ed. 2000).

The **Utah** Court of Appeals decided a case in which an insurer reimbursed an insured its deductible, but not before reducing the deductible based on depreciation of property damage caused by a fire. *Birch v. Fire Ins. Exchange*, 122 P.3d 696 (Utah App. 2005). In that case, fire damaged the insured’s property, and its insurance policy provided for full replacement costs, subject to a \$500 deductible. The carrier subrogated against the tortfeasor but was able to recover only the depreciated value of the property. It then reimbursed its insured its deductible, but first reduced it based on the depreciation of the property. The insured argued that the Made Whole Doctrine should focus not on what he might legally have recovered from the tortfeasor, but rather on the total damages or loss he sustained. The Court disagreed and held that the reduction of the deductible was allowed because the maximum recoverable in the tort action was less than the replacement value insurance payment made by the insurer.

The **Florida** Court of Appeals astutely recognizes that a blanket application of the erroneous notion that an insured must recover its deductible first before a carrier will be allowed to recover dollar-one of any subrogation interest, will guarantee that insurance companies will simply readjust their premiums to pass on the added cost to consumers. *Monte de Oca v. State Farm*, 897 So.2d 471 (Fla. App. 2004). It held that a 50% reimbursement of a deductible where the plaintiff was 50% at fault was perfectly equitable. What’s more, a third-party tortfeasor lacks any standing to complain that an insurance company cannot subrogate until its insured has been totally reimbursed its deductible or otherwise “made whole.” *National Prop. & Cas. Ins. Co. v. DPF Arc.*, 792 So.2d 369 (Ala. 2000). Unless the insured has intervened into the action to claim a right of recovery which would otherwise be prohibited due to lack of third-party proceeds or insurance coverage, a carrier can subrogate, notwithstanding the fact that the insured has not been made whole by complete reimbursement of its deductible. The only party with standing to object to the insurer’s lack of reimbursement of 100% of a deductible is the insured, and even then, it should only be able to complain when the insured is making an affirmative claim and third-party proceeds are insufficient to satisfy both the insured’s uninsured loss and the carrier’s subrogation interest. *Economy Fire & Cas. Co. v. Goar*, 564 So.2d 867 (Ala. 1990).

It should be clear then, that the so-called “dollar-one states” are a misnomer and have little application to whether and to what extent a deductible must be reimbursed to an insured. The term simply refers to whether a state recognizes and applies the Made Whole Doctrine as described above. But, if the Made Whole Doctrine doesn’t give the insurance industry guidance as to when and under what circumstances a deductible must be reimbursed, in whole or in part, what does? The answer, where it has been declared, is usually derived from the specific insurance regulations and administrative codes of each state.

Twenty-three states contain regulations or administrative codes which specifically and, in detail, govern when and under what circumstances an insured’s deductible should be reimbursed by a subrogating insurer. For example, in **Texas**, the Tex. Ins. Code § 542.204 specifically requires an insurer to “take action” to recover a deductible within one year from the date a claim is paid or 90 days before the statute of limitations runs-whichever is sooner. If it does not, the law requires an insurer to pay a deductible back to its insured. However, this burden does not apply if an insured is notified that subrogation will not be pursued and the insured is authorized to proceed on his own to recover any losses he deems he has

suffered. However, this code section applies only to private passenger automobile policies. No other applicable statute, administrative code provision or case law gives us guidance for matters involving fire and casualty, property, or health insurance subrogation. However, the Texas Department of Insurance (TDI) indicates that the reimbursement of the insurance deductible in a third-party claim is usually dictated by the level of recovery - usually a pro-rata reimbursement based on the percentage of recovery. However, the TDI warns that a carrier must be consistent on its deductible reimbursement policy.

California law requires that every insurer that makes a subrogation demand must include in every such demand the insured's deductible. 10 CA A.D.C. § 2695.7(q). Insurers must share subrogation recoveries on a pro-rata basis to reimburse a pro-rata share of their insureds' deductibles. A pro-rata share of legal expenses and fees may be deducted on a pro-rata basis, if incurred. **Iowa** law requires that an insurer shall, upon the insured's request, include the insured's deductible in any subrogation demand. Iowa A.D.C. § 191-15.43 (507B)(4). Any subrogation recoveries will be shared on a pro-rata basis with the insured unless the deductible amount has otherwise been recovered. **New York** law requires an insurer which has made a physical damage third-party subrogation recovery to mail or hand deliver to the insured a pro-rata share of the insured's deductible, within thirty days after such recovery. N.Y. Ins. Reg. 64 § 216.7(g)(1). **Wyoming**, on the other hand, has enacted a specific statute which requires that an insurer reimburse its insured its deductible, in full, before any part of the recovery is applied to any other use. Wyo. Stat. § 26-13-113. If the deductible exceeds the recovery made by the insurer, the entire recovery must be paid to the insured.

And so, it goes that 23 states have enacted insurance regulations or statutes specifically governing the duties of a subrogated carrier in subrogation settings. Of the other 27 states, 21 have no applicable statute, provision, or case law. In light of the fact that most of the states which have enacted regulations appear to apply a pro-rata reimbursement philosophy, an advisable policy with regard to reimbursement of deductibles in states which have not made any pronouncement, is to follow the pro-rata reimbursement formula.

Seven states have specific case law which governs procedures in these situations. **North Carolina** suggests that an insurer should pay the deductible first out of any subrogation recovery absent some alternate agreement. *St. Paul Fire & Marine v. W.P. Rose Supply Co.*, 198 S.E.2d 482 (N.C. 1973). The **South Dakota** Supreme Court has held that an insured can collect even if its insured has not been made whole by deductible reimbursement. *Julson v. Federated Mut. Ins. Co.*, 562 N.W.2d 117 (S.D. 1997). **Washington** follows the blanket rule that an insured must be made whole before an insurer can collect any excess, and the Washington Department of Insurance advises that it relies on this case law to establish that a deductible must be reimbursed in full before a carrier can collect. *Thiringer v. American Motorist, Inc.*, 855 P.2d 191 (Wash. 1978). Alabama has left the issue to be governed by the terms of the insurance policy. *Ex Parte State Farm & Cas. Co.*, 764 So.2d 543 (Ala. 2000). It is possible that the 21 undecided states may fall in line at some point on either side of the fence - either requiring a deductible to be reimbursed in full before any subrogation recovery can be had or allowing a carrier to subrogate either without regard to reimbursement of the deductible or after reimbursement of a pro-rata share of the deductible.

The following chart represents a summary of the laws and regulations in each state with regard to whether there is a duty or obligation on the part of a subrogated carrier to reimburse any or all of its insured's deductible to its insured before it can successfully subrogate or seek reimbursement of its claim payments. Each state is broken down into automobile and property subrogation.

50 STATE DEDUCTIBLE REIMBURSEMENT LAW AND CHART

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
ALABAMA	Automobile and Property: No applicable statute, Administrative Code provision or case law exists. Alabama’s Dept. of Insurance orally advises this issue is generally governed by contract law to extent provided in the policy. Policy language can modify the Made-Whole Doctrine. <i>Ex parte State Farm & Cas. Co.</i> , 764 So.2d 543 (Ala. 2000). The insured can’t claim it’s not made whole merely because of a deductible it paid.	N/A	N/A	N/A
ALASKA	Automobile: Pro-Rata. “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 pre-judgment or post-judgment interest shall be shared pro-rata.”	Alaska Admin. Code tit. 3, § 26.080	Deductible must be included in any subro demand.	Pro-Rata
	Property: Pro-Rata. “(a) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a first-party property claim shall: (3) include the first-party claimant’s deductible, if any, in a subrogation demand unless the first-party claimant requests that it not be included or unless the deductible has been otherwise recovered by the first-party claimant; no deduction for expense may be made from any deductible recovered unless an outside attorney or other outside expert witnesses have been retained and deduction may be for no more than a pro-rata share of their cost less attorney fees and costs recovered; any recovery of pre-judgment or post-judgment interest shall be shared pro-rata.”	Alaska Admin. Code tit. 3, § 26.090	Deductible must be included in any subro demand.	Pro-Rata
ARIZONA	Automobile: Pro-Rata. “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.” An insurer is not required to add an insured’s deductible or uninsured loss to its subrogation action; maintaining two separate suits (<i>i.e.</i> , one by insured and another by insurer) is not considered a “splitting of actions.” <i>Commercial Union Ins. Co. v. Lewis & Roca</i> , 902 P.2d 1354 (Ariz. 1995).	Ariz. Admin. Code § R20-6-801(H)(4)	Deductible must be included in subro demand when insured requests it.	Pro-rata share of allocated loss adjustment costs - only if outside atty is retained.
	Property: None.	N/A	Not Specifically Required	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
ARKANSAS	Automobile: Pro-Rata. <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>	Ark. Admin. Code § 054.00.43-10(d)	Deductible must be Included in any subro demand.	Pro-rata share of allocated loss adjustment costs – only if outside atty is retained.
	Property: None.	N/A	Not Specifically Required	N/A
CALIFORNIA	Automobile and Property: Pro-Rata. <i>“Every insurer that makes a 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> Note: The plain meaning of this regulation is that an insurer seeking settlement from a tortfeasor must seek recovery of its insured’s deductible. It does not authorize an insured to recover a deductible in litigation without the insured being a party to the suit. <i>Pacific Gas & Elec. Co. v. Superior Court</i> , 50 Cal. Rptr.3d 199, 203 (Cal. App. 2006). The above section does not apply to disability and health insurance.	Cal. Code of Regs. tit. 10, § 2695.7(q)	Deductible must be Included in any subro demand.	Pro-rata share of allocated loss adjustment costs – only if outside atty retained.
COLORADO	Automobile and Property: No applicable statute, Administrative Code provision or case law exists. Colorado’s Department of Insurance orally advises that the standard practice is to reimburse insured for deductible on a comparative negligence basis.	N/A	Not Specifically Required	N/A
CONNECTICUT	Automobile and Property: Pro-Rata. Collision deductible included in subrogation demand. <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 include 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> While there is no specific statute or case law governing the duty of a subrogated insurer to reimburse the insured’s deductible, the Connecticut Supreme Court has held that an insured need not be reimbursed its deductible to be “made whole.” <i>Fireman’s Fund Ins. Co. v. TD Banknorth Ins. Agency, Inc.</i> , 2013 WL 3818112 (Conn. 2013).	Conn. Gen. Stat. Ann. § 38a-351a.	Deductible must be Included in any subro demand.	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
DELAWARE	<p>Automobile: No applicable statute, Administrative Code provision or case law exist other than as to PIP subrogation. With regard to PIP subrogation, § 2118(f) provides: “An insured person may not plead and introduce into evidence in an action for damages against a tortfeasor the amount of the deductible; however, insurers shall recover any deductible for their insureds or their household members pursuant to subsection (g) of this section.”</p>	<p>21 Del. C. § 2118(f) <i>Stratton v. Am. Indep. Ins. Co.</i>, 2010 WL 3706617 (Del. 2010).</p>	<p>Carrier’s obligation to pursue under § 2118(g) extends to any deductible, not just exhausted deductibles. The PIP recovery deductible is limited to liability coverage that remains after insured’s bodily injury claim against tortfeasor is resolved.</p>	Not Specified
	<p>Property: None.</p>	N/A	Not Specifically Required	N/A
DISTRICT OF COLUMBIA	<p>Automobile and Property: No applicable statute, Administrative Code provision or case law exists.</p>	N/A	Not Specifically Required	N/A
FLORIDA	<p>Automobile: No applicable statute, Administrative Code provision or case law specifically setting forth a duty to reimburse a deductible. Florida law does not appear to recognize an affirmative right or cause of action by an insured against its insurer to be “made whole” beyond the payment of insurance policy proceeds. Instead, it appears that Florida law allows the “Made Whole” Doctrine as a defense used by insureds to protect the insured’s direct recovery from a tortfeasor, where the insured’s own insurer makes a subrogation claim upon the insured’s recovery. Pro-rata reimbursement probably required. Auto insurer does not violate Made Whole Doctrine where it returns to its contributorily negligent insured a properly calculated prorated portion of insured’s collision deductible after recovery in subrogation action.</p>	<p><i>Schonau v. GEICO Gen. Ins. Co.</i>, 903 So.2d 285, 287 (Fla. DCA 2005). <i>Monte De Oca v. State Farm Fire & Cas. Co.</i>, 897 So.2d 471 (Fla. DCA 2004).</p>	Not Specifically Required	N/A
	<p>Property: None.</p>	N/A	Not Specifically Required	N/A
GEORGIA	<p>Automobile and Property: No applicable statute, Administrative Code provision or case law exists. Georgia’s Department of Insurance orally takes the position that the policyholder should come first, but good customer service and insurance contract dictate.</p>	N/A	Not Specifically Required	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
HAWAII	Automobile: No applicable statute, Administrative Code provision or case law specifically setting forth a duty to reimburse a deductible. However, with regard to UM/UIM subrogation, § 431:10C-305.5 provides: “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.”	Haw. Stat. § 431:10C-305.5	Reimbursement is Required With UM/UIM Subrogation. Otherwise, Not Required.	Not Specified
	Property: None.	N/A	Not Specifically Required	N/A
IDAHO	Automobile and Property: No applicable statute, Administrative Code provision or case law exists. Idaho’s Department of Insurance orally expresses a preference that the insured be reimbursed its deductible first - no statutory support requires this.	N/A	Not Specifically Required	N/A
ILLINOIS	Automobile: Pro-Rata. “Any insurance carrier whose payment to its insured is reduced by a deductible amount under a policy providing collision coverage is subrogated to its insured’s entire collision loss claim including the deductible amount unless the deductible amount has been otherwise recovered by the insured, but if the deductible amount has been otherwise recovered by the insured it shall not be included in the subrogated loss claim and shall be excluded from the amount of loss pleaded. 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 there from 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.” Note: Administrative expenses are those incurred as a normal cost of doing business. But “incurred expenses” are “out of pocket” expenses related to a specific claim.	215 I.L.C.S. § 5/143b. <i>Morel v. Coronet Ins. Co.</i> , 117 Ill.2d 18 (Ill. 1987).	Deductible must be included in any collision subrogation action.	Administrative expenses cannot be deducted- only incurred expenses, such as atty’s fees, collection fees and adjuster’s fees. Installment payments must be reimbursed pro-rata when paid.
	Property: None.	N/A	Not Specifically Required	N/A
INDIANA	Automobile and Property: No applicable statute, Administrative Code provision or case law exists. Indiana’s Department of Insurance orally indicates that the common practice is for insurer to reimburse insured on pro-rata basis based on percentage recovered.	N/A	Not Specifically Required	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
IOWA	Automobile: Pro-Rata. <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>	I.C.A. § 191-15.43 (507B)(4) (Administrative Code)	Deductible must be included in any collision subro demand upon claimant’s request.	Pro-rata share of allocated loss adjustment costs – only if outside atty retained.
	Property: None.	N/A	Not Specifically Required	N/A
KANSAS	Automobile and Property: No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A
KENTUCKY	Automobile: Pro-Rata. <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>	806 Ky. Admin. Reg. 12: 12:095 §7(d)(5)	Deductible must be included in any collision subrogation demand upon claimant’s request.	Pro-rata share of allocated loss adjustment costs – only if outside atty retained.
	Property: None.	N/A	Not Specifically Required	N/A
LOUISIANA	Automobile and Property: No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A
MAINE	Automobile and Property: No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A
MARYLAND	Automobile and Property: No applicable statute, Administrative Code provision or case law exists. Insurer can subrogate even if insured has not been made-whole. Maryland doesn’t recognize Made Whole Doctrine.	<i>Stancil v. Erie Ins. Co.</i> , 740 A.2d 46 (Md. App. 1999).	Not Specifically Required	N/A
MASSACHUSETTS	Automobile and Property: No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A
MICHIGAN	Automobile and Property: No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
MINNESOTA	Automobile: Pro-Rata. <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>	M.S.A. § 72A.201	Deductible must be included in subrogation demand.	No deduction for expenses from deductible recovery unless atty is retained to collect recovery, in which case deduction may be only for pro-rata share of cost of retaining atty.
	Property: None.	N/A	Not Specifically Required	N/A
MISSISSIPPI	Automobile and Property: No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A
MISSOURI	Automobile: Pro-Rata. <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>	Mo. Code Regs. Ann. Tit. 20, § 100-1.050(2)(c)	Deductible must be included in any collision subrogation demand upon claimant’s request.	Pro-rata share of allocated loss adjustment costs – only if outside atty retained.
	Property: None.	N/A	Not Specifically Required	N/A
MONTANA	Automobile and Property: Insurer has duty to determine if insured is made whole before it subrogates, including recovery of insured’s deductible. Montana is a true “insured whole” state when it comes to deductibles.	<i>Ferguson v. Safeco Ins. Co. of Am.</i> , 180 P.3d 1164 (Mont. 2008).	Deductible must be demanded and reimbursed before insurer can subrogate.	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
NEBRASKA	Automobile: Pro-Rata. <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>	210 Neb. Admin. Code, Ch. 60, § 009.03	Deductible must be included in any collision subrogation demand upon claimant’s request.	Pro-rata share of legal costs only – only if outside atty retained.
NEVADA	Automobile: Pro-Rata. <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> An insurer is not required to add an insured’s deductible or uninsured loss to its subrogation action; maintaining two separate suits (i.e., one by insured and another by insurer) is not considered a “splitting of actions.” <i>Smith v. Hutchins</i> , 566 P.2d 1136 (Nev. 1977).	Nev. Admin. Code § 686A.680	Deductible must be included in any collision subrogation demand upon claimant’s request.	Pro-rata share of legal costs only – only if outside atty retained.
	Property: None.	N/A	N/A	N/A
NEW HAMPSHIRE	Automobile and Property: No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
NEW JERSEY	<p>Automobile: Pro-Rata In Physical Damage Claims. (See Formula). N.J. Admin. Code 11:3-10.7 provides: (a) If an insured has received payment under his or her physical damage coverage that is subject to a deductible, the insured shall share, pro-rata, with the insurer any net recovery received by the insurer from third parties. (b) Net recovery shall be the total recovery less the insurer's allocated loss adjustment expenses attributable to such recovery. The formula for computing net recovery and the insured's share of recovery of the deductible may be stated as follows:</p> <p style="text-align: center;"><i>Total Recovery – Allocated Loss Adjusting Expenses = Net Recovery</i> <i>(Deductible ÷ Total Loss) X Net Recovery = Insured's Share of Recovery</i></p> <p>(c) Unless the insurer returns its insured's full deductible the insured shall attempt to effect full recovery in clear liability cases and shall not enter into any intercompany agreements that provide for the acceptance of lesser amounts on a formula basis. (d) If an insurer has paid a physical damage claim that is subject to a deductible and it elects not to pursue its subrogation claim where the probability of recovery exists, the insurer shall so notify its insured in writing within 60 calendar days after it has paid the claim, except that the notification shall be given at least 30 days prior to the running of any applicable statute of limitations or period required for notice of claim. If an insurer does not notify it's insured within the time periods prescribed above and the statute of limitations or period required for notice or claim has expired, the insurer shall forthwith remit to its insured the full amount of the insured's deductible.</p> <p>Automobile: PIP/Med Pay Deductible Recoveries Not Allowed. The Automobile Reparation Reform Act (no-fault law) prohibits the injured party from recovering a medical expense deductible and/or 20% copayment under a PIP policy from the tortfeasor.</p>	<p>N.J. Admin. Code § 11:3-10.7</p> <p>N.J. Admin. Code S.A. § 39:6A-12 <i>Roig v. Kelsey</i>, 641 A.2d 248 (N.J. 1994).</p>	<p><u>Physical Damage Claims:</u> No Specific Requirement to Include Deductible In Demand But Must Reimburse Insured Pro-Rata Any Net Recovery.</p> <p>In physical damage claims, if insurer doesn't pursue subro where probability of recovery exists, the insurer must notify insured in writing within 60 days after it paid the claim. (30 days if SOL is running). If SOL runs and insurer hasn't complied with these notice provisions, it must reimburse full amount of deductible to insured.</p>	<p>Pro-rata share of allocated loss adjustment cost.</p>
	<p>Property: None.</p>	<p>N/A</p>	<p>Not Specifically Required</p>	<p>N/A</p>
NEW MEXICO	<p>Automobile and Property: No applicable statute, Administrative Code provision or case law exists.</p>	<p>N/A</p>	<p>Not Specifically Required</p>	<p>N/A</p>

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
NEW YORK	<p>Automobile: Pro-rata. In Physical Damage Claims. Specific notice requirements exist even if not pursuing subrogation and are found in New York’s Unfair Trade Practices Regulations. N.Y. Ins. Reg. 64, § 216.7(g) provides: “<i>Subrogation Agreements. (1) 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. (2) Net recovery shall be the total recovery less the insurer’s allocated loss adjustment expenses attributable to such recovery. The formula for computing net recovery and the insured’s share of recovery of the deductible may be stated as follows:</i></p> <p style="text-align: center;"><i>Total Recovery – Allocated Loss Adjusting Expenses = Net Recovery</i> <i>(Deductible ÷ Total Loss) X Net Recovery = Insured’s Share of Recovery</i></p> <p><i>Application of Formula: Assume a loss of \$500 subject to a \$100 deductible with \$50 in allocated loss adjustment expenses:</i></p> <p><i>(a) if there is full recovery of \$500: computation of net recovery: \$500 - \$50 = \$450; computation of insured’s share of recovery: \$100/\$500 x \$450 = \$90</i></p> <p><i>(b) If there is a partial recovery of \$300: computation of net recovery: \$300 - \$50 = \$250; computation of insured’s share of recovery: \$100/\$500 x \$250 = \$50</i></p> <p>(3) Unless the insurer returns its insured’s full deductible, it shall attempt to effect full recovery in clear liability cases and shall not enter into any intercompany agreements that provide for the acceptance of lesser amounts on a formula basis. (4) If an insurer has paid a physical damage claim that is subject to a deductible and it has elected to pursue its subrogation claim, the insurer shall promptly attempt to effect recovery. If a dispute arises between two or more insurers regarding the subrogation recovery, and the insurers are unable to resolve it, the insurer seeking recovery shall submit the dispute to binding arbitration or a court action shall be commenced no later than 180 calendar days following the payment of the claim to its insured. (5) If an insurer has paid a physical damage claim that is subject to a deductible and it is pursuing its subrogation claim, the insurer shall notify its insured in writing of the status of its claim 120 calendar days after the date of the claim payment to its insured. An updated status letter shall be sent every 120 calendar days thereafter until the claim is either honored or rejected. (6) If an insurer has paid a physical damage claim that is subject to a deductible and it elects not to pursue its subrogation claim where the possibility of recovery exists, the insurer shall so notify its insured in writing within 60 calendar days after it has paid the claim, except that the notification shall be given at least 30 days prior to the running of any applicable statute of limitations or period required for notice of claim. If an insurer does not notify its insured within the time periods prescribed above and the statute of limitations or period required for notice of claim has expired, the insurer shall forthwith remit to its insured the full amount of the insured’s deductible.</p>	N.Y. Ins. Reg. 64 § 216.7(g)(1)	<p style="text-align: center;"><u>Physical Damage Claims:</u></p> <p>Insurer must promptly attempt to effect recovery. No specific requirement to include deductible in demand but must reimburse insured pro-rata any net recovery.</p> <p>Must pay pro-rata portion of deductible to insured within 30 days of recovery.</p> <p>If pursuing subro, insurer must notify insured in writing of status of its claim within 120 days after claim is paid and every 120 days thereafter until claim is honored or rejected.</p> <p>If not pursuing subro, and possibility of recovery exists, insurer must notify insured within 60 days after claim paid (30 days if SOL running), or it will owe insured 100% of deductible.</p>	Pro-rata share of allocated loss adjustment expenses.

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
	<u>Property</u> : None.	N/A	Not Specifically Required	N/A
NORTH CAROLINA	Automobile and Property : No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A
NORTH DAKOTA	Automobile and Property : No applicable statute, Administrative Code provision or case law exists. North Dakota's Department of Insurance orally indicates generally, the insured is paid pro-rata amount based on the percentage recovered, but reimbursement is merely a courtesy to the insured.	N/A	Not Specifically Required	N/A
OHIO	Automobile: Pro-Rata. "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."	Ohio Admin. Code § 3901-1-54(H)(10)	Must Include Deductible In Subrogation Demand.	Pro-rata Share Of Outside Attorney's Or Collection Agency's Fees Only
	<u>Property</u> : None.	N/A	Not Specifically Required	N/A
OKLAHOMA	Automobile: Pro-Rata. "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."	Okla. Admin. Code § 365:15-3-8	Deductible must be included in any collision subrogation demand upon claimant's request.	Pro-rata Share Of Allocated Loss Adjustment Expenses
	<u>Property</u> : None.	N/A	Not Specifically Required	N/A
OREGON	Automobile: Pro-Rata. "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."	Or. Admin. Code § 836-080-0240	Deductible must be included in any collision subrogation demand upon claimant's request.	Pro-rata Share Of Outside Atty's Fees Only
	<u>Property</u> : None.	N/A	Not Specifically Required	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
PENNSYLVANIA	Automobile: Pro-Rata. <i>“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.”</i> 31 Pa. Admin. Code § 146.8 is a valid law promulgated by the Pennsylvania Insurance Commissioner. The Made Whole Doctrine has no applicability with regard to reimbursement of deductibles. <i>Harnick v. State Farm Mut. Ins. Co.</i> , 2009 WL 579378 (E.D. Pa. 2009); <i>Jones v. Nationwide Property & Cas. Ins. Co.</i> , 995 A.2d 1233 (Pa. Super. 2010). The Made Whole Doctrine does not apply in collision coverage policy cases, and the practice of pro-rate reimbursement does not violate the Made Whole Doctrine. <i>Jones, supra</i> .	31 Pa. Admin. Code § 146.8(c)	Deductible must be included in any collision subrogation demand upon claimant’s request.	Pro-rata share deduction is allowed only if outside attorney is retained. Only allocated loss adjustment expenses.
	Property: None.	N/A	Not Specifically Required	N/A
RHODE ISLAND	Automobile: Pro-Rata. <i>“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.”</i>	R.I. Code R. 11-5-73:7(C) (Alternatively Cited as R.I. A.D.C. § 02 030 073)	Deductible must be included in any subrogation demand.	Pro-Rata Share Of All Subro Expenses
	Property: Pro-Rata. <i>“Whenever, through subrogation, an insurance company or its agent collects a casualty loss from a third party, that company or agent shall, from the funds collected, first pay to the insured the deductible portion of the casualty loss less the prorated share of subrogation expenses and only after this retain any funds in excess of the deductible portion of the recovery.”</i>	R.I. Gen. Laws Ann. § 27-8-12	No Specific Requirement To Include Deductible In Demand But Must Reimburse Insured Pro-Rata Any Net Recovery.	Pro-Rata Share Of All Subro Expenses
SOUTH CAROLINA	Automobile and Property: No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A
SOUTH DAKOTA	Automobile and Property: 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).	N/A	Not Specifically Required	N/A
TENNESSEE	Automobile and Property: No applicable statute, Administrative Code provision or case law exists.	N/A	Not Specifically Required	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
TEXAS	<p>Automobile: No Reimbursement Requirements. However, it does require “action” to recover deductible to be taken unless it gives insured notice within 90 days before SOL runs that it won’t take action. If no such action is taken, and no proper notice is given, the insurer must pay the insured the amount of the deductible.</p> <p><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.”</i> Section 542.202 provides that the word “action” means “taking various actions such as reasonable and diligent collection efforts, mediation, arbitration, and litigation against a responsible third-party or the third-party’s insurer.”</p>	Tex. Ins. Code § 542.204	<p>If “third party may be liable”, subro claim must be brought within one year of payment or must pay Insured’s deductible, unless notice given to insured that subrogation will not be pursued.</p> <p>Section 542.204 is only a notice provision. It does not require a subrogated carrier to pay the deductible first out of a subrogation recovery. You should first look at the applicable insurance policy to see how it deals with a deductible, if at all.</p>	N/A
	Property: None.	N/A	N/A	N/A
UTAH	<p>Automobile: Pro-Rata. “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.”</p>	Utah Admin. Code § R590-190	<p>Deductible must be included in any subrogation demand.</p> <p>Must notify insured if subrogation efforts are discontinued.</p>	Pro-rata share deduction only if outside attorney is retained. Only allocated loss adjustment expenses.
	Property: None.	N/A	Not Specifically Required	N/A
VERMONT	<p>Automobile and Property: 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.</p>	N/A	Not Specifically Required	N/A

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
VIRGINIA	Automobile and Property: Pro-Rata. <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>	14 Va. Admin. Code § 5-400-80	Deductible must be included in any collision subrogation demand upon claimant’s request.	Pro-rata share deduction only if outside attorney retained. Only allocated loss adjustment expenses.
	Property: None.	N/A	N/A	N/A
WASHINGTON	Automobile and Property: Reimburse deductible (less pro-rata expenses) first; then carrier’s subrogation interests. <i>“The insurer must include the insured’s deductible, if any, in its subrogation demands. Any recoveries must be allocated first to the insured for any deductible(s) incurred in the loss, less applicable comparable fault. Deductions for expenses must not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be made only as a pro-rata share of the allocated loss adjustment expense. The insurer must keep its insured regularly informed of its efforts related to the progress of subrogation claims. “Regularly informed” means that the insurer must contact its insured within sixty days after the start of the subrogation process, and no less frequently than every one hundred eighty days until the insured’s interest is resolved.”</i> In <i>Daniels v. State Farm Mut. Auto. Ins. Co.</i> , 2018 WL 3424941 (Wash. App. 2018), State Farm recovered 70% of its auto property subrogation interest and reimbursed the insured 70% of its deductible. The insured argued that the policy required that she be “fully compensated” for her loss which she argues includes the full amount of the deductible. State Farm contends that it satisfied the policy’s terms because Daniels was fully compensated when it paid the cost to repair her car. The court agreed with State Farm and held that the insured was “fully compensated” for property damage because State Farm paid her for all the property damage. The term “fully compensated” did not include recovery of the insured’s deductible. The insurer is not required to fully compensate the insured for a deductible before keeping any part of a subrogation recovery.	W.A.C. § 284-30-393	Deductible must be included in any subrogation demand.	Pro-rata share deduction only if outside attorney retained. Only allocated loss adjustment expenses.

STATE	REIMBURSEMENT REQUIREMENT	AUTHORITY	INCLUSION OF DEDUCTIBLES	EXPENSE/FEE DEDUCTION
WEST VIRGINIA	Automobile: Pro-Rata. “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.”	W. Va. Code Ann. § 114-14-7	Deductible must be included in any subrogation demand.	Pro-rata share deduction only if outside attorney retained. Only allocated loss adjustment expenses.
	Property: None.	N/A	N/A	N/A
WISCONSIN	Automobile and Property: No applicable statute or Administrative Code provision exists. Wisconsin’s Office of the Commissioner of Insurance (OCI) orally 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.	N/A	Not Specifically Required	N/A (See Commissioner’s Oral Recommendation Under “Reimbursement Requirement” Column)
WYOMING	Automobile: Full Deductible Reimbursed If Recovery. “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.”	Wyo. Stat. § 26-13-113	No Specific Requirement to Include Deductible In Demand But Must Reimburse Insured Full Deductible From Any Recovery	No Expenses Deducted from Deductible Reimbursement
	Property: None.	N/A	Not Specifically Required	N/A

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