

The New Jersey Administrative Code, N.J.A.C. 11:3-10.7, regulates the manner in which the insured's deductible is treated in a subrogation claim. The rule in New Jersey is that the deductible must be included with the carrier's subrogation and any recovery is shared pro rata. The insured's deductible is also subject to payment of a pro rata share of the recovery expenses.

#### 11:3-10.7 Subrogation Agreements

(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 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:

1. Total recovery - Allocated loss adjustment expenses = Net recovery

$$\frac{\text{Deductible}}{\text{Total Loss}} \times \text{Net recovery} = \text{Insured's Share of recovery}$$

2. Application of Formula: Assume a loss of \$500.00 subject to a \$100.00 deductible with \$50.00 in allocated loss adjustment expenses:

i. If there is full recovery of \$500.00: computation of net recovery:

$$\$500.00 - \$50.00 = \$450.00$$

Computation of insured's share of recovery:

$$\frac{\$100.00}{\$500.00} \times \$450.00 = \$90.00$$

$$\$500.00$$

ii. If there is partial recovery of \$300.00: computation of net recovery:  $\$300.00 - \$50.00 = \$250.00$

Computation of insured's share of recovery:

$$\frac{\$100.00}{\$500.00} \times \$250.00 = \$50.00$$

$$\$500.00$$

(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 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 its 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.

Section effective 12/16/1985.