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Subrogation In The Insured's Name

This chart covers the general topic of real parties in interest after the payment of property insurance claims and is not intended to address subrogation that may be the subject of discrete case law or statutes, particularly those affecting worker's compensation, automobile collision, personal injury protection and uninsured motorist benefits. Contact White and Williams LLP for additional information at 215-864-6322.

ALABAMA

A subrogated insurer may sue in the insurer's own name, or in the name of the insured for the use of the insurer. Adams v. Queen Ins. Co. of America, 88 So.2d 331 (Ala. 1956).

ALASKA

Alaska's preference is unclear, although Alaska seems to prefer subrogated insurers suing in their name rather than in the insureds'. "The pleadings should be made to reveal and assert the actual interest of the plaintiff, and to indicate the interests of any others in the claim." Truckweld Equipment Co. v. Swenson Trucking & Excavating, Inc., 649 P.2d 234 (Alaska 1982).

ARIZONA

"Rule 17 requires that suits be brought by the real party in interest. It is well settled in Arizona that a partially reimbursing insurer is one real party in interest and the partially reimbursed insured another." Tri-City Property Management Services, Inc. v. Research Products Corp., 721 P.2d 144 (Ariz. App. Div. 2 1986). One real party in interest may bring suit in its name on its behalf and on behalf of the other real party in interest. Id. If the insurer has paid the entire amount of the loss, only the insurer is the real party in interest and must sue in its name. A loan receipt agreement will not alter this rule. Hamman-McFarland Lumber Co. v. Arizona Equipment Rental Co., 492 P.2d 437 (Ariz. App. Div. 1 1972).

ARKANSAS

Where an insurance company has only partially reimbursed an insured for his loss, the insured is the real party in interest and can maintain the action in his own name for the complete amount of his loss. Where the insured has a deductible interest, he is the real party in interest and the action *must* be brought in his name for his own benefit. The insured stands as trustee to the insurer as to any amount recovered; the insurer is not a necessary party. Farm Bureau Ins. Co. v. Case Corp., 878 S.W.2d 741 (Ark. 1994). However, if it desires, the insurer may join as a plaintiff in an action filed in the insured's name. Dowell, Inc. v. Patton, 257 S.W.2d 364 (Ark. 1953). An insured who has been paid in full for a loss by his insurer is not the real party in interest and cannot maintain an action in his (the insured's) name. Ark-Homa Foods, Inc. v. Ward, 473 S.W.2d 910 (Ark. 1971).

CALIFORNIA

A subrogation action may be brought by the subrogee in the name of the subrogor. Fort Bragg Unified School Dist. v. Solano County Roofing, Inc., 124 Cal.Rptr.3d 144 (Cal. App. 1st Dist. 2011). A subrogee may also sue in its own name. Hausmann v. Farmers Ins. Exchange, 29 Cal.Rptr. 75 (Cal. App. 2d Dist. 1963). However, an insurer does not have standing to represent an insured's uninsured losses, such as deductibles. Pacific Gas and Elec. Co. v. Superior Court, 50 Cal.Rptr.3d 199 (Cal. App. 3d Dist. 2006). When an insurer sues in its own name, the better practice is to coordinate with the insured or join the insured as an involuntary coplaintiff so as not to preclude any separate, uninsured claims by the insured. Malibu Broadbeach, L.P. v. State Farm General Insurance Co., 2008 WL 588998 (Cal. App. 2d Dist. 2008), citing Intri-Plex Technologies, Inc. v. Crest Group, Inc., 499 F.3d 1048 (9th Cir. 2007). A subrogation receipt transferring the insured's entire causes of action to the insurer allows the insurer to recover in the insured's name for the entire loss, not just to the extent of its payment. Shifrin v. McGuire & Hester Const. Co., 48 Cal.Rptr. 799 (Cal. App. 1st Dist. 1966).

COLORADO

Every action shall be prosecuted in the name of the real party in interest. R.C.P. 17. An insured who has no uncompensated losses, through any combination of payments by his insurer and/or by a responsible party, is not a real party in interest. British America Assur. Co. v. Colorado & S. Ry. Co., 125 P. 508 (Colo. 1912).

CONNECTICUT

"An action may be brought in all cases in the name of the real party in interest, but any claim or defense may be set up which would have been available had the plaintiff sued in the name of the nominal party in interest." Practice Book § 9-23. In the typical subrogation action brought in the insured's name, the plaintiff acts on behalf of the real party in interest, his insurer. Best Friends Pet Care, Inc. v. Design Learned, Inc., 823 A.2d 329 (Conn. App. 2003). An insurance company, as subrogee of an insured's rights, is a real party in interest and as such may also sue in its own name to enforce those rights. Old Republic Nat. Title Ins. Co. v. Garrell, 2004 WL 3105938 (Conn. Super., Judicial Dist. of Fairfield 2004).

DELAWARE

An insurer's subrogation suit must be brought in the name of the insured. Catalfano v. Higgins, 188 A.2d 357 (Del. 1962).

DISTRICT OF COLUMBIA

In cases of partial subrogation both insured and insurer own portions of the substantive right, should appear in the litigation in their own names, and either may sue. Where only one sues, the defendant may upon timely motion compel the joinder of the other. Llanes v. Allstate Ins. Co., 136 A.2d 586 (D.C. App. 1957).

FLORIDA

Every action may be prosecuted in the name of the real party in interest. R.C.P. 1.210. The rule is permissive, not mandatory. A subrogee has the right as real party in interest to prosecute the action in its name or in the name of its insured, for the insurer's use and benefit. Holyoke Mut. Ins. Co. v. Concrete Equipment, Inc., 394 So.2d 193 (Fla. App. 3d Dist. 1981). An insurer which issues a subrogation receipt to its insured is not a real party in interest. Rosenthal v. Scott, 150 So.2d 433 (Fla. 1961).

GEORGIA

"An action for a tort shall, in general, be brought in the name of the person whose legal right has been affected. In the case of an injury to property, a tort action shall be brought in the name of the person who was legally interested in the property at the time the injury thereto was committed or in the name of his assignee." O.C.G.A. § 9-2-21(a). Georgia's corresponding statute on parties to actions on contracts, O.C.G.A. § 9-2-20, contains no similar provision for assignees. Under an assignment or subrogation agreement, the insurer must sue in its name, but under a loan agreement, the insurer may sue in the insured's name. If an assignment is followed by a loan agreement, the assignment controls. Alta Refrigeration, Inc. v. AmeriCold Logistics, LLC, 688 S.E.2d 658 (Ga. App. 2009). The loan agreement is also ineffective if preceded by policy terms that work an assignment. U.S.F. & G. v. J. I. Case Co., 432 S.E.2d 654 (Ga. App. 1993). Policy conditions that do not expressly speak of transfers or assignments of causes of action do not work assignments. Allstate Ins. Co. v. Welch, 576 S.E.2d 57 (Ga. App. 2003.) An insured may accept payment for a loss from his own insurer and may assign to his insurer any claims which he may have against third parties. The language of the assignment must demonstrate an intent to transfer the right of action to the insurer. Bowen v. Waters, 316 S.E.2d 497 (Ga. App. 1984). If the insured assigns any and all causes of action against the tortfeasor, the insurer is the proper party. Parker Plumbing & Heating Co. v. Kurtz, 165 S.E.2d 729 (Ga. 1969). If the scope of the assignment is limited to the amount paid in benefits, the insured can still file suit in its own name to the extent of the deductible. Webb v. State Auto. Mut. Ins. Co., 370 S.E.2d 492 (Ga. App. 1988). If the insured has been completely compensated by the insurer, and by the tortfeasor for the deductible, the insurer must sue in its own name. King v. Prince, 80 S.E.2d 222 (Ga. App. 1954). Property torts are assignable; personal torts are not. O.C.G.A. § 44-12-24.

Hawaii

Under Hawaii's rule on real parties in interest, a subrogee may bring its claim under the subrogor's name. Mauian Hotel, Inc. v. Maui Pineapple Co., 481 P.2d 310 (Hawaii 1971).

Idaho

In the absence evidence that the insured conveyed, assigned or transferred the cause of action to the insurance company, the owner is the real party in interest and can maintain the action. Wilde v. Hansen, 211 P.2d 153 (Idaho 1949). An assignor of a cause of action is not the real party in interest and has no standing to prosecute the cause of action. Union Warehouse and Supply Co., Inc. v. Illinois R.B. Jones, Inc., 917 P.2d 1300 (Idaho 1996). Tortious injuries to property are assignable. MacLeod v. Stelle, 249 P. 254 (Idaho 1926).

Illinois

"Any action hereafter brought by virtue of the subrogation provision of any contract or by virtue of subrogation by operation of law shall be brought either in the name or for the use of the subrogee; and the subrogee shall in his or her pleading on oath, or by his or her affidavit if pleading is not required, allege that he or she is the actual bona fide subrogee and set forth how and when he or she became subrogee." 735 ILCS 5/2-403(c). The interest of the subrogee cannot be concealed in any proceeding brought for its benefit; the subrogee either must be named as the plaintiff or disclosed as the real party in interest. However, if an insured plaintiff has even a *de minimis* pecuniary interest in the lawsuit, that interest is sufficient to allow a subrogation action to be maintained in the insured's name. Orejel v. York Intern. Corp., Inc., 678 N.E.2d 683 (Ill. App. 1st Dist. 1997). A judgment in favor of a subrogee does not bar the subrogor from recovering upon any other cause of action arising out of the same transaction or series of transactions. 735 ILCS 5/2-403(d). Section 2-403(d) is designed to protect an insured from having a claim for personal injury barred by *res judicata* because his subrogated insurance carrier has previously litigated the issue of property damage arising out of the same accident. Zurich Ins. Co. v. Amcast Indus. Corp., 742 N.E.2d 337 (Ill. App. 1st Dist. 2000). Where the right of subrogation is created by the terms of the policy, the subrogee must adhere to the policy's subrogation clause to perfect its subrogation right rather than rely upon equitable principles. For example, if the policy's subrogation clause calls for an assignment, the insurer must procure the assignment from the insured to proceed. American Family Mut. Ins. Co. v. Northern Heritage Builders, L.L.C., 937 N.E.2d 323 (Ill. App. 1st Dist. 2010). Causes of action for damage to property are generally assignable. Dubina v. Mesirow Realty Development, Inc., 719 N.E.2d 1084, (Ill .App. 1st Dist.1999).

Indiana

When an insurer has paid an insured's entire loss under an insurance policy and has attained the right to pursue all causes of action associated with the loss, the insured can no longer sue in its own name. Puente v. Beneficial Mortg. Co. of Indiana, 9 N.E.3d 208 (Ind. App. 2014). As long as the insured maintains any interest in a claim, litigation may be maintained in the name of the insured. Risner v. Gibbons, 197 N.E.2d 184 (Ind. App. 1964). An insured's personal injury action does not prohibit the insurer from pursuing a property damage subrogation action in the insurer's name. I.C. 34-53-1-3.

Iowa

Every action must be prosecuted in the name of the real party in interest. R.C.P. 1.201. An insurance company is not the real party in interest "absent some inability or unwillingness" of the insured to pursue his own claim. Estate of Boyd v. Norman, 634 N.W.2d 630 (Iowa 2001), citing Farm Bureau Mut. Ins. Co. v. Allied Mut. Ins. Co., 580 N.W.2d 788, 790 (Iowa 1998). If there is no realistic possibility of the insured's filing an action against the tortfeasor, the insurer may sue in its own name. Wayne County Mut. Ins. Co. v. Grove, 318 N.W.2d 192 (Iowa 1982). An insurer is not the real party in interest if the insured has not been completely compensated for its losses. Caligiuri v. Des Moines Ry. Co., 288 N.W. 702 (Iowa 1939). If both insured and insurer have claims against a defendant, they must file suit in the insured's name and arrange between them for an allocation of any recovery from the defendant. Rursch v. Gee, 25 N.W.2d 312 (Iowa 1946). The prohibition on subrogation in an insurer's name extends to claims in which the insured is only out-of-pocket for a deductible. Glancy v. Ragsdale, 102 N.W.2d 890 (Iowa 1960).

Kansas

Under K.S.A. 60-217(a), when a loss is partially covered by insurance, the insured is the proper party to bring suit for the entire loss. The insured will then hold in trust for the insurer such part of the recovery as the insurer has paid. When a loss is fully paid by an insurer and the insurer becomes subrogated to all rights of the insured, the right of action against the wrongdoer vests wholly in the insurer. In such case the insurer becomes the real party in interest and must undertake the maintenance of the action for reimbursement. In the partial payment situation where the insured refuses to bring the action or permit his name to be used, the insurer is free to bring the action in its own name and to join the insured as a defendant. Fidelity & Deposit Co. of Maryland v. Shawnee State Bank, 766 P.2d 191 (Kan. App. 1988).

Kentucky

An insurer has no right to independently maintain a cause of action as long as the insured is pursuing a claim, although the insurer may intervene in the insured's action. Government Employees Ins. Co. v. Winsett, 153 S.W.3d 862 (Ky. App. 2004).

Louisiana

A subrogated cause of action, arising either by agreement or by effect of law, shall be enforced judicially by (1) the subrogor and the subrogee, when the subrogation is partial; or (2) the subrogee, when the entire cause of action is subrogated. LSA-C.C.P. Art. 697; LSA-C.C. Art. 1826. To overcome Art. 697, an insurer can assign its subrogation interest to the insured, with the parties agreeing that the insured will hold the amount paid by the insurer in trust in the event of recovery. The insured may then proceed to recover in its name. Carl Heck Engineers, Inc. v. Daigle, 219 So.2d 294 (La. App. 1st Cir. 1969). If the insured assigns its entire cause of action to the insurer, only the insurer may recover from the responsible party, even if the insurance policy did not fully compensate the insured. Caro Properties (A), LLC v. City of Gretna, 3 So.3d 29 (La. App. 5th Cir. 2008). When the assignment is in full, the action must be in the name of the assignee. LSA-C.C.P. Art. 698. All rights may be assigned, with the exception of those pertaining to obligations that are strictly personal. The assignee is subrogated to the rights of the assignor against the debtor. LSA-C.C. Art. 2642.

Maine

An insurer which has paid all or part of a loss may sue in the name of the assured to whose rights it is subrogated. R.C.P. 17(a). An insurer wishing to proceed in the insured's name must serve the insured with formal notice of its intentions at least ten days before filing such a pleading. If the insured also wishes to pursue its own claim, it must advise the insurer in writing within ten days after receipt of the insurer's notice. R.C.P. 17(c).

Maryland

If the insured has not been completely compensated by the insurer, the action may be maintained in the insured's name. Poteet v. Sauter, 766 A.2d 150 (Md. App. 2001).

Massachusetts

An insurer which has paid all or part of a loss may sue in the name of the assured to whose rights it is subrogated. R.C.P. 17(a); Liberty Mut. Ins. Co. v. National Consolidated Warehouses, 609 N.E.2d 1243 (Mass. App. 1993).

Michigan

An action must be prosecuted in the name of the real party in interest, although a party with whom or in whose name a contract has been made for the benefit of another may sue in his or her own name without joining the party for whose benefit the action is brought. M.C.R. 2.201(B)(1). Under this rule, a subrogation agreement which gives the insured a pro-rated interest in the insurer's recovery of benefits paid allows the action to be brought in the insured's name. Hayes-Albion Corp. v. Whiting Corp., 459 N.W.2d 47 (Mich. App. 1990). Usually, however, when the insured has not been made whole, both insured and insurer are real parties in interest and either may bring an action in its own right. Gordon Food Service, Inc. v. Grand Rapids Material Handling Co., 454 N.W.2d 137 (Mich. App. 1989). An insured which has been completely compensated cannot sue. Sinai Hospital of Detroit v. Sivak, 276 N.W.2d 518 (Mich. App. 1979).

Minnesota

The insurer is the real party in interest when it fully reimburses the insured for the loss and must bring the action in the insurer's name. If the insured is not completely compensated for his damages, he retains an interest in the action, and the lawsuit may be brought in his name. A loan receipt agreement may be used to bring the action in the insured's name. Blair v. Espeland, 43 N.W.2d 274 (Minn. 1950).

MISSISSIPPI

"In subrogation cases, regardless of whether subrogation has occurred by operation of law, assignment, loan receipt, or otherwise, if the subrogor no longer has a pecuniary interest in the claim the action shall be brought in the name of the subrogee. If the subrogor still has a pecuniary interest in the claim the action shall be brought in the names of the subrogor and the subrogee." R.C.P. 17(b).

MISSOURI

When the insurer pays the insured, the insured retains legal title to the claim. The insurer has a right to subrogation, however. The exclusive right to pursue the tortfeasor remains with the insured, and the insured holds the proceeds for the insurer. Knob Noster R-VIII School Dist. v. Dankenbring, 220 S.W.3d 809 (Mo. App. W.D. 2007). If the interest of the insurer is derived by subrogation, the action must be brought by, or at least in the name of, the insured, even though the insurer is subrogated to the entire cause of action. If the entire cause of action is assigned to the insurer, the action must be brought by the insurer, even though the insurer has paid only part of the loss and is subrogated to the extent of the payment. Warren v. Kirwan, 598 S.W.2d 598 (Mo. App. S.D. 1980). Causes of in action for property torts may be assigned. Causes of action for personal torts, including contracts of a purely personal nature, such as promises of marriage, are not assignable. Scottsdale Insurance Company v. Addison Insurance Company, 448 S.W.3d 818 (Mo. 2014).

MONTANA

A fully subrogated insurer is the real party in interest and must bring suit in its own name against the wrongdoer responsible for the loss. When an insurance carrier pays only part of its insured's loss because the loss exceeds the coverage of the insurance policy or the policy contains a deductible amount, both the insured and the carrier have a claim for relief against the wrongdoer and either may bring suit in his own name to the extent of his respective claim. State ex rel. Nawd's TV and Appliance Inc. v. District Court, 543 P.2d 1336 (Mont. 1975).

NEBRASKA

If the loss exceeds the amount of insurance paid, the action may be brought in the name of the insured for the entire loss. Schweitz v. Robatham, 234 N.W.2d 834 (Neb. 1975). If the insured is making no demands on the tortfeasor for uninsured losses, the insurer is the real party in interest and must sue in its name. Jelinek v. Nebraska Natural Gas Co., 243 N.W.2d 778 (Neb. 1976). A loan receipt agreement may allow the insurer to recover in the insured's name. Hammond v. Nebraska Natural Gas Co., 309 N.W.2d 75 (Neb. 1981). Under a loan receipt agreement, the insured's release with the tortfeasor for uninsured damages only does not preserve the insurer's cause of action even if the release specifically exempts the insurer's claim. Schmidt v. Henke, 222 N.W.2d 114 (Neb. 1974). An assignment may allow the insurer to sue in its name. American Sur. of New York v. Smith, Landeryou & Co., 4 N.W.2d 889 (Neb. 1942). Tort claims are not assignable where the tort causes a strictly personal injury and does not survive the death of the person injured. Mutual of Omaha Bank v. Kassebaum, 814 N.W.2d 731 (Neb. 2012).

NEVADA

An insurer that pays its insured in full for claimed losses must sue in the insurer's name. If the insurer has paid only part of the loss, both the insured and insurer can sue in their respective names. If the action is brought in the insured's name and the insured recovers, the insurer has a right to reimbursement of its payments from the insured. Arguello v. Sunset Station, Inc., 252 P.3d 206 (Nev. 2011). A loan receipt agreement destroys the insurer's subrogation right and prevents it from suing in its own name. Central Nat. Ins. Co. of Omaha v. Dixon, 559 P.2d 1187 (Nev. 1977).

NEW HAMPSHIRE

Both in cases of full subrogation and of partial subrogation, the action must be maintained in the insured's name. Sibson v. Robert's Express, Inc., 182 A.2d 449 (N.H. 1962); Montello Shoe Co. v. Suncook Industries, 26 A.2d 676 (N.H. 1942).

NEW JERSEY

Every action may be prosecuted in the name of the real party in interest. Rule 4:26-1. The rule is permissive. A subrogated insurer may proceed in its own name or in the insured's name, even without the insured's consent. Sullivan v. Naiman, 130 N.J.L. 278 (N.J. 1943). A loan receipt agreement merely gives the insurer the same rights it has at common law. Id.

NEW MEXICO

There is but one cause of action for the entire recovery, including the subrogated amount, and that cause of action lies in the name of the insured. The insurer is entitled to join with the insured and participate in settlement negotiations for the entire settlement amount, and it is entitled to intervene in any legal action. However, if the insurer chooses not to participate in settlement negotiations for the entire recovery, then it is properly deemed to be relying on the efforts of the insured to protect its subrogated interest. When the insured recovers from the wrongdoer, either by settlement or by judgment, he or she then holds the insurer's subrogated interest in trust. Amica Mut. Ins. Co. v. Maloney, 903 P.2d 834 (N.M. 1995). The insurer is an indispensable party in the insured's cause of action and must be joined, but its existence is not to be disclosed to the jury. Safeco Ins. Co. of America v. U.S. Fidelity & Guar. Co., 679 P.2d 816 (N.M. 1984).

NEW YORK

An insurer seeking to enforce its right of subrogation generally has two options – the insurer can bring an independent action against the wrongdoer in the name of its insured, the subrogor, or seek to intervene in an existing action between the insured and the wrongdoer. Peterson v. New York State Elec. and Gas Corp., 981 N.Y.S.2d 834 (A.D. 3rd Dept. 2014). When an insured has signed a loan or subrogation agreement, the insurer need not be joined as a party. CPLR 1004. If the insured has been completely compensated by its insurer, the insured is not the real party in interest. Skinner v. Klein, 260 N.Y.S.2d 799 (A.D. 1st Dept. 1965).

NORTH CAROLINA

A single and indivisible cause of action arises against the tortfeasor for the total amount of the loss. The insurance company can become subrogated to the rights of the insured against the tortfeasor only when it pays the insured, not some third party. The insurance company becomes a necessary party plaintiff and must sue in its own name to enforce its right of subrogation where it has paid the insured the loss in full. The insured is a necessary party plaintiff where the insurance company has paid only a portion of the loss. Security Fire & Indem. Co. v. Barnhardt, 148 S.E.2d 117 (N.C. 1966). If there is a dispute as to whether the insurer has completely compensated the insured for the insured's damages, the insurer or insured may be made a party defendant in the other's action, at the discretion of the trial court. New v. Public Service Co. of N.C., Inc., 153 S.E.2d 870 (N.C. 1967).

NORTH DAKOTA

North Dakota's real-party-in-interest rule is complied with where an action is brought against a tortfeasor in the name of an insured who has been paid by an insurer for only a portion of the insured's loss. Agra-By-Products, Inc. v. Agway, Inc., 347 N.W.2d 144 (N.D. 1984). A cause of action for damage to property is assignable. N.D.C.C. 47-07-03. After the insured assigns its rights to the insurer, the insured loses the right to recover. Tschider v. Burtts, 149 N.W.2d 712 (N.D. 1967). Where an insurer has made payment in full of the insured's loss, the insurer is generally the real party in interest and must bring the action against the person causing the damage. Id. However, if a subrogation agreement authorizes the insured to sue on behalf of the insurer, the insured may do so. Hermes v. Markham, 60 N.W.2d 267 (N.D. 1953).

OHIO

Neither the insured nor the insurer is necessarily always the real party in interest. An assignor and a partial assignee of a tort claim are united in interest; upon suit by the partial assignee alone for the amount of the assignment, the assignor must be joined upon the motion of the defendant tortfeasor. Upon suit by the assignor alone for the full amount of the damages, the partial assignee must be joined if the defendant so moves. Holibaugh v. Cox, 148 N.E.2d 677 (Ohio 1958). Subrogation is the assignment of rights by operation of law. Reed v. Ramey, 80 N.E.2d 250 (Ohio App. 1st Dist. 1947). A cause of action to recover for property damage is assignable. Aetna Cas. & Sur. Co. v. Hensgen, 258 N.E.2d 237 (Ohio 1970).

OKLAHOMA

Where the insured stands fully compensated for the value of the loss by the insurer, the fully subrogated insurer as the real party in interest may bring an action in its own name to recover to the extent of its payment for the loss. On the other hand, where the insured does not stand fully compensated for the value of the loss by insurer, the insured, as a real party in interest, may properly bring an action in his own name and/or as trustee for the partially subrogated insurer to recover for the full amount of the loss. A partially subrogated insurer may not maintain an action in its own name directly against the person causing the loss to recover on its subrogated interest. While the

law proscribes assignment of claims not arising from contract, interests acquired by subrogation are an exception; insurers subrogated to rights of their insureds by payment of claims may occupy the status of a real party in interest. Muskogee Title Co. v. First Nat. Bank & Trust Co. of Muskogee, 894 P.2d 1148 (Okla. App. Div. 1 1995); 12 O.S.A. § 2017(D). Also see the committee note to 12 O.S.A. § 2017, Oklahoma's real-party-in-interest statute.

Oregon

A subrogated insurer becomes the owner of the claim and the real party in interest in any action to enforce it. A valid loan receipt overcomes this rule and allows an action to be filed in the insured's name. However, an agreement which recites the insurer's payment of a claim rather than a loan is not a valid loan receipt. Metropolitan Property & Cas. v. Harper, 7 P.3d 541 (Or. App. 2000).

Pennsylvania

All actions shall be prosecuted by and in the name of the real party in interest, subrogees excepted. R.C.P. 2002(d). "When suit is commenced in the name of the insured alone, the cause of action will be pleaded as though there were no subrogation. The pleading will contain only the statement of the cause of action against the defendant and the damages claimed. There will be no reference to insurance, to payments made thereunder, or to subrogation." Hillworth v. Smith, 624 A.2d 122 (Pa. Super. 1993).

Rhode Island

An insurer who has paid all or part of a loss may sue in the name of the assured to whose right it is subrogated. R.C.P. 17(a).

South Carolina

An insurer which has paid the insured the entire loss may bring a subrogation action either in its own name or in the name of the insured. The insurer may not bring the action in its own name where it has paid only a portion of the loss sustained by the insured. In such a case, it may join the insured in bringing the action, but need not do so. Ordinarily, the insured is the only necessary party and the subrogated insurer cannot be compelled to join. Seaside Resorts, Inc. v. Club Car, Inc., 416 S.E.2d 655 (S.C. App. 1992). A loan receipt is a lawful device by which subrogation is avoided and under which the insured is entitled to bring the action in her own name. Martin v. McLeod, 127 S.E.2d 129 (S.C. 1962).

South Dakota

The insurer's right to subrogation is not conditioned on whether the insured is a party to the action where the insurer has indemnified the insured. Maryland Cas. Co. v. Delzer, 283 N.W.2d 244 (S.D. 1979). When the indemnity paid by the insurer covers only part of the loss, leaving a residue to be made good to the insured by the wrongdoer, the right of action remains in the insured for the entire loss. The insured becomes a trustee and holds the amount of recovery, equal to the indemnity for the use and benefit of the insurer. Bowen v. American Family Ins. Group, 504 N.W.2d 604 (S.D. 1993).

Tennessee

A party to whose rights another is subrogated may sue in his or her own name without joining the party for whose benefit the action is brought. R.C.P. 17.01. Upon payment by the insurer of a loss, it becomes the real party in interest with respect to the subrogation claim, and has the right to bring suit in the name of the insured or in its own name. The insurer may intervene in an action brought by the insured against a wrongdoer and assert its subrogation claim therein but it cannot bring suit against the wrongdoer after judgment has been rendered in the insured's action. The subrogation claim is the property of the insurer to deal with as it pleases so long as the rights of others, e.g., the insured or the wrongdoer, are not prejudiced. Travelers Ins. Co. v. Williams, 541 S.W.2d 587 (Tenn. 1976).

Texas

The insurer need not wait for the insured to assert a claim in order for the insurer to recover. The insurer can assert its subrogation claim independently of the insured, even though that claim is considered derivative of the insured's claim. When an insurer asserts an independent claim without the insured, the insurance carrier may sue in its own name or in the insured's name. If action is brought in the insured's name, the insurer is not required to disclose its involvement. Prudential Property and Cas. Co. v. Dow Chevrolet-Olds, Inc., 10 S.W.3d 97 (Tex. App. – Texarkana 1999). An insured who assigns his cause of action to the insurer may not then commence suit in his own name. Trans-State Pavers, Inc. v. Haynes, 808 S.W.2d 727 (Tex. App. – Beaumont 1991). Causes of action, including personal injury actions, are assignable absent a statutory bar. Charles v. Tamez, 878 S.W.2d 201 (Tex. App. – Corpus Christi 1994). A loan receipt allows the insured to bring the action in his name. Houston Transit Co. v. Goldston, 217 S.W.2d 435 (Tex. App . – Galveston 1949).

Utah

Subrogation actions may be brought by the insurer in the name of its insured. U.C.A. 1953 § 31A-21-108; State Farm Mut. Auto. Ins. Co. v. Northwestern Nat. Ins. Co., 912 P.2d 983 (Utah 1996).

Vermont

An insurer who has paid all or part of a loss may sue in the name of the assured to whose rights it is subrogated. R.C.P. 17(a). The provision is permissive only; the insurer may, if it wishes, sue in its own name as the real party in interest. Reporter's Notes to Rule 17. There is no requirement that the subrogee must specify in the complaint that it is bringing the action in the name of the insured. Korda v. Chicago Ins. Co., 908 A.2d 1018 (Vt. 2006). An insurer wishing to proceed in the insured's name must serve the insured with formal notice of its intentions at least fourteen days before filing such a pleading. If the insured also wishes to pursue its own claim, it must advise the insurer in writing within fourteen days after receipt of the insurer's notice. R.C.P. 17(c).

Virginia

Except for certain health insurance and motor vehicle medical payments policies, a subrogation action may be brought in the name of the insurer, in the name of the insured, or in the name of the insured's personal representative. Va. Code § 38.2-207.

Washington

The insurer, standing in the shoes of its insured, may pursue an action in the insured's name against the third party to enforce its subrogation right. Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co., 312 P.3d 976 (Wash. App. Div. 1 2013).

West Virginia

A subrogated insurer may bring its action in the insured's name. Capitol Fuels, Inc. v. Clark Equipment Co., 342 S.E.2d 245 (W. Va. 1986).

Wisconsin

If an insurer pays a claim to its insured, even though the insurer may call the transaction a "loan," the insured is not the real party in interest because any rights the insured has against the defendant belong to the insurer by virtue of subrogation. A loan receipt and agreement is unavailable and improper to conceal a suit based on subrogation or to obtain the same results as the enforcement of subrogation rights. Kopperud v. Chick, 135 N.W.2d 335 (Wis. 1965)

Wyoming

If the insurer pays the loss in full, it must bring an action in its name as the real party in interest. If the insurance covers only a portion of the loss, the action must be brought in the name of insured. Gardner v. Walker, 373 P.2d 598 (Wyo. 1962).

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