

64626-5

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NO. 64626-5-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON
AT SEATTLE

DALJEET SOMAL,

individually, and on behalf of all those similarly situated,

Appellee/Plaintiff,

v.

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Appellant/Defendant.

ALLSTATE PROPERTY AND CASUALTY INSURANCE
COMPANY'S SUPPLEMENTAL SUBMISSION REGARDING
WAC § 284-30-393

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Allstate Property and Casualty Insurance Company (“Allstate”), pursuant to RAP 10.1(h), seeks leave to submit this short supplemental brief. The brief concerns a very recent, potentially relevant change to WAC § 243-30-393, a regulation at the center of this dispute.

This appeal concerns an insurer’s obligation, if any, to reimburse its insured’s collision deductible following the insurer’s subrogation recovery. At pages 22-24 of his brief, Respondent urges the Court to retroactively apply WAC § 284-30-393. That regulation has now been changed in a manner directly contrary to Plaintiff’s argument and consistent with Allstate’s position.

At the time Respondent filed his brief (but after the facts giving rise to Respondent’s Complaint, which arose while a different regulation was in effect), WAC § 284-30-393 provided:

The insurer must include the insured’s deductible, if any, in its subrogation demands. Subrogation recoveries must be allocated first to the insured for any deductible(s) incurred in the loss.

On June 7, 2011, the Office of the Insurance Commissioner amended the regulation. It now provides:

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 comparative fault.

See Appendix A (emphasis added).

In the instant case, Allstate obtained a subrogation recovery following the Respondent's auto accident. Allstate then reimbursed to Respondent his deductible, less applicable comparative fault. *See* Allstate's Opening Brief at pp. 3-4. This was entirely consistent with the common law, the Allstate contract, and the applicable insurance regulation as it existed at the time of the reimbursement. It is also entirely consistent with the regulation as amended.

Allstate maintains its prior position: i.e., that an insurance regulation enacted *after* the events alleged in Respondent's Complaint should not be applied retroactively, and that the Court's prior decision in *Averill* is binding precedent. *See* Allstate's Reply Brief. If the Court is inclined to retroactively apply any regulation as urged by Respondent, however, then the current amended regulation should be applied and provides an additional basis for sustaining Allstate's appeal.

Respectfully submitted this 20th day of June, 2011.

RIDDELL WILLIAMS P.S.

By: 
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APPENDIX A



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Office of the Insurance Commissioner

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose:

This new rule provides clarity and improves the efficiency of claims handling in Washington for consumers and insurers.

Insurance Commissioner Matter No. R 2010-15

;Citation of existing rules affected by this order:

Repealed:
Amended: WAC 284-30-393
Suspended:

Statutory authority for adoption: RCW 48.02.060

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 11-09-027 on April 14, 2011.
Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Kacy Scott phone (360) 725-7041
Address: PO Box 40258, fax (360) 586-3109
Olympia, WA 98504-0258 e-mail kacys@oic.wa.gov

Date adopted:

June 7, 2011

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 07, 2011

TIME: 2:02 PM

WSR 11-13-029

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____

AMENDATORY SECTION (Amending Matter No. R 2007-08, filed 5/20/09, effective 8/21/09)

WAC 284-30-393 Insurer must include an insured's deductible in its subrogation demands. The insurer must include the insured's deductible, if any, in its subrogation demands. ((Subrogation)) 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.