

Which Deductible Applies?

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Facts:

How much will you pay if this happens to you?

You are driving down the road at 35 mph, a stake-bed truck carrying used tires is fully loaded and approximately 50 feet in front of you. A tire suddenly falls off the truck and hits the ground, bounces in the air, and then lands on your hood. You have \$5,000 in auto repairs but feel lucky to be alive. Your auto insurance policy has a \$1,000 collision deductible and a \$500 comprehensive deductible. Which deductible applies? Our answer will be posted on Monday!

Our Simple Answer:

You can avoid paying any deductible if you pursue your claim against the truck's liability insurer. If the truck is uninsured, or you wish to avoid the hassle of pursuing the liability claim, you should argue for a \$500 comprehensive deductible because the tire was a falling object.

Our Detailed Legal Answer:

Read your policy carefully. Standard form personal auto policies define collision as an impact between your vehicle and another object. Under the comprehensive section of most personal auto policies it clearly states "loss caused by missiles or falling objects" is not a collision loss.

There was an impact between your vehicle and another object and it was also falling at the moment it hit your car...So which definition controls? Some insurance companies may take the position that once the tire hit the ground it was no longer a missile or falling object and conclude that you must pay a \$1000 collision deductible. Nicer insurance companies will conclude that the tire continues to be a falling object until it comes fully to rest, and they will allow you to pay the lower \$500 comprehensive deductible. In this case you should fight for the lower deductible!

This is not common sense. An insurance company may ask you to pay the collision deductible and you may never question that decision. A closer look at your policy may help you save \$500.

The situation would be different if the tire came fully to rest in the roadway and then you collided with it. Most insurance companies will conclude that you collided with the object in the road and that the collision deductible applies.

Insurance company policies vary considerably. You must read the language in your policy to determine how your insurance company defines collision and comprehensive losses.

Legal opinions regarding the outcome of a given fact pattern can and do vary. The legal opinions expressed herein are just one lawyer's opinion of the likely results of this fact pattern. They are based on California law only.

You should not construe this post and/or the answer as legal advice. Legal opinions can and will vary even when facts change ever so slightly. Please consult a licensed lawyer for answers related to your specific fact pattern or legal situation. This information is disseminated for informational purposes only and is not intended to be an exhaustive legal analysis of the facts and issues presented.

[1] 2003 Edition of ISO PAP 00 01 01 05

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