

1969

South East Furniture and State Insurance Fund v. Industrial Commission Op Utah and Dean L. Barrett : Brief of Appellants

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Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF UTAH

**SOUTH EAST FURNITURE and
STATE INSURANCE FUND,**

Plaintiffs-Appellants,

vs.

**INDUSTRIAL COMMISSION OF
UTAH and DEAN L. BARRETT,**

Defendants-Respondents.

**Case No.
11816**

BRIEF OF APPELLANTS

**Appeal from the Order of the Industrial Commission
of the State of Utah**

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FILED

NOV 20 1969

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BRIEF OF APPELLANTS

NATURE OF CASE

This matter arises out of a claim by the defendant, Dean L. Barrett, requesting additional compensation benefits under the Workmen's Compensation Act of Utah.

DISPOSITION OF THE CASE BY THE INDUSTRIAL COMMISSION

The Industrial Commission ruled that the Applicant was entitled to workmen's compensation benefits notwithstanding the fact that the applicant had settled his case for \$6,250.00 with his automobile insurance carrier.

RELIEF SOUGHT ON APPEAL

The plaintiff, State Insurance Fund, seeks a reversal of the Industrial Commission's ruling that defendant, Dean L. Barrett, is entitled to both workmen's compensation benefits and the proceeds received from an "uninsured motorist coverage" provision of his automobile liability insurance.

STATEMENT OF FACTS

The defendant, Dean L. Barrett, filed on January 24, 1968 an application for benefits under the Utah Workmen's Compensation Act (R. 8). He alleged in said application and at the time of the hearing on this matter that on November 10, 1966 while being employed by the plaintiff South East Furniture Company, he was involved in an automobile accident during the course of his employment. The plaintiff, The State Insurance Fund, was the carrier for Mr. Barrett's employer and in connection with his accident had paid

medical expenses and temporary disability benefits (R. 10). The plaintiff, The State Insurance Fund, denied further liability for the reason that the defendant, Dean L. Barrett, had collected proceeds from his automobile liability carrier, State Farm Mutual Automobile Insurance Company, in the amount of \$6,250.00 (R. 96).

Pursuant to said denial a hearing was held before the Industrial Commission on April 10, 1968. At the hearing the defendant, Mr. Barrett, testified that he sustained a whiplash type of injury when his automobile was struck by an automobile driven by one Albert Kindred. It appears from the record that Mr. Kindred was at fault and that Mr. Barrett claimed proceeds under his liability policy with State Farm Mutual Automobile Insurance Company. This policy was made part of this record (R. 89). The policy had an "uninsured automobile coverage" provision. Said provision provides in part as follows:

"COVERAGE U—*Damages for Bodily Injury Caused by Uninsured Automobiles.* To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile; . . . "

At the time of the accident in question Mr. Barrett was driving his own vehicle. The liability insurance on his vehicle was purchased and the premium was

paid by Mr. Barrett. Mr. Barrett's employer, the South East Furniture Company, required him to have liability coverage for his automobile (R. 41). Mr. Barrett was paid on a piece-work basis and was reimbursed by his employer for the use of his automobile on a mileage basis (R. 45).

Subsequent to the time that Mr. Barrett claimed and received benefits from the State Insurance Fund he, with his attorney, negotiated with the State Farm Mutual Automobile Insurance Company and entered into a document entitled "Release and Trust Agreement" (R. 96). Said agreement is attached hereto and is marked Exhibit A of Appendix 1.

Mr. Barrett received compensation benefits pursuant to the provisions of 35-1-62 U.C.A. 1953, as amended.¹ This statute provides that if compensation is

1 35-1-62. "Injuries or death caused by wrongful acts of third parties—Remedies of employee—Rights of employer or insurance carrier in cause of action—Maintenance of action—Disbursement of proceeds of recovery— When any injury or death for which compensation is payable under this title shall have been caused by the wrongful act or neglect of another person not in the same employment, the injured employee, or in case of death his dependents, may claim compensation and the injured employee or his heirs or personal representative may also have an action for damages against such third person. If compensation is claimed and the employer or insurance carrier becomes obligated to pay compensation, the employer or insurance carrier shall become trustee of the cause of action against the third party and may bring and maintain the action either in its own name or in the name of the injured employee, or his heirs or the personal representative of the deceased, provided the employer or carrier may not settle and release the cause of action without the consent of the commission.

"If any recovery is obtained against such third person it shall be disbursed as follows:

(1) The reasonable expense of the action, including attor-

paid based upon an accident which was caused by the wrongful act or neglect of another person, that the employee may claim compensation and may also claim damages against "such third persons". The statute also provides that if compensation is claimed and paid, as in this case, the insurance carrier becomes the trustee of the cause of action against such "third party" and may act either in its own name or in the name of the employee. The statute further provides that any balance over and beyond the amount of compensation which had been paid should be "applied to reduce or satisfy in full any obligation thereafter accruing against the person liable for compensation" (35-1-62(3)) after the carrier or employer is compensated in full.

Mr. Barrett received a recovery and executed the document entitled "Release and Trust Agreement" without advising the plaintiffs and after receiving these proceeds makes claim for additional compensation.

The State Insurance Fund urged upon the Industrial Commission that it was entitled to reimbursement for sums expended and that it would have no additional liability for compensation until the claim of the applicant would exceed the sum of \$6,250.00 pursuant to the provisions of 35-1-62, U.C.A. 1953, as amended. The

neys' fees, shall be paid and charged proportionately against the parties as their interests may appear.

(2) The person liable for compensation payments shall be reimbursed in full for all payments made.

(3) The balance shall be paid to the injured employee or his heirs in case of death, to be applied to reduce or satisfy in full any obligation thereafter accruing against the person liable for compensation."

Industrial Commission held that Mr. Barrett was entitled to both Workmen's Compensation benefits and the proceeds received by him pursuant to his uninsured motorist coverage of his automobile liability policy.

ARGUMENT

POINT I

THE INDUSTRIAL COMMISSION ERRED IN ALLOWING THE EMPLOYEE DOUBLE RECOVERY.

The initial issue that needs to be determined is whether or not the proceeds received pursuant to an uninsured motorist clause is to be considered recovery against a "third person" within the meaning of 35-1-62, U.C.A. 1953, as amended. An "uninsured motorist" provision is a relatively new type of coverage that is included within liability policies to protect drivers from being injured by irresponsible persons unable to answer in damages for their negligent acts on the highway.

Section 41-12-21.1 sets forth the mandatory requirement (effective July 1, 1967) that all automobile liability policies must contain uninsured coverages. The argument cannot be made, therefore, that one who has uninsured coverage has voluntarily, at his own instance, obtained a different type of coverage than other drivers on our public highways. The compulsory requirement ^{of} all policies ^{to} include an uninsured motor-

ist clause is to protect innocent parties from the financial inability of an "uninsured motorist". This general principle is articulated at 79 ALR 2d page 1252 in an annotation entitled "Rights and Liabilities Under 'Uninsured Motorist' Coverage". This annotation in its introduction states as follows:

§1. Scope and related matters.

"This annotation deals with cases which have discussed 'uninsured motorists coverage,' a new type of automobile insurance which came into being as the result of public concern over the increasingly important problems arising from injuries inflicted by negligent motorists who are uninsured and financially irresponsible.

"Designed to further close the gaps inherent in motor vehicle financial responsibility and compulsory insurance legislation, this insurance coverage is intended, within fixed limits, to provide financial recompense to innocent persons who receive injuries, and the dependents of those who are killed, through the wrongful conduct of motorists who, because they are uninsured and not financially responsible, cannot be made to respond in damages."

The question to be determined, therefore, is whether or not recovery, pursuant to an uninsured motorist claim is to be considered recovery against the third party tort-feasor or whether or not recovery should be considered as recovery pursuant to a personal contract of insurance. Or, stated differently, is recovery under an uninsured motorist claim to be considered recovery against "third persons" within the meaning of 35-1-62.

In a recent Oregon case, *Peterson v. State Farm Mutual Automobile Insurance Company*, 238 Ore. 106, 393 P. 2d 651, the Oregon court initially discussed the reason and the effect of uninsured motorist clauses. The court stated as follows:

“[1] The basic purpose of the uninsured motorist provision seems clear. It provides protection for the automobile insurance policyholder against the risk of inadequate compensation for injuries or death caused by the negligence of financially irresponsible motorists. See Note, 2 Will. L.J. 56, 61 (1962); *Commissioners of the State Insurance Fund v. Miller*, 4 A. D. 2d 481, 166 N.Y.S. 2d 777, 779 (1st Dept. 1957). In other words, the legislative purpose in creating compulsory uninsured motorist coverage was to place the injured policyholder in the same position he would have been in if the tortfeasor had had liability insurance.”

The question presented in this case was whether or not the Insurance Commissioner of Oregon had authority to approve provisions in the uninsured motorist section of a policy reducing the liability of the carrier by the amount paid to a person in the form of Workmen's Compensation Benefits.

The court stated in part as follows:

“In all of the decisions mentioned, the defendant, seeking to take advantage of the plaintiff's receipt of benefits from some other source, has been a tort-feasor; but here, the defendant is a contracting party, not a tort-feasor. *This*

difference, however, is not material in the sense that the basic legislative purpose in requiring uninsured motorist insurance is to place the injured party in the same position it would have been in if the tort-feasor had had liability insurance.” (Emphasis added).

The Oregon Court, therefore, has properly construed an uninsured motorist clause to have the same effect as recovery from the defendant tort-feasor. When a claim is presented to an insurance company under an uninsured motorist clause, the insurance carrier negotiates with the insured in the same manner as it would if it was representing the third party tort-feasor. This anomaly is brought about by the provisions of the policy which provided the insurer is liable “to pay all sums which the insured . . . shall be legally entitled to recover as damages”. The Oregon Court’s decision, therefore, is realistic and has properly characterized the effect of an uninsured motorist policy. To argue differently would be engaging in a legal fiction which is not supported by logic or practical analysis.

Subsequent to the accident, the State Farm Mutual Automobile Insurance Company, for all practical purposes, was negotiating with, and effectuated a settlement as if it represented the third party tort-feasor, one Alfred Kindred. It is respectfully urged that recovery in the form of settlement or otherwise, based upon an uninsured motorist clause should be considered a recovery against “a third person” within the meaning of 35-1-62, U.C.A. 1953, as amended.

There is authority that both compensation and workmen's compensation benefits may be received. See *Commissioners of State Insurance Fund v. Miller*, 4 App. Div. 2d 481, 166 N.Y. Supp. 2d 777; *Horne v. Superior Life Insurance Company*, 203 Va. 282, 123 S.E. 2d 401 (1962).

It is submitted, however, that a better reasoned decision in *Jones v. Morrison*, U.S. D. Ct., Ark. 284 F. Supp. 1016 (1968). In this case the court examined the Arkansas statute in regard to third party liability. This statute is similar in import to 35-1-62. The Arkansas statute, 81-1340, provides as follows:

“Third party liability.—(a) Liability unaffected.

(1) The making of a claim for compensation against any employer or carrier for the injury or death of an employee shall not affect the right of the employee, or his dependents, to make claim or maintain an action in court against any third party for such injury, but the employer or his carrier shall be entitled to reasonable notice and opportunity to join in such action. If they, or either of them, join in such action they shall be entitled to a first lien upon two-thirds [2-3] of the net proceeds recovered in such action that remain after the payment of the reasonable costs of collection, for the payment to them of the amount paid and to be paid by them as compensation to the injured employee or his dependents.

“(2) The commencement of an action by an employee or his dependents against a third party

for damages by reason of an injury, to which this act [§§ 81-1301—81-1349] is applicable, or the adjustment of any such claim shall not affect the rights of the injured employee or his dependents to recover compensation, but any amount recovered by the injured employee or his dependents from a third party shall be applied as follows: Reasonable costs of collection shall be deducted; then one-third [1-3] of the remainder shall, in every case, belong to the injured employee or his dependents, as the case may be; the remainder, or so much thereof as is necessary to discharge the actual amount of the liability of the employer and the carrier; and any excess shall belong to the injured employee or his dependents.”

The general intent of the Arkansas statute is, of course, the same as our statute in regard to third party actions. It should be noted, however, that the statute is somewhat more stringent in that the employee must give notice to his employer or insurance carrier in order to afford them an opportunity to join in the action.

The issue presented to the court was whether or not settlement against an insurance carrier would be considered settlement against “a third person”. The court specifically faced this issue and held that recovery against the insurance carrier would be considered a recovery both against any “third party.” The court recognized the holding in *Horne v. Superior Life Insurance Company*, supra, and *Commissioners of State Insurance Fund v. Miller*, supra, and stated:

“In *Horne* it was held that recovery by the injured party against the uninsured motorist carrier was not a recovery against ‘any other party.’ In other words, this recovery is not equivalent to a recovery against a third party tortfeasor. This part of the opinion is in conflict with the applicable provisions of the Workmen’s Compensation Act. Any recovery by the injured party, regardless of whom from, is in the nature of compensation for the injuries. The ‘workmen’s compensation’ is designed to protect employees against work-connected accidents resulting from any cause, including employers’ negligence, the employee’s own negligence, and acts of God. Also protected against is negligence of third parties. However, in this event the compensation carrier is given the right to recover its expenses from the third party. When the injury is the result of acts of the employer, the employee or God, there is no one to whom the compensation carrier may look for reimbursement. This is the risk which forms the basis for the compensation insurance premiums. This is not the case when the negligence of third parties enters the picture. Were it otherwise, the injured employee would be entitled to collect his workmen’s compensation benefits and then seek recovery against a third-party tortfeasor, with the possibility of something in the nature of a ‘double recovery.’ To provide such is not the purpose of the Workmen’s Compensation Act. When an injured party recovers *on account of his injuries*, regardless of from which third party, he has been compensated and, having already paid, the compensation carrier is entitled to reimbursement to the extent provided in the Act. Ark.State.Ann. § 81-1340 (*supra*).”

It is submitted, therefore, that the nub of the matter is whether or not when a person is injured within the scope of his employment, he is entitled to double recovery. It is submitted that compensation benefits is a unique type of insurance, whose purpose is to afford quick and speedy help to the workmen when injured. It is submitted that double recovery in these circumstances is not appropriate. In examining the philosophy of the uninsured motorist clause and particularly the fact that said clause is now a mandatory provision in all liability policies, the employee should not be allowed to collect twice.

POINT II

THE INDUSTRIAL COMMISSION ERRED IN ALLOWING WORKMEN'S COMPENSATION BENEFITS IN LIGHT OF THE RELEASE AND TRUST AGREEMENT.

As mentioned earlier herein, the defendant, Dean L. Barrett, and his attorney, after workmen's compensation benefits had been paid, negotiated with the insurance carrier and received recovery in the amount of \$6,250.00. Mr. Barrett entered into a form contract which was entitled "Release and Trust Agreement," which is attached hereto marked Exhibit A of Appendix 1. Said agreement assigned to the liability insurance carrier any rights he, Mr. Barrett, may have against the

third party tort-feasor, one Albert Kindred. It is the position of the plaintiff's herein that this act, for all practical purposes, negates the plaintiff, the State Insurance Fund, the right it has to pursue its action pursuant to 35-1-62, U.C.A. 1953, as amended.

35-1-62 has gone through many legislative changes. Initially, the employee had the right to elect to proceed against a third party, or receive compensation. Subsequent thereto if an injured employee was desirous of claiming compensation, he was required to assign his claim against the "third party" to the carrier. In 1945 the legislature amended 35-1-62 to its present form. The statute, it is submitted, carefully provides that there is but one claim that can be brought against a third person. The employer may commence the action and claim compensation, but if recovery is had, "the person liable for compensation benefits shall be reimbursed in full for all payments made" and the balance should be paid to reduce or satisfy any additional compensation obligation. The statute also provides that if compensation is paid, the employer becomes a trustee of the cause of action and may bring an action against a third person, either in its own name or in the name of the injured employee. The statute allows, therefore, the ultimate wrongdoer to be answerable for the damage that he causes.

It appears clear that the legislature never intended that there be two causes of action against the wrongdoer. It is clear also that if the employee commences the

action and prosecutes the same successfully, that the carrier must be compensated in full. If the carrier commences the action, he does so in a trust relationship and is reimbursed in full. It is submitted, therefore, that the giving by Mr. Barrett an assignment of his right to proceed against the third party tort-feasor to his liability carrier, that he has effectively negated the plaintiffs right to full reimbursement.

Certainly, the Release and Trust Agreement received by State Farm Mutual Automobile Insurance Company vests with them the claim that Mr. Barrett may have against Albert Kindred, the tort-feasor. Now the plaintiff, The State Insurance Fund, would not be allowed to sue the third party tort-feasor in its capacity as Trustee, pursuant to the provisions of 35-1-62, since the carrier knows the injured employee has assigned all right, title and interest to another entity. If action is commenced by State Farm Mutual Automobile Insurance Company, said company has no duty to see that the plaintiff, The State Insurance Fund, be reimbursed in full, and if recovery is had against the third party tort-feasor, by State Farm Mutual Automobile Insurance Company, is the plaintiff still required to pay compensation?

The effect of this agreement entitled "Trust and Release Agreement" is simply that the defendant, Mr. Barrett, is attempting to split a cause of action. It is submitted that 35-1-62 clearly does not allow for the splitting of a cause of action. It is clear also that split-

ting of causes of action in Utah are not favored. The obvious reason being the multiplicity of claims and the protection of the potential defendant from successful law actions.

In an early case, *Badger v. Badger*, 69 Utah 293, 254 Pac. 784, the court, in quoting from authorities, stated that a party having one claim cannot split the demand into separate causes of action. The court said:

“There are no maxims of the law more firmly established or of more value in the administration of justice than the two which are designed to prevent repeated litigation between the same parties in regard to the same subject of controversy”.

This early announcement of not allowing a splitting of causes of action has been sustained in more recent cases. See *Johnson v. Cudahy Packing Company*, 107 Utah 114, 152 P. 2d 98 (1944) and *Cederloff v. Whited*, 110 Utah 45, 169 P. 2d 777 (1946).

It is submitted that the language in a recent Utah case is helpful in solving the problems presented here. In *Raymer v. Hi-Line Transport, Inc.*, 15 Utah 2d 427, 394 P. 2d 383, the court clearly stated that one may not split its causes of action even where insurance was involved. the Court stated:

“We are confronted with the long-established rule against ‘splitting cause of action.’ If neither Raymer nor Hi-Line had insurance coverage, Raymer would have been foreclosed from insti-

tuting two actions—one for his property damage and one for his personal injuries. Does the fact that there was insurance coverage give rise to an exception to the rule? In the instant case, we think not.

“An annotation in 62 A.L.R.2d reports, commencing at page 982:

‘In a substantial majority of jurisdictions, a single act causing simultaneous injury to the physical person and property of one individual is held to give rise to only one cause of action, and not to separate causes based, on the one hand, on the personal injury, and on the other the property loss. * * *

‘In jurisdictions supporting the single cause of action rule, the courts have most often taken the view that the rule accurately reflects the principle that a cause of action inheres in the causative aspect of a breach of a legal duty—that is, the wrongful act itself—and not in the various forms of harm which flow therefrom. Recognition of the existence of only one cause of action is said to benefit both plaintiffs (freeing them of delay and burdensome expense) and defendants (relieving them of the injustice of being subjected to more than one suit for a single tort), and to be in harmony with public policy and the tendency toward simplicity and directness in the determination of controversial rights and the elimination of a multiplicity of suits.
* * *

‘The argument that the single cause of action rule may work injustice in cases where one of the elements of damages is the subject

of insurance has also been rejected.' (emphasis added)

"It seems logical that if an assured cannot split his cause of action, the insurer should not be in a better position."

In the cases which have allowed double recovery it was recognized that the insurance carrier's right of subrogation was not negated. In those cases subrogation rights were created and protected by a lien-type of statute. In both *Commissioners of the State Insurance Fund v. Miller*, supra, and *Horne v. Superior Life Insurance Company*, supra, it was clearly indicated because of the statutory language of those particular states that the insurance carrier's subrogation rights were not abrogated (but see the recent New Jersey case of *Feliciano v. Oglesby*, 102 N.J. Supp., 378, 246 A. 2d 63, where the court held it would not allow an assignment of a cause of action pursuant to an uninsured motorist provision to violate a New Jersey trust fund). It is submitted, however, that that is not the case in this instance, that the defendant-applicant has effectively negated the carrier's right to proceed against the ultimate wrongdoer while he, the applicant, receives double recovery. If suit is brought against Kindred by either the plaintiff, the State Insurance Fund, or the liability carrier, State Farm Mutual Automobile Insurance Company, there has been a splitting of a cause of action. There has been an aborting of the spirit and intent of 35-1-62 that allows the workman a speedy recovery and a right against the ultimate wrongdoer.

If this procedure, which is urged by the defendants in this case, was allowed, there would be a race to the courthouse since it would become clear that two entities could not, and should not be able to proceed against a tort-feasor arising out of a single claim.

It is the belief of the plaintiff, therefore, that once a settlement has been completed between the employee and a third party that no additional liability can be assigned to the workmen's compensation carrier. It is submitted that the note writer in the *Utah Law Review*, Volume No. 9, Number 4, Winter, 1965 at page 945 clearly states what the law should be in these cases:

“Under the general rule that an employer is entitled to be subrogated to his employee's claim against a third party to the extent of his compensation liability, questions arise concerning the effect that a settlement between the third person and the employee should have upon the employer's subrogation rights. The employer's subrogation rights are protected in certain jurisdictions where it has been held that settlement between an injured employee and a negligent third party operates as a bar to a later compensation claim against the employer. States which have reached this result generally have statutes requiring the injured employee to elect between receiving compensation or pursuing a remedy against the third person. In such jurisdictions, settlement with the third party would be in lieu of the tort action, and a subsequent compensation claim would be barred because the claimant had exercised his statutory option in favor of proceeding against the third party. There may,

however, be some doubt concerning this result under statutes, such as Utah's, which permit both compensation and a third-party suit. Since an election of remedies is not required, it is arguable that it should make no difference whether compensation is demanded prior to or subsequent to an action against the third person. *However, this argument should be examined in light of the fact that part of the reason for allowing third-party suits at all is to permit the employer or the employer's insurance carrier to recoup what has been paid for compensation by being subrogated to the employee's claim against the third person. Since a release or settlement would discharge the third party's liability to the employee, it would effectively deprive the employer or insurance carrier of his subrogation rights. Therefore, to maintain a position consonant with legislative intent and to protect the rights of employers, a settlement between an employee and a third person should preclude a subsequent compensation claim against the employer in Utah.*"

CONCLUSION

It is respectfully submitted that the Industrial Commission erred in allowing the defendant, Dean L. Barrett, to receive both Workmen's Compensation benefits and the proceeds from his uninsured motorist coverage. Further, it is submitted that the settlement entered into between Mr. Barrett and his liability car-

rier effectively negates the plaintiffs' right to subrogation and, therefore, the plaintiffs are not liable for additional Workmen's Compensation benefits.

Respectfully submitted,

**ROBERT D. MOORE, of
RAWLINGS, ROBERTS &
BLACK**

**Attorneys for Plaintiffs and
Appellants.**

APPENDIX 1

EXHIBIT A

STATE FARM INSURANCE COMPANIES Bloomington, Illinois

RELEASE AND TRUST AGREEMENT

Policyholder—DEAN L. BARRETT

Claim No.—44-221-330

Policy No.—4059 757 44

Received of **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**, hereinafter called the Company, the sum of Six Thousand Two Hundred Fifty Dollars and no/100 (\$6,250.00) in full settlement and final discharge of all claims under the above numbered policy because of bodily injuries known and unknown and which have resulted or may in the future develop, sustained by **DEAN L. BARRETT** by reason of an accident or occurrence arising out of the ownership or operation of an uninsured automobile by **ALBERT KINDRED** which occurred on or about the 10th day of November, 1966 at Tooele, Utah.

For the consideration aforesaid, and to the extent of any payment made thereunder, the undersigned agrees to hold in trust for the benefit of the Company all rights of recovery which he shall have against any person or organization legally liable for such bodily injuries, and assigns to the Company the proceeds of any settlement with or judgment against such persons or organization by specifically excepting any proceeds recoverable under the workmens compensation statutes of Utah.

The Company is hereby authorized to take any action which may be necessary either in law or in equity

in the name of the undersigned against any such person or organization, and the undersigned covenants and agrees to cooperate fully with the Company in the presentation of such claims and to furnish all papers and documents necessary in such proceedings and to attend court and testify if the Company deems such to be necessary.

The undersigned further warrants that he has made no settlement with, given any release to or prosecuted any claim to judgment against any person or organization legally liable for such bodily injuries, and that no such settlement will be made, no such release will be given and no such claim will be prosecuted to judgment without the written consent of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22nd day of November, 1967.

Signed DEAN L. BARRETT
127 No. 8th E., Bountiful, Utah

Witness
Judy R. Summerhays
Notary & Witness
Sandy, Utah

This will certify that this document is a copy of the original in Mr. Barrett's file.

Felix E. Jones