

BULLETIN 99-8**WAIVER OF SUBROGATION****WORKERS' COMPENSATION INSURANCE**

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In property and casualty insurance it is not uncommon for an insurance carrier to agree to waive its subrogation rights by endorsement to the insurance policy. The question of whether an employer or the employer's workers compensation carrier may waive the right to subrogation in lawsuits involving third parties has been raised.

Utah Code Annotated (U.C.A.) §34A-2-106(2) states:

(2)(a) If compensation is claimed and the employer or insurance carrier becomes obligated to pay compensation, the employer or insurance carrier:

- (i) shall become trustee of the cause of action against the third party; and
- (ii) 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.

(b) Notwithstanding Subsection (2)(a), an employer or insurance carrier may not settle and release the cause of action of which its is a trustee under Subsection (2)(a) without the consent of the commission.

The statute prohibits the insurer from unilaterally compromising the entire claim against the third party. It does not prevent the insurer from compromising its subrogation portion of the claim. Therefore, a waiver is permissible as long as it does not affect the employee's rights. It should expressly exclude from release the employee's rights against the third party, as provided in U.C.A. §34A-2-106, and exclude from release the insurer's authority as trustee of the entire claim, as provided in U.C.A. §34A-2-106.

Workers' compensation insurance policy forms filings containing waiver of subrogation rights provision will be permitted as long as they comply with the above.

DATED this 29th day of September, 1999.

Insurance Commissioner

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