

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appointment of an attorney for a workers'
3 compensation claimant in certain proceedings initiated by a
4 workers' compensation insurance carrier.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter G, Chapter 410, Labor Code, is
7 amended by adding Section 410.309 to read as follows:

8 Sec. 410.309. APPOINTMENT OF ATTORNEY FOR CLAIMANT IN
9 PROCEEDING INITIATED BY INSURANCE CARRIER. (a) In a trial
10 initiated by an insurance carrier under this subchapter, at the
11 request of the claimant the court shall appoint an attorney to
12 represent the claimant before the court. The court may hold a
13 pretrial hearing to determine whether the claimant made a good
14 faith effort to obtain representation by an attorney before the
15 appointment of an attorney.

16 (b) The insurance carrier is liable for the attorney's
17 reasonable and necessary fees in accordance with Section 408.221(c)
18 on any issue on which the claimant prevails. The claimant attorney
19 may not bill for more hours than the hours the carrier attorney
20 billed.

21 (c) The subsequent injury fund is liable for the attorney's
22 reasonable and necessary fees in accordance with Section
23 408.221(c-1) on any issue on which the insurance carrier prevails.

24 SECTION 2. Section 408.221, Labor Code, is amended by

1 amending Subsections (b) and (i) and adding Subsection (c-1) to
2 read as follows:

3 (b) Except as otherwise provided, an attorney's fee under
4 this section is based on the attorney's time and expenses according
5 to written evidence presented to the division or court. Except as
6 provided by Subsection (c) or (c-1) or Section 408.147(c), the
7 attorney's fee shall be paid from the claimant's recovery.

8 (c-1) In a judicial review proceeding initiated by an
9 insurance carrier under Subchapter G, Chapter 410, in which the
10 court has appointed an attorney for the claimant under Section
11 410.309, the subsequent injury fund is liable for the attorney's
12 reasonable and necessary fees as provided by Subsection (d) on any
13 issue on which the insurance carrier prevails. If the insurance
14 carrier appeals multiple issues and the insurance carrier prevails
15 on some, but not all, of the issues appealed, the court shall
16 apportion and award fees to the claimant's court-appointed attorney
17 from the subsequent injury fund only for issues on which the
18 insurance carrier prevails. In making that apportionment, the
19 court shall consider the factors prescribed by Subsection (d). An
20 award of attorney's fees under this subsection is not subject to
21 commissioner rules adopted under Subsection (f).

22 (i) Except as provided by Subsection (c) or (c-1) or Section
23 408.147(c), an attorney's fee may not exceed 25 percent of the
24 claimant's recovery.

25 SECTION 3. Subsection (b), Section 403.006, Labor Code, is
26 amended to read as follows:

27 (b) The subsequent injury fund is liable for:

1 (1) the payment of compensation as provided by Section
2 408.162;

3 (2) reimbursement of insurance carrier claims of
4 overpayment of benefits made under an interlocutory order or
5 decision of the commissioner as provided by this subtitle,
6 consistent with the priorities established by rule by the
7 commissioner;

8 (3) reimbursement of insurance carrier claims as
9 provided by Sections 408.042 and 413.0141, consistent with the
10 priorities established by rule by the commissioner; ~~and~~

11 (4) the reimbursement of an insurance carrier as
12 provided by Section 408.0041(f-1); and

13 (5) the payment of court-appointed attorney's fees as
14 provided by Section 408.221(c-1).

15 SECTION 4. The change in law made by this Act applies only
16 to a trial or judicial review proceeding initiated under Subchapter
17 G, Chapter 410, Labor Code, on or after the effective date of this
18 Act. A trial or judicial review proceeding initiated before that
19 date is governed by the law in effect on the date the trial or
20 judicial review proceeding was initiated, and the former law is
21 continued in effect for that purpose.

22 SECTION 5. This Act takes effect September 1, 2009.