

By: Smithee

H.B. No. 3362

Substitute the following for H.B. No. 3362:

By: Cook

C.S.H.B. No. 3362

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the appointment of an attorney for a workers'
3 compensation claimant in certain proceedings.

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

5 SECTION 1. Section 403.006(b), Labor Code, is amended to
6 read as follows:

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

8 (1) the payment of compensation as provided by Section
9 408.162;

10 (2) reimbursement of insurance carrier claims of
11 overpayment of benefits made under an interlocutory order or
12 decision of the commissioner as provided by this subtitle,
13 consistent with the priorities established by rule by the
14 commissioner;

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

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

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

22 SECTION 2. Section 408.221, Labor Code, is amended by
23 amending Subsections (b) and (i) and adding Subsection (c-1) to
24 read as follows:

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

6 (c-1) In a judicial review proceeding initiated by an
7 insurance carrier under Subchapter G, Chapter 410, or Subchapter C,
8 Chapter 413, in which the court has appointed an attorney for the
9 claimant under Section 410.309 or 413.033, the subsequent injury
10 fund is liable for the attorney's reasonable and necessary fees as
11 provided by Subsection (d) on any issue on which the insurance
12 carrier prevails. If the insurance carrier appeals multiple issues
13 and the insurance carrier prevails on some, but not all, of the
14 issues appealed, the court shall apportion and award fees to the
15 claimant's court-appointed attorney from the subsequent injury
16 fund only for issues on which the insurance carrier prevails. In
17 making that apportionment, the court shall consider the factors
18 prescribed by Subsection (d). An award of attorney's fees under
19 this subsection is not subject to commissioner rules adopted under
20 Subsection (f).

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

24 SECTION 3. Subchapter G, Chapter 410, Labor Code, is
25 amended by adding Section 410.309 to read as follows:

26 Sec. 410.309. APPOINTMENT OF ATTORNEY FOR CLAIMANT IN
27 PROCEEDING INITIATED BY INSURANCE CARRIER. (a) In a trial

1 initiated by an insurance carrier under this subchapter, at the
2 request of the claimant the court shall appoint an attorney to
3 represent the claimant before the court. The court may hold a
4 pretrial hearing to determine whether the claimant has made a good
5 faith effort to obtain representation by an attorney before the
6 appointment of an attorney. A claimant who did not prevail in an
7 administrative proceeding before the division:

8 (1) is not entitled to a court-appointed attorney; and

9 (2) may recover reasonable and necessary attorney's
10 fees and expenses incurred in a trial initiated by the claimant in
11 which the claimant prevails as provided by Subsection (b).

12 (b) The insurance carrier is liable for the attorney's
13 reasonable and necessary fees as determined by the jury in the case,
14 or by the trial judge when a jury is not requested, in accordance
15 with Section 408.221(c-1) on any issue on which the claimant
16 prevails.

17 (c) The subsequent injury fund is liable for the attorney's
18 reasonable and necessary fees as determined by the jury in the case,
19 or by the trial judge when a jury is not requested, in accordance
20 with Section 408.221(c-1) on any issue on which the insurance
21 carrier prevails.

22 SECTION 4. Subchapter C, Chapter 413, Labor Code, is
23 amended by adding Section 413.033 to read as follows:

24 Sec. 413.033. APPOINTMENT OF ATTORNEY FOR CLAIMANT IN
25 PROCEEDING INITIATED BY INSURANCE CARRIER. (a) In a trial
26 initiated by an insurance carrier under this subchapter, at the
27 request of the claimant the court shall appoint an attorney to

1 represent the claimant before the court. The court may hold a
2 pretrial hearing to determine whether the claimant has made a good
3 faith effort to obtain representation by an attorney before the
4 appointment of an attorney. A claimant who did not prevail in an
5 administrative proceeding before the division:

6 (1) is not entitled to a court-appointed attorney; and

7 (2) may recover reasonable and necessary attorney's
8 fees and expenses incurred in a trial initiated by the claimant in
9 which the claimant prevails as provided by Subsection (b).

10 (b) The insurance carrier is liable for the attorney's
11 reasonable and necessary fees as determined by the jury in the case,
12 or by the trial judge when a jury is not requested, in accordance
13 with Section 408.221(c-1) on any issue on which the claimant
14 prevails.

15 (c) The subsequent injury fund is liable for the attorney's
16 reasonable and necessary fees as determined by the jury in the case,
17 or by the trial judge when a jury is not requested, in accordance
18 with Section 408.221(c-1) on any issue on which the insurance
19 carrier prevails.

20 SECTION 5. The change in law made by this Act applies only
21 to a proceeding initiated under Subchapter G, Chapter 410, Labor
22 Code, or Subchapter C, Chapter 413, Labor Code, on or after the
23 effective date of this Act. A proceeding initiated before that date
24 is governed by the law in effect on the date the proceeding was
25 initiated, and the former law is continued in effect for that
26 purpose.

27 SECTION 6. This Act takes effect September 1, 2011.