

1975 S.C. Op. Atty. Gen. 184 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4107, 1975 WL 22403

Office of the Attorney General

State of South Carolina

Opinion No. 4107

September 4, 1975

***1** Attorney fees in a third party action regarding a lien for workmen's compensation benefits paid by the carrier shall be prorated between the carrier and the claimant in cases where rights have vested as a result of settlement, or judgment on or after August 1, 1974.

TO: John Scott

Director

State Fund

Questions Presented:

Does the 1974 amendment to § 72–126.1, subsection b, Code of Laws of South Carolina as amended, providing for pro rata assessment of attorney fees in third party actions, apply retrospectively?

Authorities:

Prior to the reenactment of § 72–126.1, Code of Laws of South Carolina as amended, in 1969, a claimant had to elect between workmen's compensation benefits and a third party action. See 72–123 through 72–126, Code of Laws of South Carolina, repealed in 1969. With the reenactment of § 72–126.1, *supra*, the General Assembly allowed both workmen's compensation and third party actions, with attorney fees to be deducted from the total amount in third party actions. 71 Atty. Gen. Opn. No. 3211. See also Counsel on State Governments Workmen's Compensation and Rehabilitation Law, 1973, § 11, Pages 24–27 with commentary on Page 109, which is not conclusive as to our legislative intent, but influential as the model from which our Section was adopted. In 1974 this Section was amended by adding the following provision: ‘Attorney fees owed and payable by the carrier to the attorneys affecting the recovery shall be set by the commission but shall not exceed one-third of the total claim paid by the carrier to the injured employee. Such fees shall be paid from the funds recovered by the carrier.’

The effective date of this act amending § 72–126.1 was August 1, 1974. Section 2, 1974 Act No. 1048.

While statutes are normally applied prospectively, laws relating to costs and fees are procedural or remedial in nature and apply to pending actions; therefore, since no rights actually vest in third party actions until the time of settlement or judgment, a statute prorating attorney fees applies to such settlements or judgments obtained on or after the effective date of the legislation, even though the accident occurred prior to its passage. Pope v. Penn. Thresher & Farmers Mut. Cas. Ins. Co., 107, A.2d 191 (1954). See also South Carolina cases cited South Carolina Digest, statutes, Keys 263 and 276(2), relating to retroactive application generally and application specifically in pending actions and proceedings.

Conclusion:

Since this 1974 amendment involves attorney fees, it would be applicable to pending actions; however, it would not apply to the third party actions settled or adjudicated before August 1, 1974, established by the General Assembly as the effective date of this amendment.

Hardwick Stuart, Jr.

Assistant Attorney General

1975 S.C. Op. Atty. Gen. 184 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4107, 1975 WL 22403

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.