

1 comparative negligence, the recovery of the person who has paid compensation or
2 has become obligated to pay compensation shall be reduced by the same percentage.

3 **Regardless of the amount of the recovery by the employee or his dependents**
4 **from a suit against a third person, the amount of recovery or credit by the**
5 **person having paid compensation benefits or obligated to pay compensation**
6 **benefits, shall be limited to the amount paid or obligated to be paid.** The amount

7 of any credit due the employer may be set in the judgment of the district court if
8 agreed to by the parties; otherwise, it will be determined pursuant to the provisions
9 of R.S. 23:1102(A).

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11 §1102. Employee or employer suits against third persons causing injury; notice of
12 filing

13 * * *

14 B. If a compromise with such third person is made by the employee or his
15 dependents, the employer or insurer shall be liable to the employee or his dependents
16 for any benefits under this Chapter which are in excess of the full amount paid by
17 such third person, only after the employer or the insurer receives a dollar for dollar
18 credit against the full amount paid in compromise **for the recovery of lost wages**
19 **and medical benefits**, less attorney fees and costs paid by the employee in
20 prosecution of the third party claim and only if written approval of such compromise
21 is obtained from the employer or insurer by the employee or his dependent, at the
22 time of or prior to such compromise. Written approval of the compromise must be
23 obtained from the employer if the employer is self-insured, either in whole or in part.
24 If the employee or his dependent fails to notify the employer or insurer of the suit
25 against the third person or fails to obtain written approval of the compromise from
26 the employer and insurer at the time of or prior to such compromise, the employee
27 or his dependent shall forfeit the right to future compensation, including medical
28 expenses. Notwithstanding the failure of the employer to approve such compromise,
29 the employee's or dependent's right to future compensation in excess of the amount

1 recovered from the compromise shall be reserved upon payment to the employer or
2 insurer of the total amount of compensation benefits, and medical benefits,
3 previously paid to or on behalf of the employee, exclusive of attorney fees arising
4 out of the compromise; except in no event shall the amount paid to the employer or
5 insurer exceed fifty percent of the total amount recovered from the compromise.
6 Such reservation shall only apply after the employer or insurer receives a dollar for
7 dollar credit against the full amount paid in compromise **for the recovery of lost**
8 **wages and medical benefits**, less attorney fees and costs paid by the employee in
9 prosecution of the third party claim.

10 C.(1)(a) When a suit has been filed against a third party defendant in which
11 the employer or his insurer has intervened, if the third party defendant or his insurer
12 fails to obtain written approval of the compromise from the employer or his insurer
13 at the time of or prior to such compromise and the employee fails to pay to the
14 employer or his insurer the total amount of compensation benefits and medical
15 benefits out of the funds received as a result of the compromise, the third party
16 defendant or his insurer shall be required to reimburse the employer or his insurer
17 to the extent of the total amount of compensation benefits and medical benefits
18 previously paid to or on behalf of the employee to the extent said amounts have not
19 been previously paid to the employer or his insurer by the employee pursuant to the
20 provisions of Subsection B of this Section. Notwithstanding such payment, all rights
21 of the employer or his insurer to assert the defense provided herein against the
22 employee's claim for future compensation or medical benefits shall be reserved. **For**
23 **the purposes of this Paragraph, "funds" means lost wages and medical benefits,**
24 **not an award for pain and suffering or general damages.**

25 **(b) In any third party compromise or settlement, reasonable amounts of**
26 **any recovery shall provide for reasonable considerations distinguishing between**
27 **special and general damages, and such amounts shall be expressly provided as**
28 **agreed upon between the parties and the employer or compensation issuer.**

29 **(c) If the employer or his insurer arbitrarily or unreasonably withholds**

1 **its consent of the compromise between the third party and the employee, said**
2 **employer or its insurer shall be liable for attorney fees and penalties. Such**
3 **penalties should be fixed at the amount of twelve percent of the compensation**
4 **lien or up to eight thousand dollars, whichever is greater.**

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6 §1103. Damages; apportionment of between employer and employee in suits
7 against third persons; compromise of claims; credit

8 * * *

9 B. The claim of the employer shall be satisfied in the manner described
10 above from the first dollar of the judgment ~~without regard to how the damages have~~
11 ~~been itemized or classified by the judge or jury.~~ Such first dollar satisfaction shall
12 ~~be paid from the entire judgment, regardless of whether the judgment includes~~
13 ~~compensation for losses other than medical expenses and lost wages.~~ **but shall only**
14 **include an award for damages of lost wages and medical expenses.**

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Present law allows any person who has paid or is obligated to pay compensation to sue a third party to recover any amount he has paid or is obligated to pay as compensation to an employee or his dependents. Any such recovery shall be in the same percentage to the recovery of the employee or his dependents against the third party. If the recovery of the employee has been decreased by comparative negligence then the recovery of the person who has paid or is obligated to pay compensation shall be reduced by the same percentage. Any credit due the employer may be set in the judgment of the district court if agreed by the parties otherwise it will be determined by statute.

Proposed law clarifies present law by restricting the reimbursement of compensation benefits paid or credits against obligations to pay by intervention in third person suits to amounts actually paid or obligated to pay under the Workers' Compensation Act.

Present law provides for notice of filing suit by an employee or employer. Present law provides that disputes between an employee and employer over calculation of latter's credits shall be resolved by a workers' compensation judge and that any decision rendered shall not affect either party's rights.

Present law provides for employer or insurer credits in third party compromises and further provides for written approval as well as notice of all compromises. Present law provides that failure of an employee to report written compromise results in forfeiture of future compensation and medical expenses.

Proposed law clarifies that employer or insurer recovery or credits in third party compromises are limited to payments made or amounts recovered for compensation and medical benefits only. Proposed law also provides for express distinction between special and general damages in any compromise or settlement of third party claims. Further sets penalties for an employer or insurer who arbitrarily or unreasonably withholds consent in the third party compromises at 12% of the compensation lien or \$8,000, whichever is greater.

Present law states that an employer's claim shall be satisfied from the first dollar of the judgment without regard to how the damages have been itemized or classified by the trier of fact. The satisfaction of the claim shall be made from the entire judgment regardless of whether the judgment includes compensation for losses other than medical expenses and lost wages.

Proposed law changes present law by requiring that the employer's claim be satisfied from the first dollar of the judgment but shall only include an award for damages of lost wages and medical expenses.

(Amends R.S. 23:1101(B), 1102(B) and (C)(1), and 1103(B))