

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**HOUSE BILL 1045
RATIFIED BILL**

AN ACT TO RESTORE STABILITY UNDER THE WORKERS' COMPENSATION ACT BY OVERTURNING THE CASE DECIDED BY THE 2000 COURT OF APPEALS OF NORTH CAROLINA ENTITLED HANSEN V. CRYSTAL FORD-MERCURY, INC., BY PROVIDING THAT INSURERS THAT PROVIDE HEALTH BENEFIT PLANS, DISABILITY INCOME PLANS, OR ANY OTHER HEALTH INSURANCE ARE NOT REAL PARTIES IN INTEREST IN ANY PROCEEDING OR SETTLEMENT UNDER THE WORKERS' COMPENSATION ACT AND PROHIBITING INSURERS THAT PROVIDE HEALTH BENEFIT PLANS FROM OFFSETTING AGAINST PROVIDER REIMBURSEMENT ANY CHARGE FOR MEDICAL SERVICES UNLESS THE SPECIFIC MEDICAL CHARGES WERE FOUND TO BE COMPENSABLE ACCORDING TO A FINAL ADJUDICATION UNDER THE WORKERS' COMPENSATION ACT OR A SETTLEMENT AGREEMENT UNDER THE ACT APPROVED BY THE NORTH CAROLINA INDUSTRIAL COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-90.1. Insurers that provide employee's health benefit plans, disability income plans, or any other health insurance plans.

An insurer that covers an employee under a health benefit plan as defined in G.S. 58-3-167, a disability income plan, or any other health insurance plan is not a real party in interest and shall not intervene or participate in any proceeding or settlement agreement under this Article to determine whether a claim is compensable under this Article or to seek reimbursement for medical payments under its plan. The insurer that covers an employee under a health benefit plan as defined in G.S. 58-3-167 or any other health insurance plan may seek reimbursement from the employee, employer, or carrier that is liable or responsible for the specific medical charge according to a final adjudication of the claim under this Article or an order of the Commission approving a settlement agreement entered into under this Article for health plan payments for that specific medical charge. Upon the admission or adjudication that a claim is compensable, the party or parties liable shall notify in writing any known health benefit plan covering the employee of the admission or adjudication."

SECTION 2. G.S. 97-17 reads as rewritten:

"§ 97-17. Settlements allowed in accordance with Article.

(a) ~~Nothing herein contained shall be construed so as to~~ This Article does not prevent settlements made by and between the employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this Article. A copy of ~~such a~~ settlement agreement shall be filed by ~~the employer with and approved by the Industrial Commission. Provided, however, that no~~ Commission. No party to any agreement for compensation approved by the ~~Industrial Commission shall thereafter be heard to deny the truth of the matters therein set forth, contained in the settlement agreement, unless it shall be made to appear~~ party is able to show to the satisfaction of the Commission that there has been error due to fraud, misrepresentation, undue influence or mutual mistake, in which event the

Industrial Commission may set aside such the agreement. Except as provided in this subsection, the decision of the Commission to approve a settlement agreement is final and is not subject to review or collateral attack.

(b) The Commission shall not approve a settlement agreement under this section, unless all of the following conditions are satisfied:

- (1) The settlement agreement is deemed by the Commission to be fair and just, and that the interests of all of the parties and of any person, including a health benefit plan, that paid medical expenses of the employee have been considered.
- (2) The settlement agreement contains a list of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or carrier disputes, and a list of medical expenses, if any, that will be paid by the employer under the settlement agreement.
- (3) The settlement agreement contains a finding that the positions of all of the parties to the agreement are reasonable as to the payment of medical expenses.

(c) In determining whether the positions of all of the parties to the agreement are reasonable as to the payment of medical expenses under subdivision (3) of subsection (b) of this section, the Commission shall consider all of the following:

- (1) Whether the employer admitted or reasonably denied the employee's claim for compensation.
- (2) The amount of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or carrier disputes.
- (3) The need for finality in the litigation.

(d) Nothing in this section shall be construed to limit the application of G.S. 44-49 and G.S. 44-50 to funds in compensation for settlement under this section."

SECTION 3. G.S. 97-92(b) reads as rewritten:

"(b) The records of the Commission, Commission that are not awards under G.S. 97-84 and that are not reviews of awards under G.S. 97-85, insofar as they refer to accidents, injuries, and settlements are not public records under G.S. 132-1 and shall not be open to the public, but only to the parties satisfying the Commission of their interest in such records and the right to inspect them, and to State and federal agencies pursuant to G.S. 97-81."

SECTION 4. G.S. 58-51-5(a) is amended by adding a new subdivision to read:

"(8) It contains no provision excluding from coverage claims that are subject to the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, unless the exclusion extends to only specific medical charges for which the employee, employer, or carrier is liable or responsible according to a final adjudication of the claim under that Article or an order of the North Carolina Industrial Commission approving a settlement agreement entered into under that Article."

SECTION 5. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-50-57. Offsets against provider reimbursement for workers' compensation payments forbidden.

(a) An insurer that provides a health benefit plan as defined in G.S. 58-3-167 shall not offset or reverse a health plan payment against a provider reimbursement for other medical charges unless the health plan payment was for a specific medical charge for which the employee, employer, or carrier is liable or responsible according to a final adjudication of the claim under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes or an order of the North Carolina Industrial Commission approving a settlement agreement entered into under that Article.

(b) No contract between an insurer that provides a health benefit plan as defined in G.S. 58-3-167 and a medical provider shall contain a provision that authorizes the insurer to offset or reverse a health plan payment against a provider reimbursement for other medical charges unless the health plan payment was for a specific medical charge for which the employee, employer, or carrier is liable or responsible according to a final adjudication of the claim under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes or an order of the North Carolina Industrial Commission approving a settlement agreement entered into under that Article."

SECTION 6. The North Carolina Industrial Commission shall adopt any rules needed to implement this act.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of June, 2001.

Beverly E. Perdue
President of the Senate

Joe Hackney
Speaker Pro Tempore of the House of Representatives

Michael F. Easley
Governor

Approved _____m. this _____ day of _____, 2001