

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 645
HOUSE BILL 911

AN ACT TO PROVIDE THAT THE APPLICABLE COURT SHALL MAKE THE DIVISION OF THE SETTLEMENT OR JUDGMENT COSTS AMONG JOINT TORT- FEASORS IN ACTIONS BROUGHT UNDER THE WORKERS' COMPENSATION ACT WHEN THEY CANNOT AGREE AND PROVIDING FOR LIMITATIONS OF ITS APPLICABILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-10.2 is amended by adding a new subsection to read:

"(j) In the event that a judgment is obtained which is insufficient to compensate the subrogation claim of the Workers' Compensation Insurance Carrier, or in the event that a settlement has been agreed upon by the employee and the third party when said action is pending on a trial calendar and the pretrial conference with the judge has been held, either party may apply to the resident superior court judge of the county in which the cause of action arose or the presiding judge before whom the cause of action is pending, for determination as to the amount to be paid to each by such third party tort-feasor. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division."

Sec. 2. G.S. 97-10.2(e) is amended to read:

"(e) The amount of compensation and other benefits paid or payable on account of such injury or death shall be admissible in evidence in any proceeding against the third party. In the event that said amount of compensation and other benefits is introduced in such a proceeding the court shall instruct the jury that said amount will be deducted by the court from any amount of damages awarded to the plaintiff. If the third party defending such proceeding, by answer duly served on the employer, sufficiently alleges that actionable negligence of the employer joined and concurred with the negligence of the third party in producing the injury or death, then an issue shall be submitted to the jury in such case as to whether actionable negligence of employer joined and concurred with the negligence of the third party in producing the injury or death. The employer shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the jury as to this issue as fully as though he were a party although not named or joined as a party to the proceeding. Such issue shall be the last of the issues submitted to the jury. If the verdict shall be that actionable negligence of the employer did join and concur with that of the third party in producing the injury or death, then the court shall reduce the damages awarded by the jury against the third party by the amount which the employer would otherwise be entitled to receive therefrom by way of subrogation hereunder and the entire amount recovered, after such

reduction, shall belong to the employee or his personal representative free of any claim by the employer and the third party shall have no further right by way of contribution or otherwise against the employer, except any right which may exist by reason of an express contract of indemnity between the employer and the third party, which was entered into prior to the injury to the employee. In the event that the court becomes aware that there is an express contract of indemnity between the employer and the third party the court may in the interest of justice exclude the employer from the trial of the claim against the third party and may meet the issue of the actionable negligence of the employer to the jury in a separate hearing."

Sec. 3. This act shall become effective October 1, 1983, and shall apply to actions initiated on or after that date.

In the General Assembly read three times and ratified, this the 30th day of June, 1983.