

34:15-111. Payment of claims on application therefor; fund may recover against insurance carrier but not from employer, except as otherwise provided

A valid claim for compensation or death benefits, or installments thereof, heretofore or hereafter made pursuant to this chapter or the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. § 901 et seq.), as authorized by this article, which has remained or shall remain due and unpaid for 60 days, by reason of default by an insolvent carrier, shall be paid from the fund in the manner provided in this section. Any person in interest may file with the Commissioner of Banking and Insurance an application for payment of compensation or death benefits from the fund on a form to be prescribed and furnished by the commissioner. If there has been an award, final or otherwise, a certified copy thereof shall accompany the application. Such commissioner shall thereupon certify to the State Treasurer such award for payment according to the terms of the same, whereupon payment shall be made by the State Treasurer.

Any person recovering under R.S.34:15-103 et seq. shall be deemed to have assigned his rights under the policy to the fund to the extent of his recovery from the fund. Every insured or claimant seeking the protection of R.S.34:15- 103 et seq. shall cooperate with the fund to the same extent as that person would have been required to cooperate with the insolvent carrier. The fund shall have no cause of action against the insured employer or the insolvent carrier for any sums it has paid out, except those causes of action that the insolvent carrier would have had if those sums had been paid by the insolvent carrier, including, but not limited to, the right to receive the benefit of, and to enforce any and all obligations on the part of the insured, to either fund directly (or indirectly through a third party administrator), or secure the payment of, compensation due under the policies of the insolvent carrier, to the extent of claims paid. The foregoing vests the fund with an exclusive cause of action against the insured and includes the right to enforce against the insured the rights of the carrier with respect to any obligation of the insured to reimburse the carrier for deductibles or pay claims within a deductible. Further, the fund is vested with a first lien in any collateral provided by the insured to the carrier to secure the insured's performance, to the extent of claims paid by the fund, which lien can be perfected by notice to the liquidator. In the case of an insolvent insurer operating on a plan with an assessment liability, payments of claims of the fund shall not operate to reduce the liability of insureds to the receiver, liquidator or statutory successor for unpaid assessments.

The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the fund or its representatives. The court having jurisdiction shall grant a claim priority equal to that to which the claimant would have been entitled in the absence of R.S.34:15-103 et seq. against the assets of the insolvent carrier. The expenses of the fund or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

Except as otherwise provided in this section, an employer may pay such award or part thereof in advance of payment from the fund and shall thereupon be subrogated to the rights of the employee or other party in interest against the fund to the extent of the amount so paid.

The State Treasurer as custodian of the fund shall be entitled to recover the sum of all liabilities of such insolvent carrier assumed by such fund from such carrier, its receiver, liquidator,

rehabilitator or trustee in bankruptcy and may prosecute an action or other proceedings therefor. All moneys recovered in any such action or proceedings shall forthwith be placed to the credit of the fund by the State Treasurer to reimburse the fund to the extent of the moneys so recovered and paid.

Amended by L.1987, c. 250, § 5, eff. Aug. 25, 1987; L. 2004, c. 179, § 8, eff. Dec. 22, 2004.

Source: L.1935, c. 133, § 9, p. 341.