

Julia Bob, et al.,

Plaintiffs,

versus

Harsco Corporation,

Defendant.

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Civil Action H-12-1647

Opinion on Reimbursement

1. In November of 2011, Herbert L. Bob died when a gas compressor fell on him. His wife – Julia – and his daughters – Kimberly and Candace – sued Harsco Corporation, the manufacturer of the compressor. The parties settled for \$950,000. Julia received one-half; Kimberly and Candace each received one-quarter.
2. Through March 7, 2014, American Zurich Insurance Company has disbursed \$98,480.99 of worker’s compensation benefits to Julia. She continues to receive weekly payments in the amount of \$787.00.
3. Zurich must be reimbursed for the \$98,480.99 that it has paid to Julia because she has recovered from a third party.¹ Zurich must subtract two adjustments from its reimbursement: (a) a proportionate share of the cost of the lawsuit; and (b) no more than one-third of \$98,480.99 for its share of the attorney’s fees.²
4. Because Kimberly and Candace were not beneficiaries of Herbert’s worker’s compensation, Zurich may not be reimbursed from their portion of the settlement.

¹ Tex. Labor Code § 417.002.

² Tex. Labor Code § 417.003(a).

5. To calculate Zurich's proportionate share of the costs to bring the lawsuit, divide the benefits paid by Julia's recovery.³

Zurich's Percentage of Julia's Recovery:

Benefits paid by Zurich:	\$98,480.90
Divided by Julia's recovery:	<u>\$475,000.00</u>
Zurich's proportionate share:	20.70%

6. The total cost of this lawsuit was \$91,873.64. One-half of that cost – \$45,936.82 – is attributable to Julia, with the other one-half attributable to Kimberly and Candace.

Zurich's Proportionate Share of Julia's Costs:

Julia's Expenses:	\$45,936.82
Multiplied by Zurich's share:	<u>20.70%</u>
Zurich's share of the costs:	\$9,508.92

7. In Texas, an insurer must pay a reasonable attorney's fee that may not exceed one-third of its gross reimbursement amount.⁴ Because Julia's lawyers represented Zurich's interests, it will pay them one-third.

Zurich's Attorney's Fees:

Benefits paid by Zurich:	\$98,480.99
Divided by one-third:	<u>3.00</u>
Zurich's share of attorney's fees:	\$32,826.99

³ Tex. Labor Code § 417.003(a)(2).

⁴ Tex. Labor Code § 417.003(a)(1).

8. To calculate Zurich's reimbursement, subtract its share of the attorney's fees and costs from its gross recovery.

Zurich's Lien

Benefits paid:	\$98,480.99
Less its share of attorney's fees:	\$32,826.99
Less its share of the costs:	<u>\$9,508.92</u>
Zurich's total reimbursement:	\$56,145.08

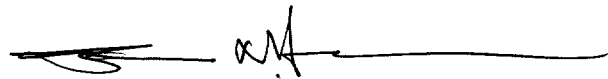
9. Through March 7, 2014, Zurich was owed a reimbursement of \$56,145.08.
10. In Texas, a recovery from a third party that exceeds what the carrier has disbursed in worker's compensation benefits is a credit against future benefits.⁵ Zurich wants a credit against its weekly payments of \$787.00.

Zurich's Credit

Julia's net recovery to date:	\$475,000.00
Less gross reimbursement to Zurich:	\$98,480.99
Less her attorney's fees:	\$150,607.60
Less her 79.6% share of expenses:	<u>\$36,427.90</u>
Total credit:	\$189,483.51

11. Through March 7, 2014, Zurich was owed a credit of \$189,483.51 against its disbursements under the policy after March 7.

Signed on April 11, 2014, at Houston, Texas.



Lynn N. Hughes
United States District Judge

⁵ Tex. Labor Code § 417.002(b).