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Settlements and Commutations

Miranda Chiu & Richard Robilotti

Office of Workers' Compensation Programs

Division of Longshore & Harbor Workers' Compensation

Settlements and Commutations

1. **Concluding a Claim by Settlement – the Basics**
2. **Commutations – the Basics**
3. **Differences Between Settlement and Commutation**
4. **Settlement and Commutation of Foreign Claims**

Section 8(i) Settlement

References

1. 33 U.S.C. § 908(i)(1) – (4),
<http://www.dol.gov/esa/owcp/dlhwc/lhwca.htm#908>.
2. 20 CFR § 702.241 – 243,
[http://www.dol.gov/dol/allcfr/Title 20/Part 702/20CFR702.241.htm](http://www.dol.gov/dol/allcfr/Title%2020/Part%20702/20CFR702.241.htm).
3. Longshore Procedure Manual, Chapter 3-501,
<http://www.dol.gov/esa/owcp/dlhwc/lspm/lspm3-501.htm>.
4. Topic 8. At the OALJ website, following the link on the right to the Longshore Judges' Benchbook.
<http://www.oalj.dol.gov/LIBLHC.HTM>

Settlement Basics

- **Criteria for approval: settlement must be adequate and not obtained under duress. See 33 USC § 8(i)(1) and 20 CFR § 702.243(f).**
- **May include compensation or medical benefit or both.**
- **Settlements are limited to claims then in existence.**
- **Settlement application must be a stand-alone document and contain the information set out in 20 CFR § 702.242(b).**

Settlement Basics Continued

- Settlements are final and not subject to change 30 days after the Order is filed.
- Structured settlements are permitted.
- The lump sum payment must be paid (received by the claimant) within 10 days of the filing of the Order Approving Settlement.
- Late payments are subject to an additional 20% compensation per § 14(f) of the LHWCA.

Commutations

References

- **The Defense Base Act, at 42 USC § 1652 (b),**
<http://www.dol.gov/esa/owcp/dlhwc/dba.htm>.

...the Secretary of Labor may, at his option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

Commutations

References, cont'd

- **Federal Code of Regulations, 20 CFR § 702.142,**
http://www.dol.gov/dol/allcfr/Title_20/Part_702/20CFR702.142.htm.
- **Longshore Procedure Manual, Chapter 3-502,**
<http://www.dol.gov/esa/owcp/dlhwc/lspm/lspm3-502.htm>.

Commutation Basics

- Only permanent disability (partial or total) and death benefits may be commuted.
- Only benefits payable to aliens and non-nationals of the U.S. not residing in the U.S. or Canada may be commuted.
- Only future installments of compensation may be commuted, not benefits already accrued.
- Payment must be made within ten days of the filing of the Commutation Order.
- Late payment is subject to an additional 20% of compensation per § 14(f) of the LHWCA.

Commutation Basics Continued

- **Medical benefits may not be commuted.**
- **A claim cannot be commuted unless all entitlement issues have been resolved, either by stipulation of the parties or by a compensation order.**
- **Documentation of age and citizen ship of the benefit recipients must be submitted.**
- **The benefit recipients do not have the option to reject a commuted sum in lieu of a continuing award.**

Commutation Formula

1. To determine the beneficiary's life expectancy, use the U.S. Life Tables published by the National Center for Health Statistics, available at <http://www.cdc.gov/nchs/products/pubs/pubd/lftbls/life/1966.htm>.
2. If the beneficiary is a minor, use the number of years until the 18th birthday.

Commutation Formula

Cont'd

3. To determine the present value discount rate, use the US Treasury one year constant maturity rate, published by the Federal Reserve at

<http://www.federalreserve.gov/releases/h15/current/h15.htm>.

Commutation Formula Cont'd

4. For PTD and death benefits, determine the current percentage of increase of the NAWW used to calculate § 10(f) adjustments under the LHWCA.

<http://www.dol.gov/esa/owcp/dlhwc/NAWWinfo.htm>

5. Subtract this rate from the Treasury one year constant maturity rate to arrive at the commutation interest rate.

Commutation Formula Cont'd

6. Determine the future value of compensation using an spreadsheet that will calculate the cumulative annual increase/decrease in weekly benefit rate.
7. Divide the sum of future value by 2 to arrive at the commuted payment.

Commutation Formula

Cont'd

8. If there are multiple beneficiaries, the commuted payment must be separately calculated for each beneficiary.

Settlement vs. Commutation

Settlement

- Settlement is a compromise to resolve a claim with bona fide disputes of entitlement, which if fully litigated, may result in the claimant taking less than the settlement sum.

Commutation

- Commutation is used when all entitlement issues have been resolved and the benefits payable are based on the maximum allowed by law.

Settlement vs. Commutation continued

Settlement

- Medical benefits may be settled.
- Settlements may be structured, with future payments made at specified intervals.

Commutation

- Medical benefits may not be commuted.
- Commuted payment must be made in one lump sum.

Settlement vs. Commutation continued

Settlement

- Settlements may be approved by the District Director or the Administrative Law Judge.

Commutation

- Commutations may only be approved by the District Director.

Settlement vs. Commutation continued

Settlement

- Settlements may not be further reduced by commutation.
- Settlements are reimbursable under the WHCA.

Commutation

- Compensation awards are reduced by 50% when commuted.
- Commutations are reimbursable under the WHCA.

Settlement and Commutation of Foreign Claims

- **Language and cultural barriers.**
- **Documentation of earnings, extent of disability, relationship of survivors in death claims, financial support in dependency claims.**
- **Adequacy of settlement – proving entitlement and adequacy.**
- **“Under duress”.**
- **Benefit delivery mechanism to ensure payment within 10 days of the Order.**

Commutation Payments to Date

- **As of 1/04/08:**
 - **95 Commutations Approved**
 - **Cumulative Total Payments \$9,487,497**

- **As of 9/30/08:**
 - **156 Commutations Approved**
 - **Cumulative Total Payments \$30,029,788**