

**Department of Labor
OWCP
Defense Base Act/
War Hazards Compensation Act Seminar
February 23, 2006**

Settlements and Commutations

Miranda Chiu

Settlements and Commutations

- 1. Concluding a Claim by Settlement – the Basics**
- 2. Settlements Involving Foreign National**
- 3. Commutations – the Basics**
- 4. Difference Between Settlement and Commutation**

Section 8(i) Settlement

References

1. 33 U.S.C. § 908(i)(1) – (4),
<http://www.dol.gov/esa/regs/compliance/owcp/lhwca.htm#908>.
2. 20 CFR § 702.241 – 243,
http://www.dol.gov/dol/allcfr/Title_20/Part_702/20CFR702.241.htm.
3. Longshore Procedure Manual, Chapter 3-501,
<http://www.dol.gov/esa/owcp/dlhwc/lspm/lspm3-501.htm>.
4. OALJ Judges' Bench Book, Topic 8,
http://www.oalj.dol.gov/PUBLIC/LONGSHORE/REFERENCES/REFERENCE_WORKS/2002_LHWCA_TOPIC_810.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.**
- **Medical benefits may not be commuted.**

Commutation Basics **Continued**

- **The commutation must be based on a compensation order that has fixed the right of the beneficiaries to compensation.**
- **The claimant does not have the option to reject a commuted sum in lieu of a continuing award.**

Calculation of commuted payments

- 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.**
- 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>.**

Calculation of commuted payments **continued**

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>. Subtract this rate from the Treasury one year constant maturity rate to arrive at the commutation discount rate.
5. Determine the present value of future compensation using the above steps. Divide the sum by 2, to arrive at the commuted payment.
6. 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 there are no entitlement issues and the benefits payable are based on the maximum allowed by statute.**

Settlement vs. Commutation **continued**

Settlement

- **Medical benefits may be settled.**
- **Settlements may be structured, with future payments made at specified intervals.**
- **Settlements may be approved by the District Director or the Administrative Law Judge.**

Commutation

- **Medical benefits may not be commuted.**
- **Commutated payment must be made in one lump sum.**
- **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 **For Foreign Nationals**

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