

## ATTORNEY'S INFORMATION SHEET - SETTLEMENT AGREEMENTS

### A. Introduction

Unlike most legal proceedings, the parties in a workers' compensation case are statutorily required to have an administrative law judge review and approve their agreement before the agreement is valid and operational.

The administrative law judge will use two main points of analysis. The first is the following directive from U.C.A. 34A-2-420(4):

- [A]n administrative law judge shall review and may approve the agreement of the parties to enter into a full and final:
- (a) compromise settlement of disputed [claims] or;
  - (b) commutation and settlement of [benefit] entitlements . . . by means of
    - a lump sum payment, structured settlement, or other appropriate payout.

Accordingly, whenever the parties seek to settle the case on a full and final basis, the ALJ will first determine into which category the claim falls. The analysis is simple: If a valid dispute is outlined and supported, the Petitioner's claims may be settled for compromised amounts. If no valid dispute is shown, the claim will be categorized as an entitlement or commutation, and must be paid out as such in full. A commutation agreement therefore seeks to provide a lump sum payment to Petitioner for ALL future workers compensation costs and benefits Petitioner may incur as a result of treating his subject industrial injuries. As a result, reasonably anticipated benefits must be addressed in the parties' agreement.

The second important point of analysis is in Utah Administrative Code R602-2-6:

"Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws . . . . The Commission will not approve any proposed settlement that is manifestly unjust."

The underlying purposes of the workers' compensation laws are discussed in Reteuna v. Industrial Commission, 185 P. 535, 537 (Utah 1919), written shortly after the Utah Workers' Compensation Act was passed: "The Workers' Compensation Act embodies a public policy and legislative intent to 'secure compensation to an injured employee... (and) to relieve society of the care and support of the unfortunate victim of the industrial accident.'"

### B. Other Factors

The most common reason that settlement agreements are rejected is that the parties have not provided sufficient information to the ALJ to evaluate the agreement. The attached form is meant to provide an outline of information needed by the ALJ. Parties should complete all sections or risk rejection of their agreement. **However please note that completion of the form does not guarantee approval, as the ALJ will continue to review for overall substantive content.**

Additionally, the following points are relevant to the ALJ's consideration of the proposed agreement:

The ALJ will not approve agreements containing global releases of claims other than workers' compensation claims; nor will the ALJ approve broad releases seeking to include industrial claims not identified and described with some certainty/not the subject of the claim brought.

With regard to disputed validity agreements: The ALJ will first look at whether a valid dispute is outlined. The parties should describe the dispute clearly and provide support for assertions as necessary. If the dispute is medical in nature, copies of **relevant** medical documents should be provided with the proposed agreement that outline the dispute.

With regard to commutation agreements: the ALJ will consider many factors. Included are:

U.C.A. 34A-2-421: "An [ALJ], under special circumstances and when the same is deemed advisable, may commute periodic benefits to one or more lump sum payments." Furthermore, "Lump sum payments are the exception . . ." Utah State Rd. Comm'n v. Industrial Comm'n, 168 P.2d 319 (1946). The parties should therefore describe special circumstances which justify a lump sum payment in lieu of regular payments, or otherwise address the advisability of the payment of a lump sum over the regular, continuing payments prescribed by 34A-2-401 et seq.

A showing of how all amounts are calculated. To support these calculations, a doctor's opinion is usually necessary foundationally to provide a detailed evaluation of possible future medical care needed, from which the parties may begin to evaluate costs of treatment. Each benefit deemed satisfied by the commutation agreement must be accounted for by the consideration paid, and computed separately.

The severity of the injuries and the age and physical restrictions/employability of the injured. For example, a person in his 20's with a 26% impairment rating for spinal injuries is less likely to be approved for a commutation than a person in his 60's with a 3% impairment rating for a rotator cuff.

History of stability. Along with age, restrictions, etc. mentioned above, usually a person with more severe impairments needs to demonstrate a longer history of stability before a commutation is deemed advisable. Under most circumstances, the ALJ will not approve a commutation for a person that has not been declared by a doctor to be medically stable, or one who, although is declared stable, has been so only recently and needs frequent and fairly involved medical care.

The ALJ will not approve an agreement that puts the burden of an injured workers' claim on a third party, i.e. private health carrier, Medicare/Medicaid, or other such entities or governmental agency.