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Who, What, When, Why,
and How for Settlements
under Section 8(i)

By Jonathan A. Tweedy

Why Settle?

- Common sense = Employers and Carriers want to close a claim
- Is withdrawal of a claim an option?
- Administrative closure does not equal closure of a claim
- Payment of a claim by the Special Fund does not equal closure of a claim
- A running award just sounds awful

What to Settle

- Compensation benefits(Past and Future)
- Death benefits
- Attorney's fees and expenses
- Penalties and interest
 - Caveat for all penalties
- Medical
 - Issues with closure of past medical

Where to Settle?

- Consider the referral date for OWCP v. OALJ
- Consider the procedural status of claim – Remand v. Retainer of Jurisdiction
- Consider which office of the U.S. Department of Labor gets to have a discussion about deficiency with you.

When to Settle?

- When “it” hits the fan
- Scheduled awards
- Claimant has reached MMI
- Claimant does not desire any more medical care
- Death Benefits to Minors
- Claims accepted by the Special Fund
- War Hazards considerations

Who can Settle?

- Must have a ripe claim or be a valid beneficiary
- Can only settle what exists at settlement (ex. not expected death claim for a living claimant)
- Special Fund considerations
- Claimant's attorney considerations

How to Settle?

- Settlement Apportionment
 - Comp., Medical, P&I, Fees for “successful representation”
- Section 8(i) Settlement Agreement
 - Meets proper regulations
- All the “ducks” are in a row
 - How can insured / carrier assist?
- Proper filing office
- Time period for approval

Regulations for Settlement Document

§ 702.242 Information necessary for a complete settlement application.

- (a) The settlement application shall be **a self-sufficient document** which can be evaluated without further reference to the administrative file. The application shall be in the form of a stipulation signed by all parties and shall contain a **brief summary** of the facts of the case to include: a description of the incident, a description of the nature of the injury to include the degree of impairment and/or disability, a description of the medical care rendered to date of settlement, and a summary of compensation paid and the compensation rate or, where benefits have not been paid, the claimant's average weekly wage.
- (b) The settlement application shall contain the following:
- (1) A full description of the terms of the settlement which clearly indicates, where appropriate, **the amounts to be paid** for compensation, medical benefits, survivor benefits and representative's fees which shall be itemized as required by § 702.132.
 - (2) The **reason for the settlement**, and the issues which are in dispute, if any.
 - (3) The claimant's date of birth and, in death claims, the names and birth dates of all dependents.
 - (4) Information on whether or not the **claimant is working or is capable of working**. This should include, but not be limited to, a description of the claimant's **educational background and work history**, as well as other factors which could impact, either favorably or unfavorably, on future employability.
 - (5) A **current medical report** which fully describes any injury related impairment as well as any unrelated conditions. This report shall indicate whether **maximum medical improvement has been reached and whether further disability or medical treatment is anticipated**. If the claimant has already reached maximum medical improvement, a medical report prepared at the time the employee's condition stabilized will satisfy the requirement for a current medical report. A medical report need not be submitted with agreements to settle survivor benefits unless the circumstances warrant it.
 - (6) A statement explaining how the settlement amount is considered **adequate**.
 - (7) If the settlement application covers medical benefits an **itemization of the amount paid for medical expenses by year for the three years prior to the date of the application**. An estimate of the claimant's need for future medical treatment as well as an estimate of the cost of such medical treatment shall also be submitted which indicates the inflation factor and/or the discount rate used, if any. The adjudicator may waive these requirements for good cause.
 - (8) Information on any **collateral source available** for the payment of medical expenses.

Adequacy

- So what is not adequate in the eyes of the DOL?
 - Claimant needs money so he wants to settle
 - There are numerous issues and the parties desire resolution without further explanation
 - Claimant has stopped medical care
 - Claimant believes his unscheduled injury falls under the schedule of benefits
 - Claimant does not know what he's doing

Pro Se v. Represented Claimants

- Pick your poison
- Caution is necessary for dealing with pro se litigants
- No deadline for approval if both parties are not represented
- 30 days from receipt if both parties are represented
- Attorney's Fee Disputes

Foreign National Settlements

- Applicable Beneficiaries
 - Proper documentation
- Commutation Amount v. Non-Commutation Amount
- Average Weekly Wage information
- Funeral Benefits

Ducks in a Row

- Medicare's interests / Collateral benefits
 - Medicare Set Aside approved
 - Payment of Collateral Benefits Lien
- Structured settlements – Reinsurance v. annuity
- Special Fund's interests
- Bifurcated settlements
- Test wire transfers for foreign nationals
- Settlement checks in safe before submitting documents
- Fee petitions filed properly
- All regulations met by the settlement document

Notice of Deficiency

- What to do now?
 - Work it out amongst the parties
 - Ask for clarification from the DOL / OALJ
 - Referral to the OALJ

Penalties

- Must make ordered payments within 10 days of “service” by DD
- Service by the ALJ or BRB is not relevant, but provides a warning to watch out for the served order from the DD
- 10 days are CALENDAR DAYS except if 10th day is on a weekend or federal holiday then the period is extended to the next day (probably even in the Fifth Circuit due to new FRCP)
- Payments by check or draft are based on date of receipt of the check or draft by the Claimant IF the bank promptly honors payment
- Very difficult to acquire excuse without stay of award
- No *force majeure*, but due process considerations
- Potential for avoidance of penalty based on Claimant’s behavior

LS-208 Notice of Final Payment or Suspension of Compensation Payments

Notice of Final Payment or Suspension of Compensation Payments

U.S. Department of Labor
Office of Workers' Compensation Programs



INSTRUCTIONS: This notice must be filed with the District Director within 16 days after compensation has been stopped or suspended. Use of this form is mandatory. Failure to timely file this form shall result in assessment of a penalty of \$110.00, (33 U.S.C. 914(g)). This form is to be used to report disability or death compensation payments, as well as other statutory payments. The information will be used to verify the sufficiency of compensation paid under the Act.

OMB No.: 1240-0041
1. OWCP No. _____
2. Carrier's No. _____

3. Name and address of Employee or other beneficiary (Type or print)
Place within brackets

a. Address of the OWCP District Office where this form is filed

CARRIER - Original (Copy 1) should be sent to the District Director. Copies 2, 3, 4 and 5 should be sent to the parties listed at the bottom of the form. Check the boxes at the bottom of the page to indicate parties copied.

4. Name of employer _____ 5. Address of employer _____

6. Date of injury _____ 7. Date employee first lost pay because of injury _____ 7a. Date of first payment of compensation _____ 8. Date physician found employee able to return to work _____

9. Date employee returned to work _____ 10. Was compensation paid at the maximum rate? Yes No
Average weekly wage \$ _____ multiplied by 2/3 = Compensation rate \$ _____

11. State reason or reasons for termination or suspension of payments _____ 12. Date last payment made _____
13. Date of this notice 02/10/2012

14. **ENTER ALL PAYMENTS MADE ON ACCOUNT OF DISABILITY**

TYPE OF DISABILITY	FROM (Mo., day, yr.)	THROUGH (Mo., day, yr.)	AMOUNT PAID PER WEEK	NUMBER OF WEEKS PAID	TOTAL
a	b	c	d	e	f
Temporary total					
Temporary partial					
Permanent partial (Non-schedule)					
Permanent total					
Permanent partial (Schedule loss, facial or other disfigurement)	Percent	Part of body			

Attach continuation sheet to show additional periods, rates and amounts paid and enter total here. **TOTAL PAID** _____

15. **ENTER ALL PAYMENTS MADE ON ACCOUNT OF DEATH**

a. Dependent name and date of birth	b. AMOUNT	c. OTHER PAYMENTS	d. AMOUNT
		Funeral Expenses	
		Sec. 44(c)(1) payment to the Special Fund	
(Attach continuation sheet)		TOTAL (cols. b + c + d)	

16. **ENTER OTHER PAYMENTS**

a. Attorney fees	b. Compensation for late payment per Sec. 14(e) or (f)	c. Interest	d. Sec. 8(j) Settlement	e. Commutation
TOTAL (cols. a, b, c, d, e)				

17. Name of insurance carrier or self-insured employer and claim administrator _____ a. Address and phone number of person whose name is shown in Box 19 _____

18. Signature of person authorized to sign for employer or carrier _____ 19. Name and Title of person whose signature appears in Box 18 _____

EMPLOYEE- PLEASE READ CAREFULLY Any claim for compensation, to be valid, must be filed IN WRITING with the District Director, OWCP, WITHIN ONE YEAR after the date of injury or date of last payment of compensation. If you have serious disfigurement of the face, head, or neck or other normally exposed areas which may handicap you in securing or maintaining employment, or any impairment of the body or other disability from the injury for which you have not received compensation, you should inform the District Director. (Address in 3a above)

Public Burden Statement
The following statement is made in accordance with the Privacy Act of 1974 (5 USC 522a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is 20 CFR 702.235. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information is 1215-0024. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Labor, Division of Longshore and Harbor Workers' Compensation, Room C4315, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND COMPLETED FORMS TO THIS OFFICE
 1 - District Director 2 - Employer 3 - Insurance Carrier Form LS-208 Rev. November 2008
 4 - Employee 5 - Employee's Representative The LS-208 dated June 1994 is being replaced by LS-208 dated November 2008. All previous copies will be destroyed or cannot be used.

- Submitted by Employer/Carrier *within 16 days* to notify the DOL and the claimant that compensation benefits are being suspended (or ongoing!)
- LS-208 shows the payment periods, the benefit rate and the total benefits paid
- Mandatory \$110 penalty for LS-208 filed more than 16 days after Final Payment: 33 USC § 914(g)

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Mandatory \$110 Penalty: LS-208 Filed > 16 Days After Final Payment: 33 USC § 914(g)

- Only acceptable excuse: the payment was not a “Final Payment”
- Per the LHWCA Procedure Manual a “Final Payment” is:
 - Any payment of compensation which anticipates no further payments.
 - The last payment of compensation made in accordance with a compensation order awarding disability or death benefits, issued by either a DD or an administrative law judge.
 - The payment of an agreed settlement, approved under Section 8(i).
 - The last payment of compensation made pursuant to an agreement reached by the parties through informal proceedings.

20% Penalty for Failure to Pay Ordered Comp Within 10 Days

- Must make ordered payments within 10 days of “service” by DD
- Service by the ALJ or BRB is not relevant, but provides a warning to watch out for the served order from the DD
- Applies to Settlements per 33 USC § 908(i)
- Applies to awards such as ALJ awards
- The 20% penalty applies to each payment due per running award (ex. ALJ orders TTD) UNTIL modified by order (ex. settlement)
- 10 days are CALENDAR DAYS except if 10th day is on a weekend or federal holiday then the period is extended to the next day (probably even in the Fifth Circuit due to new FRCP)
- Payments by check or draft are based on date of receipt of the check or draft by the Claimant IF the bank promptly honors payment

How can Employer / Carrier Help?

- Return to work, date of hire, wage records, incident reports, initial medical records
- Payment histories
- Deficiency concerns

ANY QUESTIONS?

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