

## Commutations and COLA's

### Calculating Case Values and Attorney's Fees in a SAWW-based System

DEU Commutation Training  
April 2011



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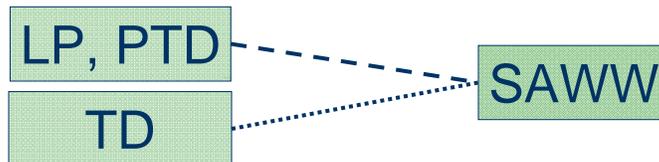
## Overview

- **Building a Foundation**
  - How the Labor Code and landmark decisions have impacted commutations
- **Establishing the Parameters**
  - Choices that can affect commuted values
- **Receiving/Processing Requests**
  - Establishing realistic expectations to avoid problems down the line

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## AB 749 Amendments

- LC 4659(c) – linked LP and PTD **payments** to State Average Weekly Wage (SAWW)
- LC 4453(a)(10) – linked TD **limits** to SAWW



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## SAWW Effect on LP and PTD

- LP and PTD payment rates will increase every year on Jan 1 based on change in SAWW
  - Applies only for DOI's o/a 1/1/03
- But how is the initial LP or PTD payment rate determined?



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## Prior Case law

- Loya v. Arrowhead Brass Products; SCIF (panel) – first adjustment on Jan 1<sup>st</sup> after LP or PTD commences (Jan '08)
- XYZZX SJO2 v. Subsequent Injuries Benefits Trust Fund (panel) – first adjustment on Jan 1<sup>st</sup> after DOI (Feb '09)

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## Decision – Now Under Appeal

- **Duncan v. WCAB**
  - Certified DCA opinion
  - Filed 11/25/09
  - First adjustment on 1/1/04
  - Supreme Court has granted review
    - Case is no longer precedent and cannot be cited

Holy cow!



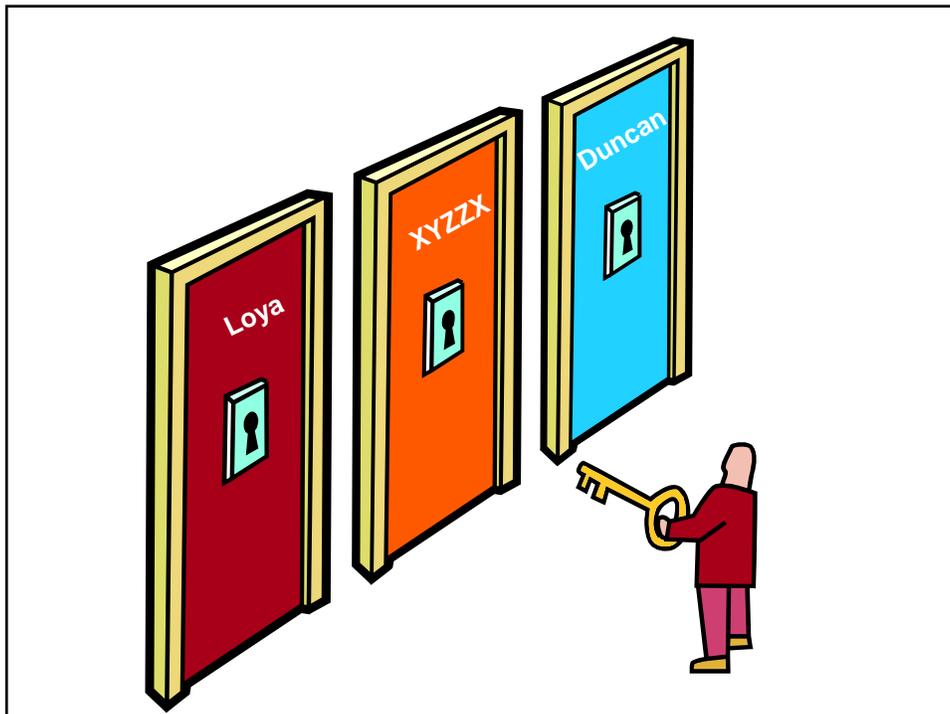
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## Latest Decision - Unpublished

- Case: Allied Waste Industries, et al. v. WCAB (Rojas), No. C064914,
  - DCA Opinion – Unpublished
  - Filed 12/6/10
  - First adjustment on Jan 1<sup>st</sup> after DOI
  - Supports XYZZX, but not citable



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## Life Pension Starting Rate Example

- DOI = 2/1/08
- P&S = 2/1/10
- PD = 85% (673.25 weeks ending in 2022)
- Statutory LP rate = \$193.27

What is the estimated starting paid rate of LP?

Loya →

XYZZX →

Duncan →



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## LP/PTD Summary

- SAWW applies only to injuries o/a 1/1/03
- Payment is adjusted, not the limit
- Three different start dates for first adjustment
  - Loya – first Jan 1<sup>st</sup> after LP or PTD starts
  - XYZZX – first Jan 1<sup>st</sup> after DOI
  - Duncan – 1/1/04

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## SAWW Effect on TD

- TD paid 2 or more years after DOI is subject to minimum/maximum in effect at time of payment (LC 4661.5)
- TD payment rate will increase each year on Jan 1 so long as earnings are above statutory maximum

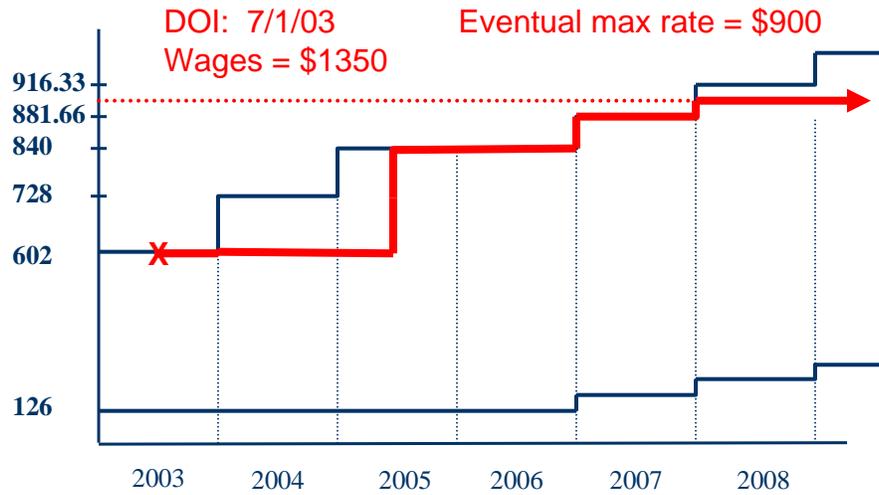
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## Impact of TD Adjustment on Death Benefits

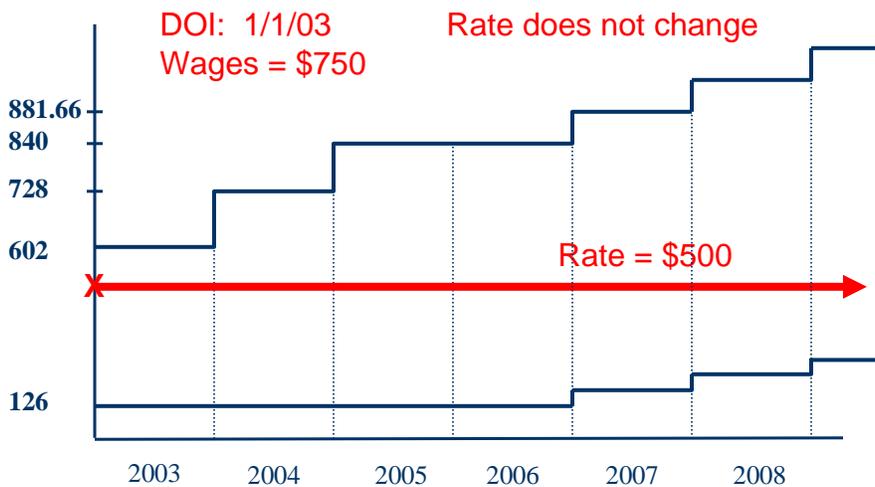
- Death benefits are paid in the same manner as TD (LC 4902)
  - TD benefits paid more than 2 years post-injury will be adjusted to current maximum so long as earnings justify it (LC 4661.5)
  - LC 4661.5 applies to injuries o/a 1/1/90

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### Death benefit – high wage earner



### Death benefit – medium wage earner



## Death Benefit Summary

- Applies to all DOI's o/a 1/1/90
- TD min/max are subject to SAWW, not payment
- Payment only affected for maximum and minimum earners

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## Establishing the Parameters

- Effective date of commutation
- 1<sup>st</sup> SAWW adjustment – Loya, XYZZX, or Duncan
- $\pm 15\%$  PD adjustment
- Reduction method

Clear Wishes Make  
for Happy Raters



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## Date of Commutation (DOC)

- DOC = Effective valuation date
  - It should match the day on which attorney's fees are paid
  - 3 weeks from request used by default
  - 2-3 weeks after hearing is another good option
  - Rate reductions for attorney's fees generally go into effect on the day after the DOC

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## 1<sup>st</sup> SAWW Adjustment

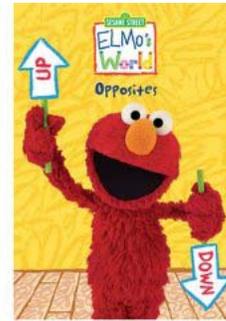
- Duncan case
  - January 1, 2004
- XYZZX
  - January 1 after DOI
- Loya case
  - January 1 after LP or PTD starts



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## ±15% PD adjustment

- LC 4658(d) Adjustment
  - Increases PD by 15% if no suitable job offered within 60 days of P&S
  - Decreases PD by 15% if suitable job is offered within 60 days of P&S
  - For DOI's o/a 1/1/05
  - Does not apply to employers with less than 50 employees



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## Reduction Methods

- Method 1 – Uniform Reduction
- Method 2 – Increasing Reduction
- Method 3 – Far End Reduction



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## Method 1 – Uniform Reduction

- Best method for most situations
- Same amount subtracted from each biweekly payment
- Suitable for PD, LP, PTD and death benefits



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## Method 2 – Increasing Reduction

- Reduction is increased each year by the percentage used in the commutation calculation, regardless of SAWW changes
- Suitable for PTD primarily
- Reduction grows roughly in proportion with PTD payment



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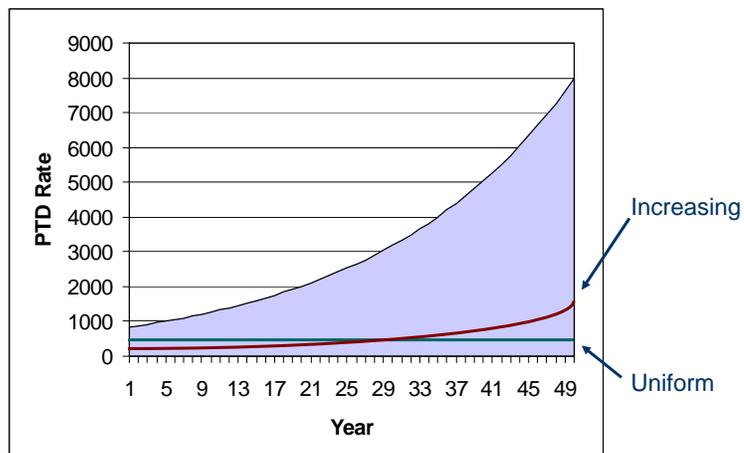
## PTD Reduction Example

- 31-year old female, life expectancy = 50 yrs.
- Initial PTD rate = \$840
- Uniform reduction = \$394/week for life
- Increasing reduction – starts at \$126/week and grows at 4.6%/year



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## Uniform Reduction v. Increasing Reduction



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## Method 3 – Far End Reduction

- Suitable for PD only awards
- Advantage – PD rate is not reduced
- Disadvantage – creates a gap when used in combination with LP benefits



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## Applying a Uniform Reduction

- Apply the annual SAWW increase to the gross LP/PTD rate, not the net rate
  - Example
    - 2010 gross rate = \$900/week
    - Reduction for atty. fees = \$130/week
    - 2011 SAWW increase = 5%
    - Calculate the net rate to applicant for 2010 and 2011
- 2010 =  
2011 =

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## Applying an Increasing Reduction

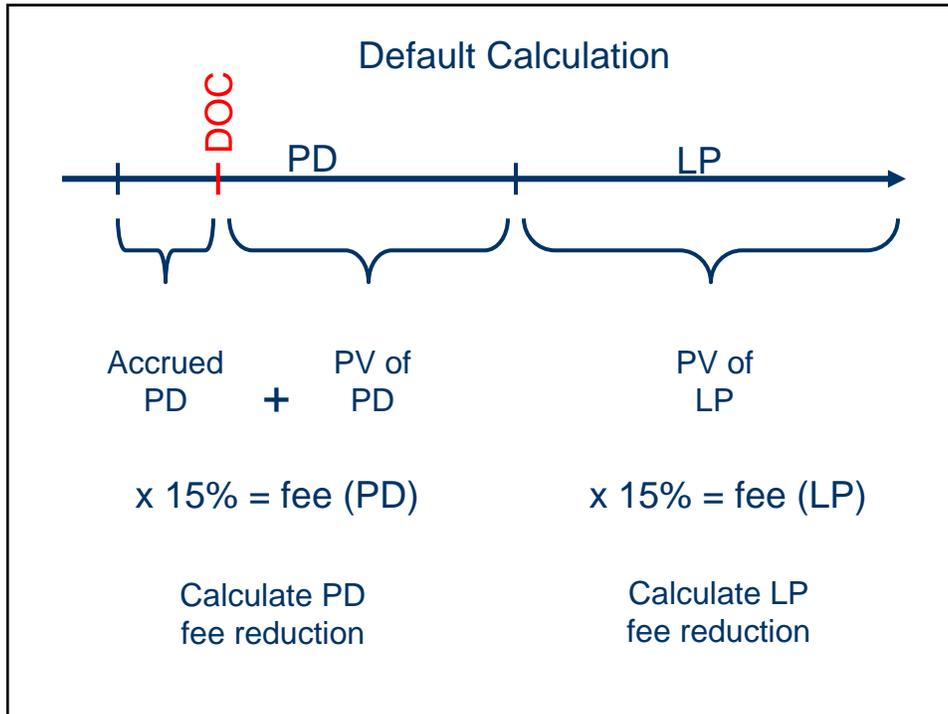
- Apply the annual SAWW increase to the gross LP/PTD rate, not the net rate
  - Example
    - 2010 gross rate = \$900/week
    - 2010 reduction for atty. fees = \$60/week (increased by 4.6% each year)
    - 2011 SAWW increase = 5%
    - Calculate the net rate to applicant for 2010 and 2011
- 2010 =
- 2011 =

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## A Few More Choices

- Assumed SAWW percentage
  - 4.6% is used by default but any value acceptable to the parties is permissible
  - Based on 50 year AWW increase 1962-2011
- Percentage used for attorney fee
  - Can be any number but 12-15% most common
- Method of applying attorney's fee
  - Full value of PD v. present value

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## LP/PTD Case Examples

1. PTD + Loya
2. PTD + XYZZX
3. PD/LP + Loya
4. PD/LP + Duncan
5. PD/LP + 15% adjustment

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## Death Benefit Case Examples

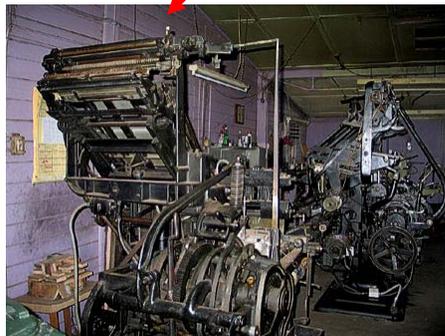
1. Death – minor
  - Benefit ends on a date certain when youngest child reaches age 18
2. Death – no minor
  - Benefit ends at a specific dollar figure when statutory amount has been paid

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## Receiving/processing Requests

- Requiring the correct form
- Limiting multiple requests
- Turnaround times
- EAMS processing

Insert request  
here



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## Commutation Request Form

- Insist on correct form
  - Narrative requests usually omit critical info causing delay or incorrect calculations
- Request Form available at:  
[www.dir.ca.gov/dwc/forms/DEU\\_CommutationRequest.xls](http://www.dir.ca.gov/dwc/forms/DEU_CommutationRequest.xls)

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## Limit Multiple Requests

- Parties will ask for:
  - Multiple PD percentages, e.g. 85% and 100%
  - Multiple first adjustments, e.g. Loya and Duncan
  - Multiple SAWW assumptions, e.g. 3% and 4.7%
- How many versions is this?



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## Turnaround Times

- DEU offices are equipped to do calculations
- Courtesy Service
- Turnaround time of up to two weeks

APRIL 2010						
SUN	MON	TUES	WED	THU	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	X

-Recalculations may take longer

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## Forget Hawaii



## Vacation in Bakersfield

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