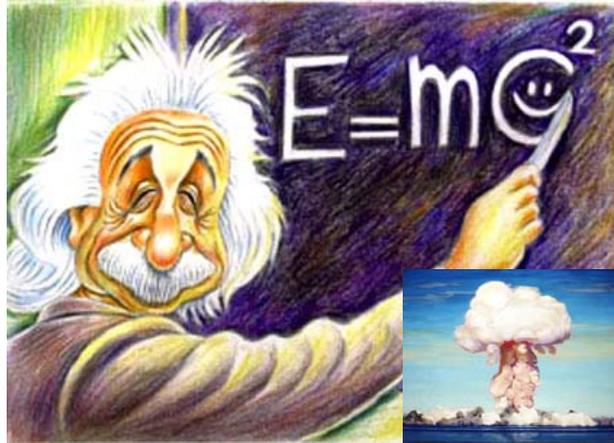


SAWW Commutations

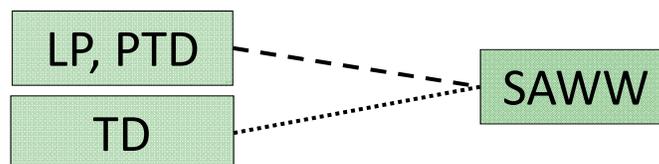


*DWC Conference 2015
Presented by Barry Knight*

1

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



2

When do SAWW Increases Apply?

Life Pension and PTD

- Dates of Injury 2003 and after

Death Cases

- Dates of Injury 1990 and after
- First SAWW Increase January 1st after commencement of that benefit (Baker vs WCAB ADJ1510738)

3

Life Pension Starting Rate Example

- DOI = 2/1/10
- P&S date = 4/11/13
- PD = 85% (673.25 weeks ending in 8/16/2024)
- Statutory LP rate = \$193.27
- What is the initial LP rate?
- Date of 1st SAWW increase?

4

PTD Starting Rate Example

- DOI = 7/12/11
- P&S date = 5/14/13
- PD = 100%
- Statutory PTD rate = \$986.69
- PTD start date = 5/14/13
- What is the initial PTD rate?
- Date of 1st SAWW increase?

5

What about the 104 Week TD Cap?

- LC 4656(c) – 104 weeks maximum TD
- Injured may not be P&S to determine and start PD benefit
- When is the PD start date?
- When do SAWW increases apply?
- On 104 week cap cases – From first date of PD or PTD payment (Brower vs. Jones ADJ802221)

6

Brower vs. Jones (ADJ802221)

- En Banc decision
- Defense commences PD at end of 104 weeks
- Based on reasonable estimate of PD
- If PTD, payments retroactive to end of 104 weeks TD
- SAWW increases based on effective LP or PTD start date

7

104 Weeks TD Cap Example

- DOI 10/1/10
- Maximum earner
- 104 weeks TD ends 9/27/12
- P&S on 8/28/14 and determined to be 100% PD



8

104 Weeks TD Cap Example

- Claims administrator advances PD beginning 9/28/12 at max PD rate \$270.00 per week
- At 100% PD determination – PTD owed at \$986.69 per week retroactive to 9/28/13
- Date of first SAWW increase = 1/1/14

9

Brower Decision Silver Lining

- LC 4658(c) 15% increase applicable 60 days after P&S if no job offer or RTW
- On 104 week TD cap cases, they will be fewer PD weeks affected by the 15% PD increase
- Slightly lower PD owed on cases under 100% when +15% increase applies



10

LP/PTD Summary

- SAWW applies only to injuries on or after 1/1/03
- Payment is adjusted, not the limit
- The first SAWW increase is January 1st after payment commences

11

SAWW Effect on TD

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

12

Death Benefit

Death – with minor

- Benefit ends on a date certain when youngest child reaches age 18

Death – no minor

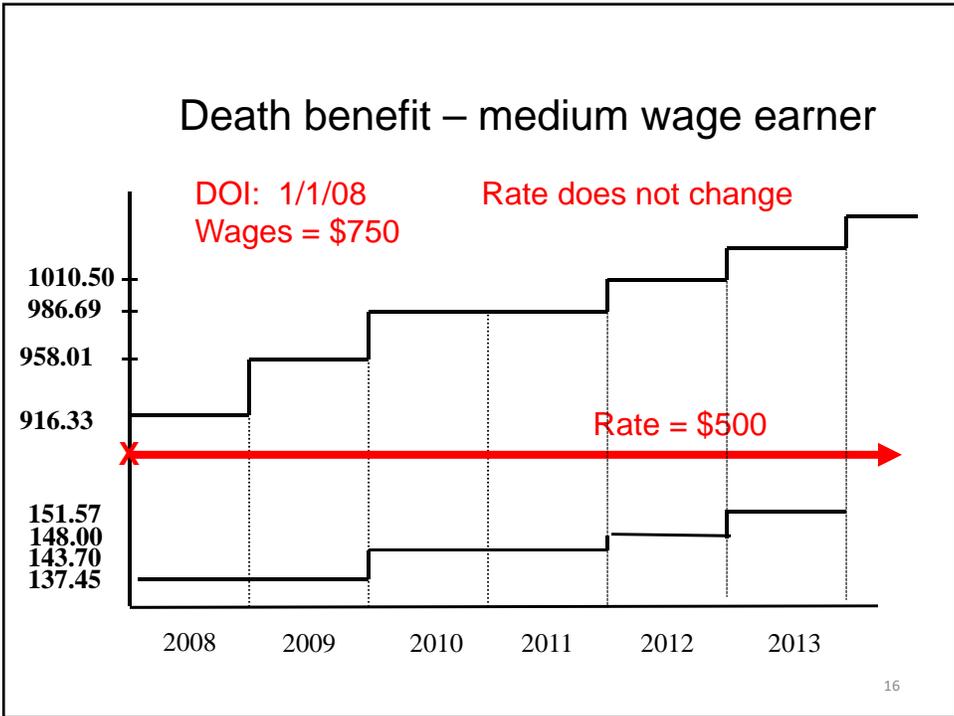
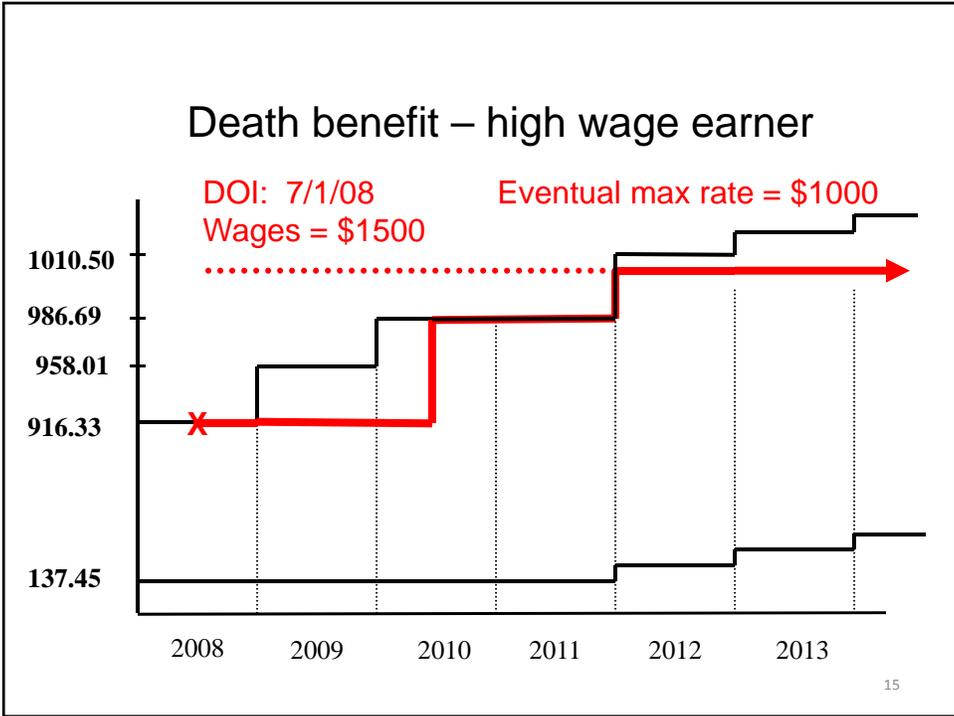
- Benefit ends at a specific dollar figure when statutory amount has been paid

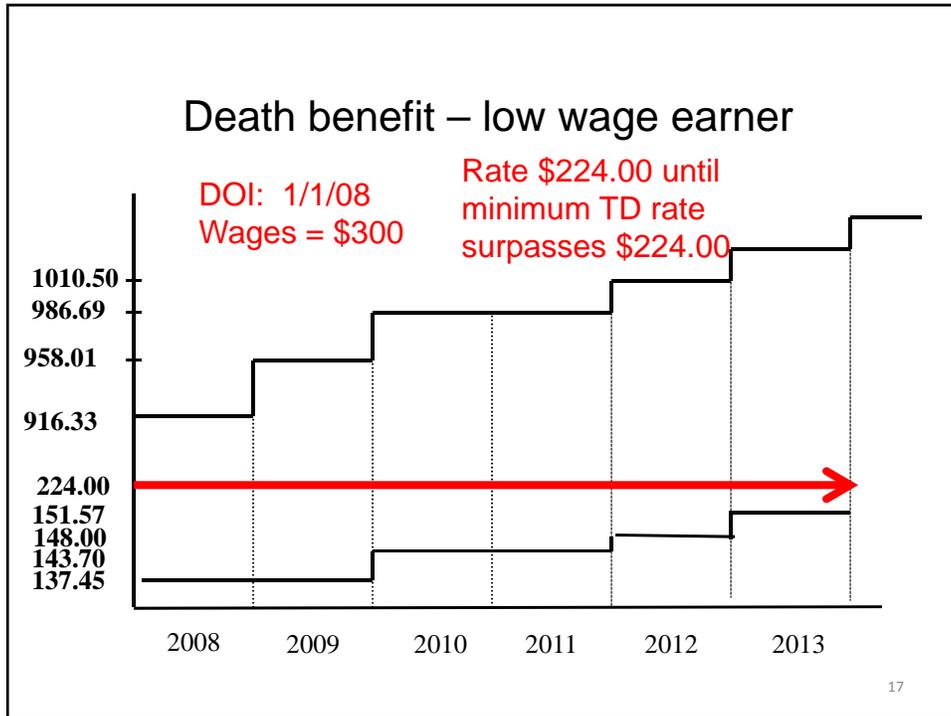
13

SAWW Effect on Death Benefits

- Death benefits are paid in the same manner as TD (LC 4902)
- Benefits paid more than two years post injury are subject to current maximum/minimum TD rates
- For maximum earners rates will cap at 2/3 wages

14





- ### 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
- 18

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



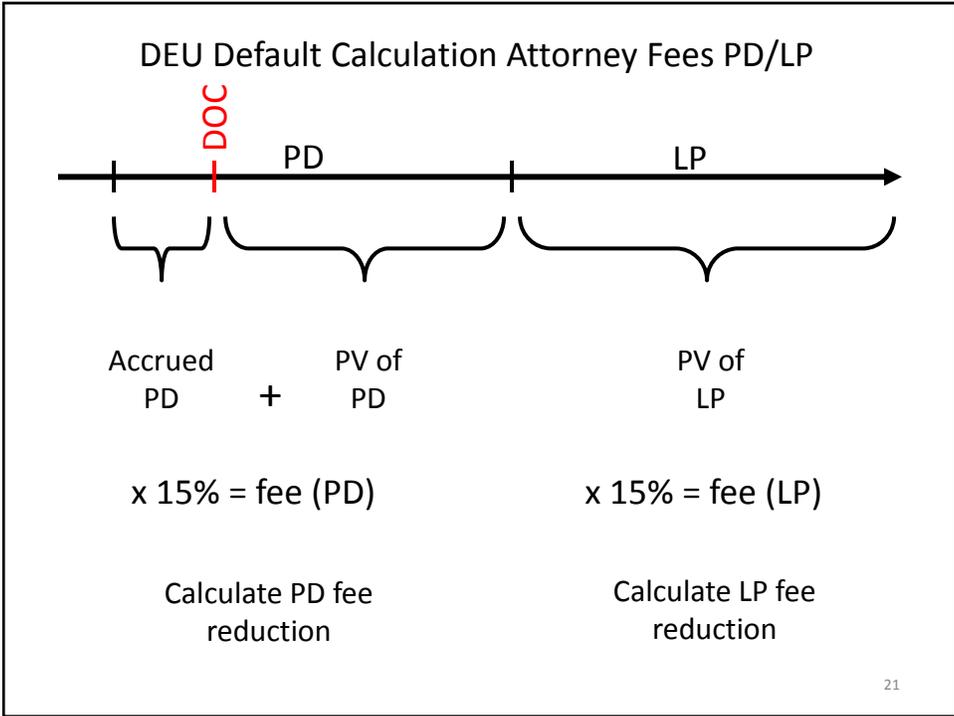
19

DEU Commutation Calculations

- Determine value of accrued benefits
- Determine present value of future benefits
- Add up for total case value
- Take Percentage for Attorney Fees
- Reduce rate to account for Attorney Fees



20



DEU Commutation Calculation Coversheet

IW:	Joe Average
WCAB#	ADJ1234567
Date:	10/29/2014

ATTORNEY FEE CALCULATION - PERMANENT TOTAL DISABILITY

DOI:	11/24/10	This calculation utilizes the approach set forth in Baker v. WCAB(ADJ1510738/SJO 0251902). This calculation will be invalid unless benefits are paid to applicant in a manner consistent with this decision.
Date of commutation (DOC):	11/15/14	
Attorney fee %:	15.0%	
Assumed annual SAWW increase:	3.00%	

Important

PTD starting rate:	
PTD rate on DOC:	\$
PTD start date:	11/18/12

1) PTD accrued through commutation date.....		\$105,783.67	
2) Commuted value of remaining PTD.....	+	\$2,537,886.00	
3) Total basis for attorney fee.....		\$2,643,669.67	← Case Value
4) Attorney fee percentage.....	x	15.0%	
5) Total amount of attorney fee.....		\$396,550.45	← Case Value

6) Weekly deduction from future PTD payments to produce attorney fee:		\$320.28	
	Method #1*	\$163.96	← % Case Value
	Method #2*		

Calculated by: DEU Rater
Disability Evaluation Unit

22

Future SAWW Increase



- Future SAWW Increases Unknown
- Necessary to estimate future benefit value
- No basis for estimation of Future SAWW increase in Labor Code, Regulation or Case Law

23

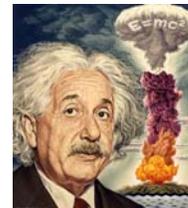
Effect of Future SAWW Increase

30 year old male 100% maximum earner

Future SAWW Increase 3% = \$2,537,886

Future SAWW Increase 4.6% = \$3,868,424

4.6% SAWW increases value 52.4%



24

History of 4.6% SAWW Increase

- Future SAWW Increase needed
- Based on 50 year mean average
- 4.7% 1957-2006
- Changed to 4.6% in 2011
- 1966-2015 50 year average 4.5%



4.6% Institutionalized

25

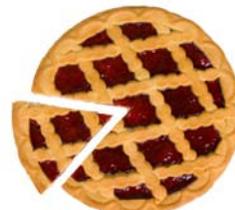
Recent SAWW Increases

Year	SAWW Increase
2006	4.01%
2007	4.96%
2008	3.93%
2009	4.55%
2010	2.99%
2011	0.00%
2012	2.41%
2013	5.56%
2014	0.74%
2015	2.66%
10 year Average	3.18%

26

WCAB SAWW Increase Concerns

- Disproportionate attorney fees if actual SAWW increases lower than estimate
- Disproportion exaggerated due to compounding effect
- Injured worker should not bear risk of uncertainty



27

WCAB Panel Decisions

Case Number	Case	Decision
ADJ2894653	Lena Wilson v. Piedmont Lumber	3% SAWW
ADJ716686	Richard Anderson v. Jaguar/Landrover	3% SAWW
ADJ4677964	Eugene Gilmore v. Autoland Resale	3% SAWW
ADJ797001	Darryl Oyas v. Dept. Corrections	2% SAWW
ADJ4292283	Sylvia Miles v. Walmart	3% SAWW

28

Where Attorney Fees Come From

Claims Administrator



Injured Worker



Attorney

29

Attorney Fees

Judges have authority to award attorney fees

Variables include

- Case complexity
- Work done by attorney
- Case value



30

Defense Concerns on Attorney Fees

- Claims administrator is fronting the money
- Money is recovered through future rate reduction
- If injured dies prematurely full recovery is not made



31

Lifetime Annuity Tables

- 3% annual discount rate
- Based on survival rate
- US Decennial data
- Population normals



32

Cases of Reduced Life Expectancy

- Physician report states reduced life expectancy
- How should this affect case settlement?
- What about attorney fees?



33

COMMUTATION REQUEST Revised August 2014

Directions: Fill in the section under All Cases as completely as possible. Remaining sections only need to be filled in if you are requesting a commutation of those benefits.

New Commutation Request Form

All cases:

IW: _____	Requested by: _____
EAMS Case#: _____	Contact number: _____
	FAX Number: _____
	Request Date: _____
	If DOI is o/a 1/1/03, then any LP or PTD benefits would be subject to annual SAWW-based increases.
DOI: _____	
P&S date: _____	

Attorney fee% (if applicable): _____

Annual SAWW increase (if appl.): _____

Permanent Disability: _____

PD Rating: _____

PD duration (in weeks): _____

Initial PD weekly rate: _____

Is PD subject to +15% adjustment under LC 4658(d)? (Y/N) _____

Is PD subject to -15% adjustment under LC 4658(d)? (Y/N) _____

Life Pension:

Date of birth: _____

PD start date (typically the P&S date or the day after TD ends): _____

PD duration (in weeks): _____

Initial rate of LP benefits: _____

Gender: _____

100% Permanent Total Disability:

Date of birth: _____

PTD start date (typically the P&S date or the day after TD ends): _____

Initial rate of PTD benefits: _____

Gender: _____

Death Benefit:

Average Weekly Earnings: _____

Start date of benefits: _____

Initial benefit rate: _____

Death benefit amt (LC 4702): _____

DOB of youngest child: _____

All commutations will follow Baker vs. WCAB in determining effective date of first SAWW increase.

Commutations involving 104 week TD cap will follow Brower vs. Jones (ADJ802221) in determining start date of PD or PTD.

Judge to fill in Annual SAWW Increase and provide approval signature. If Judge leaves the Annual SAWW Increase blank, DEU will use 3%.

Judge: _____

New Procedure

Commutation sent to Judge

Judge inputs Annual SAWW Increase

Judge Signature

DEU calculates commutation

3% used as default

Reasons for New Procedure

- Concerns over 4.6% SAWW Estimate
- Judge is the determiner of attorney fees
- Procedure gives flexibility to Judges



35

Martinez Appellate Decision

- ADJ7278184
- No basis for unwavering 4.6% future increase
- Expert testimony
- Estimated SAWW Increase nullifies LC 5101 present value discount on commutations

36

Future Site of DWC Conference



Reduction Methods

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



38

Method 1 – Uniform Reduction

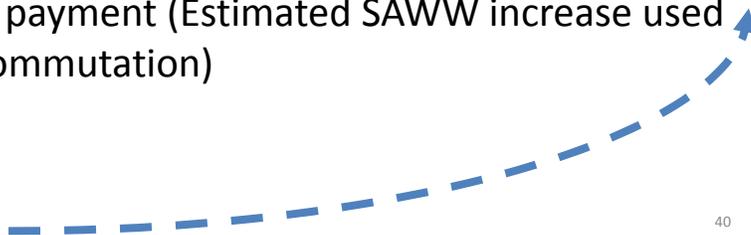
- Best method for most situations
- Same amount subtracted from each biweekly payment
- Suitable for PD, LP, PTD and death benefits



39

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 (Estimated SAWW increase used in commutation)



40

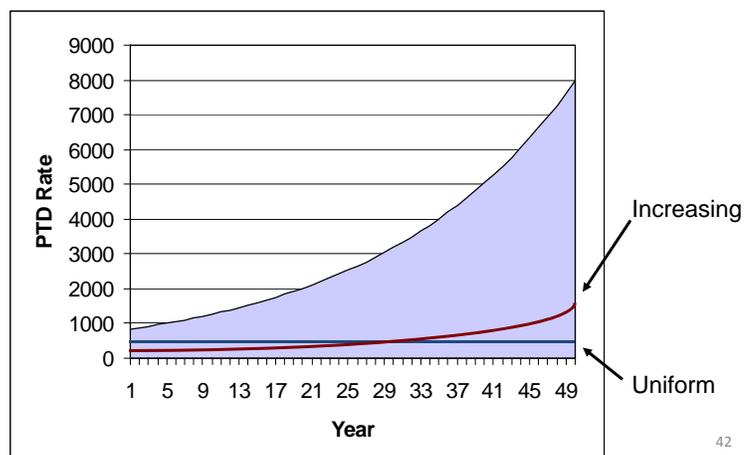
PTD Reduction Example

- 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



41

Uniform Reduction v. Increasing Reduction



42

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



43

Applying a Uniform Reduction

- Apply the annual SAWW increase to the gross LP/PTD rate, not the net rate
- Example
 - 2014 gross rate = \$900/week
 - Reduction for atty. fees = \$130/week
 - 2015 SAWW increase = 2.66%
 - Calculate the net rate to applicant for 2014 and 2015

44

Applying a Uniform Reduction

For 2014

Gross Rate Before Reduction = \$900

Less Uniform Reduction = \$130

Net Rate to Injured = \$770

45

Applying a Uniform Reduction

For 2015

2014 Gross rate x SAWW increase

$\$900 \times 1.0266 = \923.94

Less Uniform Reduction

$\$923.94 - \$130.00 = \$793.94$

46

Applying a Uniform Reduction

Steps

- 1) Apply SAWW increase to previous year's gross rate before reductions to obtain new year's gross rate
- 2) Subtract uniform reduction from new year's gross rate

Remember to always apply the SAWW increase to the gross rate. If the SAWW increase is applied to the net rate the calculation will be incorrectly low.



47

Applying an Increasing Reduction

- Apply the annual SAWW increase to the gross LP/PTD rate, not the net rate
- Example
 - 2014 gross rate = \$900/week
 - 2014 reduction for atty. fees = \$60/week (increased by 4.6% each year)
 - 2015 SAWW increase = 2.66%
 - Calculate the net rate to applicant for 2014 and 2015

48

Applying an Increasing Rate Reduction

For 2014

Gross Rate Before Reduction = \$900

Less Increasing Rate Reduction = \$ 60

Net Rate to Injured = \$840

49

Applying an Increasing Rate Reduction

For 2015

2012 Gross rate x SAWW increase

$\$900 \times 1.0266 = \923.94

2012 Reduction X Est SAWW increase

$\$60 \times 1.046 = \62.76

Gross Rate less Increasing Rate Reduction

$\$923.94 - \$62.76 = \$861.18$

50

Applying an Increasing Rate Reduction

Year	Prev Gross Rate	SAWW Increase	Gross Rate	UIR (uniform increase)	Net Rate
2011	-----	-----	900	60.00	820.00
2012	900.00	2.41%	921.69	62.76	858.93
2013	921.69	5.56%	972.94	65.65	907.29
2014	972.94	0.74%	980.14	68.67	911.46
2015	980.14	2.66%	1006.21	71.83	934.38

51

Applying an Increasing Rate Reduction

Steps

- 1) Apply SAWW increase to previous year's gross rate before reductions to obtain new year's gross rate
- 2) Increase previous year's reduction by estimated SAWW increase used in commutation
- 3) Subtract uniform increasing reduction from new year's gross rate

52

Applying an Increasing Rate Reduction

Common Mistakes

- 1) Applying the SAWW increase to the net rate
- 2) Increasing the increasing reduction by the actual SAWW increase



53

Present Value vs. Full Value PD

- 85% PD award lasts 12.9 years
- 3% annual present value discount
- Commutation calculations factor in 3% Present Value Discount
- Should attorney receive full value PD?



54

Drive Safely

