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**Petition Requesting Amendment to NAC 616C.502  
to Update Present Value Table**

To:  
Steve George, Administrator of DIR  
400 West King Street, Suite 400  
Carson City, NV 89703  
Donald C. Smith, Senior Division Counsel  
DIR  
1301 North Green Valley Parkway, Suite 200  
Henderson, NV 89074  
Charles J. Verre  
WCS of DIR  
1301 North Green Valley Parkway, Suite 200  
Henderson, NV 89074

**A. Procedure to request amendment to regulations**

The undersigned attorney, on behalf of injured workers clients and others with Nevada industrial insurance claims who have sustained serious injuries and have been and who will be entitled to permanent partial disability awards, petitions the Division of Industrial Relations to amend and update the interest rate and present value table contained in NAC 616C.502 that must be used to calculate the present value of a lump sum permanent partial disability award.

NRS 233B.100 addresses the right of the undersigned to petition the Division of Industrial Relations for an amendment to NAC.616C.502, as follows:

- "1. Any interested person may petition an agency requesting the adoption, filing, amendment or repeal of any regulation and shall accompany the petition with relevant data, views, and arguments. Each agency shall prescribe by regulation the form for such petitions and the procedure for their submission, consideration and disposition. Upon submission of such a petition, the agency shall within 30 days either deny the petition in writing, stating its reasons, or initiate regulation-making proceedings.
- 2. Any regulation of any agency is subject to amendment or suspension by the Governor pursuant to the provisions of NRS 416.060."

1 The Division of Industrial Relations adopted a procedure for filing such a petition in NAC  
2 616C.440. That regulation provides that a petition requesting that the Division adopt, amend or  
3 repeal a regulation must include the name and address of the petitioner, a clear and concise  
4 statement of the regulation to be adopted, amended or repealed, and the reasons for the  
5 adoption, amendment or repeal of the regulation. Three copies of the petition and the supporting  
6 documents are to be filed with the Administrator of the Division. The Division is to notify the  
7 petitioner in writing of its decision concerning the petition within 30 days after receiving the  
8 petition.

9  
10 **B. DIR's obligation to update the chart in NAC 616C.502**

11  
12 NRS 616C.495 addresses the conditions under which an award for a permanent partial  
13 disability may be paid to Nevada injured workers in a lump sum. That statute provides in  
14 pertinent part as follows:

15 "5. The lump sum payable must be equal to the present value of the  
16 compensation awarded, less any advance payment or lump sum  
17 previously paid. The present value must be calculated using monthly  
18 payments in the amounts prescribed in subsection 7 of NRS 616C.490  
19 and actuarial and actuarial annuity tables adopted by the Division. **The  
20 tables must be reviewed annually by a consulting actuary.**"  
21 [Emphasis added].

22 The table to calculate present value is included in NAC 616.502. (Exhibit A.)

23 On July 1, 2015, the undersigned submitted a Public Record Request to DIR for all  
24 records of any annual reviews of the table in NAC 616C.502 by a consulting actuary for the past  
25 five years. DIR was asked to clarify whether there has been any such annual review if no  
26 records were produced. On July 13, 2015, DIR responded through Senior Division Counsel,  
27 Don C. Smith, that there were no such reports and that the last time a consulting actuary  
28 reviewed the present value table was on April 13, 2000. He thanked the undersigned for  
bringing the oversight to DIR's attention. (Exhibit B.)

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2  
3 **C. The oversight needs immediate correction**

4 DIR concedes that it has been an oversight not to have a consulting actuary review the  
5 present value table annually along with the interest rate that is contained in the regulation at  
6 NAC 616C.502 since 2000. The table in NAC 616C.502 is labeled "1997 Undifferentiated  
7 Pension Mortality- 6% interest".

8 In addition to DIR's failure to follow the specific statutory directive in NRS 616C.495(5)  
9 that the present value table **must** be reviewed annually, DIR is required by NRS 233B.050(1)(e)  
10 to review this regulation at least once every 10 years to determine whether it should amend or  
11 repeal NAC 616C.502 and the present value chart contained in this regulation.

12 NRS 616A.400 requires DIR as the Administrator to prescribe regulations. The Nevada  
13 Legislature used the word "shall" when assigning DIR its duties, which include adopting and  
14 amending the regulations used to compensate Nevada's injured workers. DIR acknowledged this  
15 duty when it adopted NAC616A.390 in 2001. "The administrator will perform each duty he or she  
16 is required to perform pursuant to chapters 616A to 617, inclusive of NAC or will designate a  
17 person to perform the duty on his or her behalf."

18 This oversight by DIR to perform its statutory duty to assure that the present value table is  
19 updated has resulted in favoring the rights and interests of employers and industrial insurers to  
20 the detriment of injured workers with permanent impairments.

21  
22  
23 **D. The purpose of an annual review of the present value chart**

24 Without an annual review by an actuary as required by NRS 616C.495(5), there is no  
25 correlation between a lump sum paid to the injured worker purporting to be the present value of a  
26 permanent partial disability award, with current, actual economic conditions. The lump sum  
27 PPD award is not calculated at a true present value if the discount interest rate is not kept  
28 current each year as mandated by the Nevada legislature.

1 The financial crisis in the United States that began in 2007 has resulted in the inability of  
2 consumers, including the average working person in Nevada, to make any decent return on their  
3 money. Three of the biggest banks in Nevada (Wells Fargo, Bank of America, Chase) are paying  
4 only 0.01% on savings accounts as of July 2015. There is no correlation between the 1997 6%  
5 interest rate used in the present value table in the regulation and the present financial climate.  
6

7  
8 **E. A sampling of what other jurisdictions use**

9 In Iowa, for commutation purposes, the rate is equal to the current rate of a one-year  
10 treasury bond plus 2%. The current discount rate is 2.24%. See Iowa Admin. Code 876-6.3(2);  
11 Iowa Code 668.13(3).

12 In Ohio, the current discount rate is 4%. See Ohio Administrative Code 4123-17-60  
13 (Annuity Factor Tables).

14 In Indiana, it is a 3% present value reduction.. See Ind. Code Section 22-3-3-25.

15 In Connecticut commutations after May 1, 2005 were set at a 3% rate, but were 10% prior  
16 to 2/17/1998 (The Connecticut Commission has authority to set a commuted rate. C.G.S 31-  
17 302.)

18 Colorado has one of the highest at a 4% discount for lump sum awards.

19 Montana uses the average rate for the U.S. 10-year treasury bills for the previous  
20 calendar year. See, 39-71-741 MCA. This is adjusted annually by the Department of Labor.  
21 Currently the rate is 2.54%.

22 South Carolina uses a net present value table at 2% per annum.

23 California uses Present Value of Permanent Disability at 3% Interest as issued in July  
24 2001 by the California Division of Workers' Compensation. See Sections 133,5100, 5101, 5307.3  
25 and 5307.4 of the California Labor Code.

26 Federal workers' compensation cases under FECA use a 4% discount rate. 5 USC Sec.  
27 8135.  
28

1 North Carolina uses a discount rate that is currently less than 2% by utilizing the IRS'  
2 Applicable Federal Rate. See, o4 NCAC 10A .0406 on discount rate to be used in determining  
3 commuted values.  
4

5 Most states that allow commutation of an award to a lump sum present value use a rate  
6 equal to either a one year treasury bond plus 2%, a 10-treasury bill (2.54%), or a 50-year  
7 treasury bond rate (which is currently 3.2%). Other states use current and universally accepted  
8 Department of Labor statistics to establish a fair interest rate when discounting awards to present  
9 value. Petition had this information verified independently by Johnson Lambert LLP. (Exhibit C.)  
10

#### 11 **F. What the discount rate should be**

12 In order to assist DIR in correcting this oversight, the Petitioner asked a national  
13 accounting firm to analyze the problem and make a recommendation as to what the discount rate  
14 should be currently, and what the criteria should be when an annual review is done by an annuity  
15 consultant. Attached is the reporting of John Prescott of Johnson Lambert LLP. (Exhibit C.) His  
16 research discusses discount rate options that consider the interests of insurers and injured  
17 workers. The conclusion of Johnson Lambert LLP was that the current rate of 6% is not  
18 reflective of the current rate environment, and that an equitable discount rate would be in the  
19 2.25% to 4% range. The rate recommended in this reporting can easily be transferred into a new  
20 present value chart by the Milliman, the Claims Management Consultants, who has been hired  
21 by DIR for other claims management reports in the past.  
22

#### 23 **G. The DIR must amend regulations on lump sums anyway**

24 In the 2015 legislative session, S.B. 232 amended NRS 616C.495 so as to allow  
25 claimants injured before 1995 to receive disability awards that do not exceed 30% to elect to  
26 receive their awards in lump sum. Previously the statute allowed only a 25% PPD to be paid in  
27 a lump sum, with the remainder over 25% paid in installments. Presumably, the DIR, when it  
28

1 must adopt regulations and preparatory administrative tasks to carry out this amendment , will  
2 also amend NAC 616C.498 so as to allow claimants injured after July 1, 1995 to also receive  
3 awards that don't exceed 30% whole person in a lump sum, instead of the current 25% limitation  
4 on lump sums. This was an amendment supported by the self-insured employers.  
5

6 When the DIR asks the Legislative Council Bureau for assistance in amending  
7 regulations to comply with the amended, 2015 version of NRS 616C.495, it should ask for  
8 assistance in bringing NAC 616C.502 current after reviewing the information attached to this  
9 petition and after consulting with an actuary for an updated interest rate and corresponding  
10 table.  
11

#### 12 **H. Conclusion**

13 In 1995, the Nevada legislature charged DIR with overseeing the actions of insurers and  
14 their administrators to ensure that laws and regulations were followed for the benefit of injured  
15 workers. This watchdog function of DIR is not being met, however, if DIR is not carrying out its  
16 own statutory duties to annually update the chart by which the most seriously injured workers are  
17 awarded compensation for permanent impairments. By not updating the present value chart or  
18 even reviewing it since 2000, injured workers have had their permanent partial disability lump  
19 sum awards heavily and unfairly discounted in a manner that strongly favors self-insured  
20 employers and insurers.  
21

22 The Petition is legally sufficient to prompt action by DIR to obtain a current chart to  
23 calculate the present value of PPD lump sums, However, Petitioner anticipates that some self-  
24 insureds, insurers, and their TPA's will oppose updating the 1997 chart with its 6% interest rate .  
25 After all, changing the interest rate to a more current 3% interest rate for example will cost  
26 insurers more money. These opponents may state it more eloquently, but their real complaint  
27 will be that they were counting on the DIR staying asleep at the wheel regarding the  
28 compensation injured workers are paid for their permanent impairments when they elect to be

1 paid in a lump sum. That argument is insulting to DIR, of course, as it questions whether DIR's  
2 oversight should be ignored now to intentionally benefit insurers at the expense of injured  
3 workers. Please note that the Petitioner does not have information and does not contend DIR's  
4 oversight was intentional. This Petition is to correct the oversight.  
5

6 Insurers opposed to updating the regulation might also comment that Petitioner and other  
7 claimant's attorneys who charge contingency fees will profit from increased lump sum PPDs paid  
8 to injured workers. That is true, and that is also completely irrelevant as to how to update the  
9 present value chart annually as required by law. Nevada injured workers are savvy consumers  
10 of legal services and are capable of determining whether a legal fee is commensurate with the  
11 value of the legal services proposed and provided. All injured workers who are offered a PPD  
12 award, whether represented by an attorney or not, will benefit from being paid a true present  
13 value of a PPD award in a lump sum.

14 It is right and fair for injured workers to be paid a greater lump sum PPD award once the  
15 present value chart and interest rate are updated. Nevada's injured workers are entitled to a  
16 lump sum of money based on a true present value of that PPD award. That has already been  
17 decided by the legislature. DIR just needs to propose a regulation to properly compute the  
18 present value of a PPD award by updating the interest rate and chart every year to reflect  
19 accepted national financial barometers. The law in Nevada already requires an annual review of  
20 the present value chart.

21 An annuity consultant at Milliman has advised Petitioner that a simple excel sheet can  
22 redo the chart to reflect a different interest rate once a regulation is adopted to determine how  
23 the annuity consultant is to update the interest rate each year. As noted above, most states that  
24 allow a lump sum payment of an award have a statutory method that relies on Treasury bill rates.  
25

26 DIR is asked to quickly propose a regulation with a fair method for updating the present  
27 value chart and interest rate. Right now, all of Nevada's injured workers are not being paid the  
28 true present value of a PPD installment award because economic conditions are significantly and

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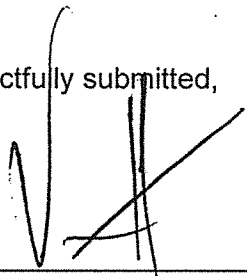
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obviously different than what they were in 1997 or 2000. How much money have Nevada's injured workers unfairly lost when their PPD awards were reduced to lump sums over the past 15 years? DiR informed Petitioner that in Fiscal Year 2014, it assigned 5,405 PPD rating doctors to perform ratings. A small number of these assignments may not have resulted in awards, and a small number may have elected to take PPD awards in installments. How much did insurers and self-insured employers inequitably profit when most of those PPD awards were discounted to lump sum payments using a 6% interest rate and chart from 1997? Most importantly, how quickly can DIR remedy its oversight with a proposed amendment to NAC 616C.502 that sets forth how present value is to be updated annually?

Petitioner respectfully requests that the DIR follow the regulatory procedure for making appropriate changes to the present value chart without further delay.

Dated this 29 day of July, 2015

Respectfully submitted,

By 

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CERTIFICATE OF MAILING


The undersigned, an employee of The Law Office of Virginia L. Hunt does hereby certify that on the date shown below, a true and correct copy of the foregoing document was duly mailed, postage prepaid to the following:

STEVE GEORGE, (3 Copies attached)  
ADMINISTRATOR OF DIR  
400 WEST KING ST., SUITE 400  
CARSON CITY, NV 89703

CHARLES J. VERRE  
WCS OF DIR  
1301 N. GREEN VALLEY PKWY., SUITE 200  
HENDERSON, NV 89074

DONALD C. SMITH,  
SENIOR DIVISION COUNSEL, DIR  
1301 N. GREEN VALLEY PKWY., SUITE 200  
HENDERSON, NV 89074

Dated this 29<sup>th</sup> day of July, 2015

  
An Employee of the Law Office  
of Virginia L. Hunt

# EXHIBIT

# A

**NAC 616C.502 Factors for computing present value for lump-sum payment. (NRS 616A.400, 616C.495)** The factors in the following table must be applied whenever present value is computed to make a lump-sum payment for an award for a permanent partial disability. The determination of the age of an injured employee must be made by subtracting the birthdate of the injured employee from the date of the request by the injured employee for a lump-sum payment. Only the month and year may be used in the determination.

## DIVISION OF INDUSTRIAL RELATIONS

Factors to be Applied to Awards for Monthly  
Permanent Partial Disability to Calculate Lump-Sum Settlements

MALES/FEMALES - BENEFITS TO AGE 70		1997 UNDIFFERENTIATED PENSION MORTALITY - 6% INTEREST										
Age Years	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
15	192.72	192.68	192.63	192.59	192.54	192.50	192.45	192.41	192.36	192.32	192.27	192.23
16	192.18	192.13	192.09	192.04	191.99	191.94	191.89	191.85	191.80	191.75	191.70	191.65
17	191.61	191.56	191.50	191.45	191.40	191.35	191.30	191.25	191.20	191.14	191.09	191.04
18	190.99	190.94	190.88	190.83	190.77	190.72	190.66	190.61	190.55	190.50	190.44	190.39
19	190.33	190.27	190.21	190.16	190.10	190.04	189.98	189.92	189.86	189.80	189.74	189.68
20	189.63	189.56	189.50	189.44	189.37	189.31	189.25	189.18	189.12	189.06	188.99	188.93
21	188.87	188.80	188.73	188.66	188.60	188.53	188.46	188.39	188.33	188.26	188.19	188.12
22	188.05	187.98	187.91	187.84	187.76	187.69	187.62	187.55	187.47	187.40	187.33	187.26
23	187.18	187.11	187.03	186.95	186.87	186.79	186.72	186.64	186.56	186.48	186.40	186.33
24	186.25	186.16	186.08	186.00	185.92	185.83	185.75	185.67	185.58	185.50	185.42	185.33
25	185.25	185.16	185.07	184.99	184.90	184.81	184.72	184.63	184.54	184.46	184.37	184.28
26	184.19	184.10	184.00	183.91	183.81	183.72	183.63	183.53	183.44	183.34	183.25	183.16
27	183.06	182.96	182.86	182.76	182.66	182.56	182.46	182.36	182.26	182.16	182.06	181.96
28	181.86	181.75	181.64	181.54	181.43	181.32	181.22	181.11	181.00	180.90	180.79	180.68
29	180.58	180.46	180.35	180.24	180.12	180.01	179.90	179.79	179.67	179.56	179.45	179.33
30	179.22	179.10	178.98	178.86	178.74	178.62	178.50	178.38	178.27	178.15	178.03	177.91
31	177.79	177.66	177.54	177.41	177.28	177.16	177.03	176.90	176.78	176.65	176.52	176.40
32	176.27	176.14	176.01	175.87	175.74	175.60	175.47	175.34	175.20	175.07	174.94	174.90
33	174.67	174.53	174.39	174.25	174.11	173.96	173.82	173.68	173.54	173.40	173.26	173.12
34	172.98	172.83	172.68	172.53	172.38	172.23	172.08	171.94	171.79	171.64	171.49	171.34
35	171.19	171.04	170.88	170.72	170.57	170.41	170.26	170.10	169.94	169.79	169.63	169.48
36	169.32	169.16	168.99	168.83	168.66	168.50	168.33	168.17	168.01	167.84	167.68	167.51
37	167.35	167.18	167.01	166.83	166.66	166.49	166.32	166.14	165.97	165.80	165.63	165.45
38	165.28	165.10	164.92	164.74	164.56	164.38	164.20	164.02	163.83	163.65	163.47	163.29
39	163.11	162.92	162.73	162.54	162.35	162.16	161.97	161.78	161.59	161.40	161.21	161.02
40	160.83	160.63	160.43	160.23	160.03	159.83	159.64	159.44	159.24	159.04	158.84	158.64
41	158.44	158.23	158.02	157.81	157.60	157.39	157.19	156.98	156.77	156.56	156.35	156.14
42	155.93	155.71	155.49	155.27	155.06	154.84	154.62	154.40	154.18	153.96	153.74	153.52
43	153.30	153.07	152.84	152.62	152.39	152.16	151.93	151.70	151.47	151.24	151.01	150.78
44	150.55	150.31	150.07	149.83	149.59	149.35	149.11	148.87	148.63	148.39	148.15	147.91
45	147.67	147.42	147.17	146.91	146.66	146.41	146.16	145.91	145.66	145.41	145.15	144.90
46	144.65	144.39	144.12	143.86	143.60	143.34	143.07	142.81	142.55	142.28	142.02	141.76
47	141.49	141.22	140.94	140.67	140.39	140.12	139.84	139.57	139.29	139.02	138.74	138.47
48	138.19	137.91	137.62	137.33	137.04	136.76	136.47	136.18	135.90	135.61	135.32	135.03
49	134.75	134.45	134.14	133.84	133.54	133.24	132.94	132.64	132.34	132.04	131.74	131.44
50	131.14	130.82	130.51	130.19	129.88	129.56	129.25	128.94	128.62	128.31	127.99	127.68
51	127.36	127.03	126.70	126.38	126.05	125.72	125.39	125.06	124.73	124.40	124.07	123.74
52	123.41	123.07	122.72	122.38	122.04	121.69	121.35	121.00	120.66	120.32	119.97	119.63

53	119.28	118.92	118.56	118.20	117.84	117.48	117.12	116.76	116.40	116.04	115.68	115.32
54	114.96	114.58	114.20	113.83	113.45	113.07	112.69	112.31	111.94	111.56	111.18	110.80
55	110.43	110.03	109.63	109.24	108.84	108.44	108.05	107.65	107.25	106.86	106.46	106.06
56	105.67	105.25	104.83	104.41	104.00	103.58	103.16	102.75	102.33	101.91	101.50	101.08
57	100.66	100.23	99.79	99.35	98.91	98.47	98.03	97.60	97.16	96.72	96.28	95.84
58	95.40	94.94	94.48	94.02	93.56	93.10	92.64	92.18	91.71	91.25	90.79	90.33
59	89.87	89.38	88.90	88.41	87.92	87.44	86.95	86.46	85.98	85.49	85.00	84.52
60	84.03	83.52	83.00	82.49	81.98	81.46	80.95	80.43	79.92	79.41	78.89	78.38
61	77.86	77.32	76.78	76.23	75.69	75.15	74.60	74.06	73.51	72.97	72.43	71.88
62	71.34	70.76	70.18	69.61	69.03	68.45	67.88	67.30	66.72	66.15	65.57	64.99
63	64.42	63.80	63.19	62.58	61.97	61.35	60.74	60.13	59.51	58.90	58.29	57.67
64	57.06	56.41	55.75	55.10	54.45	53.79	53.14	52.49	51.83	51.18	50.53	49.87
65	49.22	48.52	47.82	47.12	46.42	45.72	45.02	44.32	43.62	42.92	42.22	41.53
66	40.83	40.08	39.32	38.57	37.82	37.07	36.32	35.57	34.82	34.07	33.32	32.56
67	31.81	31.00	30.19	29.38	28.57	27.76	26.95	26.14	25.33	24.52	23.70	22.89
68	22.08	21.20	20.32	19.44	18.56	17.68	16.80	15.92	15.04	14.16	13.28	12.40
69	11.52	10.56	9.60	8.64	7.68	6.72	5.76	4.80	3.84	2.88	1.92	0.96

(Added to NAC by Dep't of Industrial Relations, eff. 6-29-84; A 11-12-85; 6-23-86; eff. 7-1-86; 8-31-87; A by Div. of Industrial Relations by R009-97, 10-27-97)

**EXHIBIT**

**B**

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DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INDUSTRIAL RELATIONS  
DIVISION COUNSEL

July 13, 2015

Virginia L. Hunt, Esq.  
Virginia Hunt Law Offices  
3057 E. Warm Springs Road, #400  
Las Vegas, NV 89120

Re: July 1, 2015 records request

Dear Ms. Hunt,

Your public records request dated July 1, 2015, and faxed to Dock Williams in Carson City, Nevada and Suhair Susan Sayegh of Henderson, Nevada on that date, have been forwarded to my office for response.

The Division of Industrial Relations is not able to forward the reports you requested as no such reports exist. The Factor Table contained in NAC 616C.502 was last reviewed by a consulting actuary on April 13, 2000. Thank you for bringing this oversight to our attention.

If you have any questions or need any additional information, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald C. Smith".

Donald C. Smith, Esq.  
Senior Division Counsel  
Phone: 702-486-9070  
Facsimile: 702-990-0361  
E-mail: [donaldcsmith@business.nv.gov](mailto:donaldcsmith@business.nv.gov)

DCS/jah

cc: Steve George, Administrator, Division of Industrial Relations  
Teri Williams, Public Information Officer, Department of Business & Industry  
Jan Rosenberg, Deputy Administrator, Division of Industrial Relations  
Chuck Verre, Chief Administrative Officer, Workers' Compensation Section

# EXHIBIT

C

Law Offices of Virginia L. Hunt

To: Law Offices of Virginia L. Hunt  
From: Daniel Welch, CPA, Senior Associate and John Prescott, CPA, AIAF, Co-Managing Partner  
Date: 7/29/2015  
Re: Nevada Division of Industrial Relations (DIR) Financial Reg. and Discount Rates related to Permanent Partial Disability lump sum payments

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**Facts:** On June 26, 2015, Virginia L. Hunt of Virginia L. Hunt law offices, contacted Johnson Lambert (JL) for assistance in evaluating the appropriateness of a discount rate to be used to discount a stream of future guaranteed payments back to a lump sum present value. Specifically, the payment streams and lump sum payments relate to permanent partial disability (PPD) benefits for injured workers in the State of Nevada. The State of Nevada Division of Industrial Relations (DIR) has not updated the prescribed discount rate for use in this calculation since 1997, despite a statute which requires the rate be updated annually.

In Nevada, PPD awards are computed by using the injured workers' average monthly wage, their chronological age, and the percentage of impairment using the AMA Guides to Evaluation of Permanent Impairment, 5th edition. The award is computed in installments until the worker is age 70; or the worker can take their award in a lump sum reduced to present value. The current discount rate prescribed by the Nevada DIR, which has not been updated since 1997, is 6%.

If the beneficiary is less than 25% disabled, they are eligible to receive a lump sum payment for the entire amount. If the beneficiary is greater than 25% disabled, the beneficiary may elect to receive compensation in a lump sum equal to the present value of an award for a disability of 25 percent and the remaining benefit will be paid in installments to the injured employee.

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**Question** What is an appropriate discount rate to use for the purpose of discounting the guaranteed future PPD payments back to a lump sum present value, for those injured workers who elect a lump sum payment?

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**Analysis** In order to answer this question objectively, there are two perspectives to take into consideration.

1. The Insurer
2. The PPD worker

From the perspective of the insurer, there is a benefit to closing out at a claim via a lump sum payment as it results in a significant reduction in administrative costs, and the payment represents a definitive expense to the insurer which is no longer subject to uncertainty related to the period of the payout. In return for the reduction in administration and certainty of a lump sum payment, the insurer forgoes the investment return on the funds that it otherwise would have earned during the payout period.

From the perspective of the PPD worker there is a benefit to receiving a lump-sum, as they can then re-invest that capital and earn interest and/or dividends, or otherwise make immediate use of the funds. The PPD worker who makes the lump sum election has essentially assumed the investment risk. As a result, the PPD worker would want the payment stream discounted using an interest rate which approximates a risk free rate of return.



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## Discount Rate Options

1. **Risk-free rate of return** – this is the amount obtained from investing in securities considered free from risk, such as government bonds from developed countries. The interest rate of U.S. Treasury bills or the long-term bond rate is frequently used as a proxy for a risk-free rate. We believe the longer term treasury bond yields are better suited than the shorter term t-bill rates for this purpose as the payment streams being discounted are generally long term payments (7 to 30 years, for example). Treasury Yields at December 31, 2014 were (Source: [www.treasury.gov](http://www.treasury.gov)):
  - A) 7 Year rate 1.97%
  - B) 10 Year rate 2.17%
  - C) 20 Year interpolated rate 2.47%
  - D) 30 Year rate of 2.75%
  - E) Average of A-D of 2.34%
2. **Expected rate of Return of the Insurer**—While no specific information is available to document current rates of investment return across the insurance industry, the Financial Results and Commentary – 2014 Year End Results presented by the Insurance Information Institute (III.org) suggests that the majority of the industry’s investment income comes from bond portfolios “which are mainly high quality corporates and municipals”. The 2014 Year End Results states that “average monthly corporate bond market yields in 2014, as captured by Moody’s AAA-rated seasoned bond index, dropped every month compared to the prior month, from 4.49% in January to 3.79% in December. As a result, we think it’s reasonable to assume investment income will be in the 3.5% to 4.0% range for the near future. Over a longer term horizon, we reference the Barclays Capital Corporate Index (Index), which shows a yield and duration of 3.37% and 7.11 years, respectively and the long duration constituent of the Index which reflects yield and duration of 4.93% and 13.53 years, respectively. See appendix 1 for more details.
3. **Rates Used by Other States for Similar Purpose**—As an additional data point, we conducted an analysis of rates used by other states for a similar purpose, and we reviewed the rate that the Federal Government has enacted. These rates range from 2.24 percent to 4.0 percent. See appendix 2 for details of discount rates that a sample of states have enacted and the applicable Federal rate.

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**Conclusion** The Nevada statutes require that the discount rate used to discount PPD streams of payments to a lump sum, for those electing a lump sum distribution, be reviewed annually. This rate is currently 6% and has not been changed since 1997 (NRS 616C.495). Based on review of the above discount rate data, JL concludes that the current rate of 6% is not reflective of the current interest rate environment. Taking into account the three discount rates above, which represent different data points to consider, we believe an equitable discount rate for this purpose would be in the 2.25% to 4% range.

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**Permanent Partial Disability Lump-Sum Payment  
Barclay's Capital Corporate Index**

Note: The following rates are sourced from Barclays Captital Corporate Index, which estimate earnings on investments in the following categories of corporate securities.

<u>June 30 2015</u>	<u>Market Value</u>	<u># of Securities</u>	<u>Duration</u>	<u>Yield to Maturity</u>
Corporate Index	\$4.3 trillion	5510	7.11 years	3.37%
Intermediate Corporate	\$3.0 trillion	3792	4.42 years	2.71%
Long Corporate	\$1.3 trillion	1718	13.53 years	4.93%

**Permanent Partial Disability Lump-Sum Payment  
Table of Discount Rates Used by Neighboring States**

Note: Per Peter S. Barth, via Social Security Bulletin, Vol. 65 No. 4 2003/2004, There is substantial variability in how state workers' compensation laws provide benefits to workers who have a permanent partial disability...Because compensating permanent partial disabilities frequently involves contention, the matters in dispute will depend on the approach used to determine benefits. The continuation of such differences in approach suggests that the states have not found a single "best practice" for determining what such benefits should be.

<u>State</u>	<u>Rate</u>	<u>Code Section</u>	<u>Note</u>	<u>Verified</u>
Iowa	2.24%	Iowa Code 668.13(3)	one-year treasury bond plus 2%	x
Ohio	4.00%	Administrative Code 4123-17-60		x
Indiana	3.00%	Code Section 22-3-3-25		x
Colorado	4.00%	C.R.S. 8-43-406		x
Montana	2.54%	39-71-741 MCA	ten-year treasury bond	x
California	3.00%	Sections 133,5100, 5101, 5307.3 and 5307.4 of the California Labor Code		x
FECA	4.00%	5 USC Sec. 8135		x

Most states that allow commutation of an award to a lump sum present value use a rate equal to either a one year treasury bond plus 2%, a 10-treasury bill (2.54%), or a 50-year treasury bond rate (which is currently 3.2%). Other states use current and universally accepted Department of Labor statistics to establish a fair interest rate when discounting awards to present value.