

***Statement  
Of  
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Attorney for Civilian Contractors Injured in the War Zone***

***Domestic Policy Subcommittee  
Oversight and Government Reform Committee***

***“After Injury, the Battle Begins: Evaluating Workers’ Compensation for  
Civilian Contractors in War Zones”***

***2154 Rayburn HOB  
Thursday, June 18, 2009  
2:00 p.m.***

Good afternoon, Chairman Kucinich and Honorable Members of the Committee. I am an attorney that has practiced before the U.S. Department of Labor for the last 30 years. Since the war began six years ago, I have had the honor of representing more civilian contractors wounded, injured, or ill from the war zone, than any other attorney in the country. I have had over 300 Defense Base Act cases going on at all times for the last four years, from all parts of our country. The most frequent demographic of my clients has been a truck driver hit by a roadside bomb.

On behalf of my clients, and civilian contractors injured in the war zone in general, thank you for your concern for their proper treatment. In regard to the delays in the proper and efficient handling of their cases, I have four proposals, based upon my experience:

- 1.) **Additional funding of the U.S. Department of Labor’s Office of Workers’ Compensation Programs (“OWCP”) and Office of Administrative Law Judges (“OALJ”)**, while the war is going on. The number of Defense Base Act cases and trials has dramatically increased over the course of the war (statistics for trials are listed below). For example, AIG had three adjusters in Dallas handling Defense Base Act cases in mid-2004. They now have about 30, a ten-fold increase, because of the numbers of injured. In contrast, there has been no increase in the number of people working in the two U.S. Department of Labor offices that handle these cases since the war began. Both the Office of Workers’ Compensation and the Office of Administrative Law Judges have done a great job with the resources that they have, but they need some additional help while the war continues, so that the cases can be handled in a more efficient and a timely manner.

For example, if the Office of Administrative Law Judges could afford to be

outfitted with video-conferencing equipment (which would probably cost about \$200,000 total for all of the Judges), the hearings could be handled more quickly and efficiently. It would reduce the cost to the system in the long run because Judges would not have to waste their time and taxpayer's money to travel to remote locations for the Formal Hearings, and the hearings could be set relatively quickly.

- 2.) **American contractors coming from the war zone with post-traumatic stress disorder ("PTSD") should be able to obtain treatment at the VA rather than have to litigate their case to get treatment.** Currently, a contractor's case usually takes about a year and a half to work its way through the system and to be litigated to conclusion in order to get any treatment for PTSD. If it is found that the contractor has PTSD from the war, the cost of the litigation (about \$30-\$40,000 or so - adding both the defense and prosecution costs) gets passed on to the taxpayer through the War Hazards Act. It would be more efficient and humane, and also more economical to the American taxpayer to just let contractors psychologically traumatized by the war to immediately go to the VA for treatment. Research shows that early treatment for PTSD reduces the risk of a life-long problem. Also, the risk of a contractor with PTSD hurting themselves or others before they can get any psychological treatment would be eliminated.

There may be resistance by some, in principle, to letting any non-soldier be seen by the VA for anything; but in the particular instance of PTSD, which the VA has the expertise for in our country, and which is a direct result of violent combat exposures in the war zone, it makes humanitarian and financial sense for all concerned to just let American war zone contractors be seen there rather than have to litigate their case in order to get any treatment for it.

- 3.) **Requiring an employer to get a written acknowledgment from the widow of a contractor killed in the war zone, that she understands that she and their dependent children may have rights to death benefits under the Defense Base Act.** There is presently no such requirement. Presently if a widow (or surviving spouse) does not figure out that there is such a thing as the Defense Base Act, and how to timely and properly file a claim with the New York office of the OWCP, she and their children may end up destitute and on public assistance. The workers' compensation insurance company would be unjustly enriched in such an instance, by the spouse being kept in the dark, when they have already been paid premiums to pay proper death benefits. Production of the one-page written acknowledgment of the surviving spouse could be a condition of the contract, which would hold up payment by the government on the contract, or be the subject of a statutory fine, if it is not done.
- 4.) **If there is a judicial finding by a Federal Administrative Law Judge of a frivolous defense, a 10% penalty should be allowed to be assessed.** If a Claimant's claim is frivolous, it will be dismissed, and there are criminal penalties for a Claimant making a fraudulent claim or perjuring themselves. On the other hand, there is currently really no stick available to the Judge if the insurance company exhibits bad behavior. If they lose a

case, the insurance company only has to pay interest on the benefits overdue (presently less than ½ %), and pay Claimant’s attorney’s time, but otherwise, the Judge can only make them do what they should have done to begin with, even if the insurance company has no actual defense, or they maintain a patently frivolous defense.

There is presently a provision for a 10% penalty for nonpayment, but it is stopped merely by the pro-forma filing of a Notice of Controversion by the insurance company, which is generally done very early in the case. Allowing the Administrative Law Judge to assess the 10% penalty even after a Notice of Controversion is filed, if there is a judicial finding of a frivolous defense beyond the informal conference recommendations, would only require a brief amendment to the penalty provision of the law.

U.S. District Judges, and most state court judges, have the ability to sanction a party for frivolous pleadings. Federal Administrative Law Judges should also be able to assess some penalty where there is clearly an abuse of the system by an insurance company, where there is a judicial finding of a frivolous defense.

Thank you again for your attention to the proper treatment of our civilian contractors injured in the war zone while they are providing the vital support functions that the Army used to have to do for itself.

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Number of Defense Base Act cases docketed for trial (Formal Hearing), from Office of Administrative Law Judges statistics:

<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
<b>95</b>	<b>145</b>	<b>359</b>	<b>428</b>	385 - as of 5/30/09, 2/3 of the fiscal yr., so about <b>578</b> projected for the year at the current rate