

Statement
Of
Timothy D. Newman

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

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2:00 p.m.

Sen. Elbert D. Thomas of Utah (1941) "When once total war, spherical war, global war or whatever one may choose to call it, is undertaken, the sooner we bring home to our people the fact that all are responsible for the war, all might suffer by the war and therefore all should sustain the losses, the better off we will be in a social and governmental way."

Statement, EXPANDED

Good afternoon my name is Timothy Newman and I was injured in Iraq in 2005 while working for DynCorp as a civilian contractor. Since my injury I have personally endured the effects of an outdated Defense Base Act ("DBA") and also advocated for other injured contractors through their ordeals.

I grew up in Charleston, South Carolina. I am the son of a first generation American Mother and a Father whose family immigrated to the U.S. in the 1700's. They instilled in me a sense of patriotism, family and of right and wrong. At age 17 I joined the Marine Corps and at 22 became a South Carolina Police Officer. I was a good Cop and devoted my later career to training other Cops to be their best. After September 11th I was moved to do more. Once my children were old enough to thrive without my daily input I volunteered for a Civilian Policing Mission through DynCorp International with the U.S. Department of State ("DoS"). I landed in Iraq on the fourth of July 2004 and hit the ground running, literally.

I served with the CPATT Training Unit that worked to train the existing Iraqi police forces and move them closer to civilized policing and the recognition of basic human rights. After several months the situation on the ground worsened and my skills were needed to transport our officers through Baghdad and the surrounding areas. We traveled the BIAP highway several times a day. My unit moved over 3,000 passengers without any injuries until September 2nd 2005.

On that date, just after departing our compound my vehicle was hit by a roadside IED. The blast blew completely through the driver section of the vehicle, my navigator and friend of 20 years Leon Vince Kimbrell was killed instantly.

The blast tore off my right leg, shattered my left leg, almost severed my left wrist, and sent shrapnel through my lung, intestines and chest. I was blown out of the vehicle. I dragged myself down the street and was rescued by my team who delivered me to the Combat Surgical Hospital in the International Zone within 20 minutes of the attack. I spent the next 22 days in a medically induced coma and woke up in the U.S. Military Hospital in Landshul, Germany.

This is where my personal story with the DBA began. Initially my treatment and care were amazing. My own personal heroes are the men and women of the hospitals where I stayed. They, along with my family gave me many reasons to live. Initially my treatment from DynCorp's DBA insurance carrier (C.N.A. Global) was also good. I was appointed a local Nurse Case Manager who expedited my care and worked with the hospital staff.

My care did not begin to fail until I left the hospital. In February, 2006 I was ready to start walking on a prosthetic leg. By October 2006, I was disillusioned with the absence of communication from my former employer. I had viewed DynCorp as I did my old Sherriff's Office back home and I expected a lot more from them. If I had been injured on duty in South Carolina my agency would have rallied to my aid. This was not happening with my corporate employer, so I wrote a letter to the CEO... In a few weeks I received a phone call inviting me to Texas to talk about my complaint. I went to Texas on my shiny new leg and met with my former bosses. The meeting concluded with the decision to start a new program of employee care within the Civpol Division of DynCorp and the offer of a part time job to start the program. The first year was a joy. Our organization worked with many brave men and women who returned from the war zones damaged and broken. We had the honor of caring for the families of the friends that did not make it home and we worked hard to streamline every process imaginable to assist our DBA insurance carrier in delivering the compensation and authorizing the services we had contracted for and expected.

Although we made great strides in caring for our fellow employees and creating associations and programs to help them, we had far less success with the insurance carrier. The actions taken on their part amounted to lip service.

Beyond limited support for some of our programs they did nothing to improve the claims process. Their consistent practice was double talk and empty promises.

During a two year period in this role, my confidence and hope began to wane. The commitment from DynCorp had faded and the programs and overall effort had become less of a priority for them. In August of 2008 I resigned from DynCorp hoping to bring change to the system by other means.

In 2007 my treating physician recommended that I get an Ossur "Power Knee" system. This is a true bionic leg system that acts in place of and supplements the muscle I lost through the traumatic amputation of my right leg. It has restored the physical endurance I lost after my injury

The legal battle for this prosthetic began in March of 2007 and took over a year and a half of hearings, quotes, denials, depositions, examinations, and stress.

Finally, on November 6th, 2008, 557 days after it was initially prescribed, I received my power knee system.

The Administrative Law Judge that concluded the power knee was both reasonable and medically necessary found that of CNA's experts, ". . . neither Dr. [] nor Mr. [] have opined with any degree of certainty that the Power Knee prosthetic will not address Claimant's needs . . . "and that both "Dr. [] and Mr. [] have little knowledge regarding the Claimant's medical status and regular daily activities and have no firsthand knowledge of the Power Knee prosthesis."

I believe this issue was litigated not because C.N.A. or their lawyers thought I didn't need this prosthetic but because they were concerned about being denied War Hazards reimbursement.

One of the factors that precipitated my resignation from DynCorp was a reduction in hours that prevented me from performing the duties that the position required.

C.N.A. was advised of the reduction in my earning which should have should have resulted in a corresponding increase in workers compensation benefits.

Without concluding their investigation of my actual earnings, in October of 2008, one month after my resignation from DynCorp my bi-weekly compensation checks from C.N.A. were substantially reduced. This action was allegedly justified by an overpayment of benefit. Although there is no dispute that even after my rehabilitation is concluded, at a minimum, I am entitled to 288 weeks of compensation for the loss of my limb and that I am entitled to compensation at the maximum rate, C.N.A. chose to reduce my compensation to a level that prevented me from paying my mortgage and my car payment. The point is this. Their actions served no purpose but to create a financial hardship.

These examples are typical of the administration of DBA claims. It is a system that failing many men and women who answered a call and risked their lives to be a part of the war on terror. In the 3 ½ years since my injury I have met and tried to help many people who were damaged in our national defense.

I have personally talked three friends out of suicide, each of them suffered greatly from PTSD but their biggest stressor was the battle they were having with their DBA insurance carriers to get care for their problems. I know of more than one friend that did take their life in despair.

I have helped and supported a friend facing amputation for war injuries while his DBA carrier argued that the amputations were not medically necessary. This 39 year old man was faced with two choices; (1) keep two useless feet and be bound to a wheelchair forever or (2) undergo amputation and flourish with two high tech prosthetic feet. That is not a choice for a man wanting to live his life rather than watch it pass him by.

I have helped a man who had an RPG go straight through him twice, who was denied help, support or simple communication from the DBA insurance company. I have seen friends with blast related hearing loss be denied any help and be forced to buy their own hearing aids while their case went to court.

I could continue on and on but instead I would rather discuss what could be done to make the DBA work.

I am not an expert but I am a victim with common sense who has seen the failures of the current system. In my experience the single biggest cause of these failures is the insurance carriers' practice of seeking to profit in every way possible from our fight for national survival instead of becoming part of the forces united against our enemies.

When this Act was written Congress sought to provide an expedited workers compensation structure for war effort workers, they purposely geared the system toward the injured worker with an eye toward making this a less litigious and more dispute oriented system. Once DBA carriers became primarily profit-driven the legislature's intent never stood a chance. .

Changing the law to discourage the rampant profiteering of the insurance companies is the only alternative to avoid the creation of a totally new care system changes might that erase the good parts of the DBA.

How do we change the DBA?

- Establish a mechanism that allows for the Office of Workers' Compensation Programs ("OWCP") to independently investigate the veracity of claims and recommend solutions to service related disputes with insurance carriers. Further train the OWCP hierarchy in dispute resolution and reinforce the goal of settling disputes at the informal level. Empower the OWCP to make recommendations binding on insurance providers. Preserve formal hearing structure as a remedy for disputes but include penalties for frivolous disputes that will encourage all parties to avoid the formal process in favor of resolution.
 - Standards of care should be set to provide for uniform treatment of injured workers. Provider disputes should be tracked and habitual or repetitive disputes or those previously adjudicated should be used by OWCP to persuade providers to avoid service problems or issues.

- The DBA should be reviewed by congress every five (5) years or within six (6) months of the initiation of hostile actions or humanitarian operations that will utilize substantial contractor service.

This will allow for incident by incident amendment of the DBA if necessary so that service standards can adequately address the problems arising from a given conflict. For example: special training on claims for Post Traumatic Stress Disorder arising out of the Global War on Terror.

- Create a means of classifying claims as War Hazards and a mechanism for appeal by carrier's who are denied the designation. This will allow carriers a guaranty that their claims will be reimbursed and allow them to streamline their claims management.
- With the guarantee of reimbursement, claims will be limited to this rate and any excessive profiting should be investigated. Basically, insurance providers would relinquish the temptation of excessive profit for the standard profit, this will help to ensure that the system contains profit but discourages excesses and therefore benefits prompt care.
- Just as the DBA provides for generous compensation and treatment it is meant to discourage conflict. The cost of DBA claims and the injuries to workers underlying those claims are the price of being involved in global conflict. The profit regulation requirement would assure providers a set reimbursement (profit) rate which would act as an incentive to streamline and maximize the efficiency of the services. Providers would be discouraged from disputing all but the obviously invalid claims as often now do because they are perceived as potentially costly. Setting a profit standard and linking participation in the DBA coverage with profitable contracts in other government programs could improve the system. While not perfect the limitation of profits to 15% DBA claims administration will cost less and improve the efficiency of the system exponentially.
- Establishing penalties, limiting profits and putting in place the ability for contractor holders (the US Gov) to recoup Insurance profits above 15% we will establish a support system that will work rather than be a perpetual motion machine of victimization.

- Insurance providers would be required to deliver to the US DoL annually a DBA Profit Report and must show that their profits were limited to the set rate (15%) or why their profits exceeded that limit. Unwarranted excesses would result in a penalty that would reduce the profits below the set rates. Eventually, providers would self police themselves and understand that supporting our national missions are not profit potentials.

In closing, I am simply someone who has experienced the failures of the system and the behavior of the insurance companies who are paid to provide our care. The men and women who rely on this system were Cops, Soldiers, Truck Drivers, Cooks, Teachers, Construction Workers, Mothers, Fathers, Sons, Daughters and friends. They answered the call for many different reasons but they did answer the call and they were promised and expected to be cared for if the worst happened. War is Hell, these injured Heroes have seen it overseas and now they are seeing the Hell of America. Two things that I have experienced since my explosion have changed my life. First was seeing my dead friends two daughters Victoria and Caitlin grow into beautiful, smart and loving young women. The other was talking a friend out of suicide. This friend had seen and survived evil and horror of the war in Iraq only to fall into despair over the treatment he received when he came home. He and other men and women are just as much a part of our national defense structure as my two Marine Sons. They deserve the same acceptance, care and appreciation. They also deserve a system that does not fail them.

I would like to personally thank you for your interest in this issue, your commitment to making a difference and to your service to all of us.

In my 3 ½ years of recovery I have gained many friends who have shared their own ordeals with CNA and their frustration with the Defense Base Act. I have attached their stories and redacted any personal information. These people are a minute number of those victimized by a system focused on profit than care.

Contractor Care System & The Defense Base Act, Revision

Timothy D. Newman

Today, private contractors who include; professional American Police, Firefighters, Administrators, Cooks, Truck Drivers and individuals with a myriad of supporting skills that are essential to the success of an American military.

Our military cannot survive or thrive without the work of its civilian partners and their supportive establishment. Years ago our military streamlined its ranks to create a war fighter persona that focused on gradually reducing and often eliminating from its ranks the administrative and supportive skills and professions. Additionally our military has never possessed a staff of seasoned professionals who can provide infrastructure support for emerging and recovering countries to establish themselves and encourage democratic law and civil order.

Our contractor infrastructure has grown and shrunk with the ever-changing needs of our country. Not since the reconstruction of post WWII Japan has our task been as great as in the support of our Global War on Terror and in the reconstruction of Iraq and Afghanistan. The need for supportive and specialized professional skills has never been so vital. While the “private contractor” system of support and management has many shortcomings the system is essential to our national survival as is the aftercare of our returning contract veterans. Presently, all injured contractors rely on a private insurance system applied through a 60 year old law that was never intended to support their level of commitment or service. The current system is in my opinion plagued by greed while the Defense Base Act (“DBA”) was at its inception designed to limit profiteering, legal wrangling and victimization. The issue is not one that the issue has been ignored like our military medical establishment or unforeseen as our national disaster response it is one that we have allowed the mega-providers to reconfigure the system into one that allows them to enlarge their profits to suit their own needs rather than to provide efficient and timely disability care to those who were promised it.

In 1941 Congress saw a need, acted and then abandoned their good intentions to money driven, privately controlled private giants who have pushed our national economy into a disaster.

In 2009, our national leaders must act to save the work of their predecessors and to save the health and safety of so many national heroes.

Presently military and defense contractors who serve as part of an overseas mission or conflict support are required by the DBA to have employer provided insurance should they become disabled, injured or are killed in the line of duty. The present regulations were written in 1942 and last revisited and amended in 1958. The regulations are on their face generous and well intended, but with the profit driven environment today the regulations are easily swamped and discounted by the legal wrangling of insurance providers, legal counsel and an overburdened regulatory system. The U.S. Department of Labor (“DoL”) provides oversight and guidance for the employee, employer and the insurance providers as a subcontractor of the employer.

While the DoL Office of Workers’ Compensation Programs is tasked with mediating coverage disputes between the carriers and the injured workers they do not possess the authority to force the carriers to provide treatment or compensation. I believe this practice only encourages the routine denial of claims, request for services and necessary medical treatment. Insurance providers concentrate on their profit margins rather than providing quality and necessary medical care as intended with the passage of the Defense Base Act. Insurance profits were and the removal of those incentives were a direct focus of the DBA when passed and legally linked and supported by the War Hazards Act which provides for total Federal reimbursement of all related cost plus a built in profit and administrative fee of 15%.

As intended the DBA should have streamlined the process and eliminated the focus of companies on profit by providing them an automatic profit rate. The injured workers who are already victims and are suffering medical and emotional stress must contend with the added victimization of the legal process.

Men and women who survived the nations Global War on Terror have taken their own lives in desperation fighting the invisible enemies who are supposed to be their support system. How can this system be fixed and how can these brave Americans receive the proper care and a level of concern that attempted to match their sacrifice?

There are two options left; a total restructuring of the contractor support system which would equate the socialization of their care or a revisiting of the DBA which would redefine the scope of the program. The powers of the DoL require providers to act and the revision of the legal system that must be the backbone of the entire system.

The DBA should be focused on providing support to injured workers. Retaining a standardized profit rate and prohibiting the lure of profiteering would greatly streamline the system, by removing the temptation of swelling their profit insurance providers would dispute far less claims and limit their disputes to the more valid issues. Including a penalty system that would punish insurance providers for disputing normally accepted claims would change the system and streamline the legal process instantly. Including in the statute a provision for Administrative Law Judges (“ALJ”) to penalize providers for pursuing frivolous disputes would ensure that providers gave up an attitude of denying without cause and again make the legal process far more effective and far less costly. Additionally, the inclusion of language that requires proof of DBA coverage for any contractor’s entry into a conflict zone or to obtain the necessary military identification would greatly limit the possibility that uninsured contractors would operate in conflict zones. Standardized contractor education in DBA coverage requirements should also be required for employers to be awarded government contracts at covered locations.

The DBA should retain the elements that allow employees to select physicians and supportive care providers; this would ensure that cost are minimized and that the Act retains its efficiency and positive points. Simply fixing the minor problems with the DBA would be far easier than creating a new system of claims administration.

The number of contractors needing DBA benefits changes with the environment of the world. Making the shortsighted choice of throwing money at the problem and building a VA system, as some have suggested, that will only be ignored when conflicts end and where funding could be easily refocused as with the conditions of Walter Reed will result in another crisis in our children's future. By enhancing a legally backed, professionally overseen, properly motivated administration we can provide a support system that will grow and shrink with the changing needs of the country.

These men and women will need this support, current and future contractors deserve a supportive system and we all agree that they deserve to be treated with the respect and concern we care for all our national servants and heroes. We have let these men and women down. The legacy of these men and women who answered the call at our generation's most trying time could very well be the guarantee that those who follow in their footsteps will never be discarded and should not be the broken care and compensation system.

The solutions to our present crisis with the application of DBA can be resolved with the revision or restructuring of the Act that includes the following:

- Establish the US Department of Labor ("DoL") as a true management entity, establish a method or system within the DoL to independently investigate, consider and recommend the solutions to service related disputes with service providers. Set a legal standard of service, train the DoL hierarchy in dispute management and set a goal of settling disputes within the DoL system. Assume that many issues will be settled on behalf of the injured party as demonstrated in the years of dispute settlements and empower the DoL to make these binding recommendations to insurance providers. Maintain the formal (ALJ) remedy for disputes but include penalties for frivolous disputes that will actually encourage the providers to avoid the formal legal processes.
 - A DoL, DBA Management System that makes legal recommendations that should be followed.

Continued disputes can be appealed to the ALJ with automatic penalties for unwarranted disputes or frivolous conflicts.

- Service standards should be set to allow for the uniform care of injured employees and services. As disputes are settled and conflicts are resolved service standards should be set to avoid future disputes. Provider disputes should be tracked and habitual disputes or disputes that have previously been adjudicated should be used to persuade providers to avoid service problems or issues.
- Government contract employers should be required to standardize the pre-deployment DBA briefings they provide employees prior to deployment. The DoL should govern the content of these briefings with updated information and materials. The DoD should require evidence of this training before the issue of any authorization to enter a combat zone or issue of any identification cards.
- The DoL & DoD should require that every report of injury be officially investigated close in time to the occurrence. Too many injuries are sustained without any real documentation other than the initial report of injury supplied to the insurance carrier. In the case of death, serious injury, emergency evacuation or critical incidents (with mass injury potential) the DoD, DoS or DoL should conduct an incident investigation that will seek justice, document all potential casualties and serve as reference for future inquiries. Regardless of any other reported injury this record would be maintained by the employer, insurance carrier and contracting government agency for future reference. This would act as supportive documentation for cumulative injuries, PTSD claims and similar claims by injured workers.
- The DBA should be reviewed by congress every five (5) years or within six (6) months of the initiation of hostile actions or humanitarian operations that will utilize substantial contractor service. This will allow the incident by incident application of the DBA, service standards could not be reduced or service prohibited but situation specific issues addressed and specialized inclusions added.

For instance, the special inclusion of the treatment of Post Traumatic Stress Disorder applied as demonstrated during the Global War on Terror.

- Provide for an Initial Status Legal Process or finding that will quickly designate claims as War Hazard claims along with an appeals process for disputes. The setting of claim standards that will define what claims are War Hazard claims and what are Non-War Hazard claims. This will allow providers the forehand knowledge that a claim will be reimbursed and allow them to streamline their standard claim management.
- The system should include an appeals system that will allow employers, employees or legal counsel the ability to appeal War Hazard designation they feel improper. Additionally, receiving the War Hazard designation would standardize policy profits to the legal administrative and management percentage. With the guaranteed profit reimbursement claims will be limited to this rate and excessive profit investigated. Basically, insurance providers would relinquish the excessive profits for the standard profit which will ensure that the system contains profit but discourages excesses and therefore benefit issues. Just as the DBA provides generous services and coverage it discourages conflict related suits that are basically the price of being involved in that type of world politics. This requirement would assure providers a set reimbursement (profit) rate which would act as an incentive to streamline and maximize the efficiency of the services. Providers would be discouraged from disputing all but the obviously disputable claims in return for a guarantee of recovery.
- Set a profit standard and link participation in DBA coverage with profitable contracts in other government programs and limit private profits to the set 15%. While not perfect the limitation of profits to 15% as set by the original DBA will reduce the disputes, improve service, cost less and will improve the efficiency of the program exponentially. Establishing penalties, limiting profits and putting in place the ability for contractor holders (the US Gov) to recoup Insurance profits above 15% we will establish a support system that will work rather than be a perpetual motion machine of victimization.

- Insurance providers would be required to deliver to the DoL annually a DBA Profit Report and show that their profits were limited to the set rate (15%) or why their profits exceeded that limit. Unwarranted excesses would result in a penalty that would reduce the profits below the set rates. Eventually, providers would self police and understand that supporting our national missions are not profit potentials.
- Regarding the treatment of injuries that are largely unique to military and defense contractors the legal allowance for contractors to obtain and be admitted at designated government specialized centers should be made. The DBA should include a provision to fund or reimburse these centers for treatment which would have not have been possible as part of their operational budgets. This would make specialized treatment available to contractors and avoid the creation of mirror facilities in the public sector that will hopefully outlive their usefulness as conflicts end. This would also serve to continue to group military and defense veterans together and expedite their recovery. Some of these facilities that could be utilized as available could be the:
 - Traumatic Brain Injury Center
 - The Post Traumatic Stress Disorder Center
 - VA Amputee Center and Local Clinics
- Additionally, many contractors are former military veteran or performed duties in the war zones that essentially made them active partners with the military units they were assigned to. These specialized contractors performed exactly as the military until their specialized skills were needed, these included; Military and Police Trainers, Corrections Trainers, Judicial Trainers, Technical Contractors, Project Protection Specialist and Security Detail Specialist. The veterans fraternity is growing daily and so is the number of associated contractors, along with this increase is the increase of injured contractors who would benefit from belonging to the same fraternity or social group outreach program. Many of these outreach programs are limited to military only and receive funding along those lines.

Some provision should be made to provide funding to these groups in return for inclusion of specific contractor categories. This would provide these contractors who had been so entrenched in the military establishment to continue this relationship and not be alienated simply because of label. This designation could be required at the onset of certain military contracts with employers being required to pay some memberships, provide supportive funding or the like based on requirements of designated contracts.

For instance, Electricians working to maintain an electrical system on a military base within the war zone that only provide a support function would not fall into this category, Contract Intelligence Officers who operate alongside their military units on a daily basis and who provide additional capability to these units would be eligible for this program and would be able to avail themselves of typical military support programs post-conflict. This contractor's employer would be required to provide limited support or funding to these programs through some type of unified contribution system. Again, one of the biggest stressors or contributors to PTSD is the feeling of abandonment once at home, the availability of these programs to the contractor and the brotherhood and support they provide would help greatly.

- There are presently several government programs intended to assist or reimburse victims in certain situations. These programs should be researched by the DoL and catalogued for reference and to expedite victim's claims. For instance, the U.S. Department of Justice ("DoJ") has a program to provide reimbursement for the victims of terrorism (ITVERP) but employees who make claims under this program face long delays, red-tape and communication issues. Presently, claims under this program regularly take one to two years before any decision. The DoJ penalizes victims who lack documentation of the incident when the employer, contracting agency or military failed to document the attack or investigate the incident.

Being a non-combatant employed overseas should not prohibit them from being part of this program and the lack of professional action or documentation should not be viewed as the fault of the injured person.

- Many contractors are called upon to perform professional training or oversight that the military cannot and intend to return to their careers after serving as part of the overseas mission. For instance, American law enforcement officers are encouraged to join the law enforcement training mission to re-establish the infrastructures of these nations. The mission requires that they are trained and certified in law enforcement and presently officers relinquish those certifications to be part of these missions.
 - The contracting government agency and the DoJ should work to create a system where these types of contractor can retain their required training and certification throughout their missions. This will ensure that mission officers are able to more easily return to their communities and encourage their communities to work within the system and not discourage participation. Ultimately this will improve the quality of the mission officers and not cause the professionals to suffer. Some type of required training and certification should be offered and required of employers and state regulations should be lobbied to allow these programs to succeed.
 - With these types of programs in place many contractors will then be eligible for programs designed to benefit their professions. For instance, it is undecided if law enforcement officers qualify for the US DoJ Police Officers Survival Benefits Program (PSOB) which provides the families of slain American police officers certain benefits such as education benefits, counseling programs, memorialization and acceptance in the brotherhood of professional career law enforcement heroes. These brave men and women should not be penalized for volunteering to take the fight against terror to the enemy's backyard rather than remaining in their own backyards.

Over 30 career professional law enforcement heroes have died overseas as part of DoS & DoD missions and do not qualify for DoJ benefits or recognition on the National Law Enforcement Officers Memorial Wall in Washington, DC. The children of these heroes do not receive the same acceptance and benefits that other children of slain officers do. This only serves to further victimize these families and discourage others from participating in these types of programs that are essential to our nation's future success and safety.