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**SERVICE DENIED: INJURED MILITARY CONTRACTORS  
FIGHT FOR COMPENSATION**

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BY

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**Report**

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## **ABSTRACT**

### **SERVICE DENIED: INJURED MILITARY CONTRACTORS FIGHT FOR COMPENSATION**

**by**

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The University of Texas at Austin, 2014

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During the Afghanistan and Iraq wars in the last decade, U.S. government has relied heavily on military contracting companies and their employees to carry out military missions in Middle East. The high salary and call to serve the country have attracted many people to take the risk of working in war zones since 2001. Some contractors, however, have been injured while working and now find themselves caught between their insurance companies and the U.S. department of labor, fighting for their promised workers' compensation and health care.

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Gary Pitts tiptoed around piles of documents scattered on his office floor and maneuvered amid file boxes labeled with his clients' names, on the way to his equally cluttered desk to grab for the phone.

"Hey, how are you doing?" Pitts answered in a brisk tone. His office is modest, a crowded warren in an uninviting strip mall in Pearland, Texas, south of Houston. But contractors who have been injured in America's war zones in Iraq and Afghanistan know where to call when they feel their insurance companies have treated them unfairly. Since 1999, Pitts has represented 6,000 such clients and on this day one of them was on the line to discuss his pending lawsuit.

"Don't worry," Pitts told the man. "They are going to ask you a few questions on how you've been doing since the injury. Nothing we already haven't talked about."

In 2012, the client, who Pitts refers to as "Mark," to preserve his lawyer-client privilege, was working as a truck driver in Iraq for a major military contracting firm, when he was injured dodging the blast from a roadside bomb. He turned to Pitts when his insurance company, one of America's largest, refused to cover hospital bills in excess of \$15,000.

Mark is hardly alone infighting for promised coverage. According to the Department of Labor, injured contractors filed 11,568 complaints in 2013 alleging their insurance companies failed to cover their medical bills or indemnify them for work-related injuries.

When the government awards defense contracts for military work, companies must provide workers' compensation and health insurance to employees, but at no cost to the company. Under a law called the Defense Base Act or DBA, military companies pay insurance companies with a subsidy included in the contract amount to provide insurance for their employees. The law was enacted in 1941 to protect contractors whom the government increasingly relied on to execute military operations. Today, the act covers

some 218,000 contract employees , a figure that surpasses that of deployed military personnel.

However, advocates for contractors argue that administrative loopholes, deficient government oversight and the public's indifference have enabled insurance companies to withhold public funds intended to care for injured contractors.

“Insurance carriers control which case is going to be paid and when,” Howard Grossman, a DBA attorney and a member of Workers Injury Law and Advocacy Group, said. Grossman said even if insurance companies delay or deny claims in bad faith the penalty is “minute.”

Since 2002, out of the \$139.2 billion worth of in Afghanistan and Iraq defense contracts, an estimated \$5 billion was diverted to insurance companies to cover workers' compensation and health care cost for contractors, according to the Department of Labor. The top five insurance companies, American International Group or AIG, ACE American Insurance Company, Insurance Company of the State of Penn, CAN Casualty of California and Chubb Indemnity Insurance Company retained an average of 39 percent of those funds as profit. By comparison, the domestic accident and health insurance industry has a 10.5 percent profit margin as of April 2014, according to Yahoo Business index.

Insurance companies argue that the profit margin alone does not reflect the overall costs as some compensation payouts last a lifetime. Also, they say denying claims is a necessary process to sort out fraud.

“Even if the injury was your fault, the insurance companies have to pay for it,” Ray Lehmann, a contributor to Insurance Journal, said. “Because all you have to prove is that the injury took place while working, many do file fraudulent claims.”

But to advocates, the injured contractors' claims are not based on dubious circumstances. Instead, they argue insurance companies deny claims on grounds, which run the gamut from contending that injuries resulted from conditions predating contracting employment to insufficient documentation, in order to maximize profits.

“The insurance companies are corporations and they will act like one no matter what,” Pitts said.

As President Obama began to withdraw U.S. troops from Afghanistan and Iraq in 2009 and 2011, respectively, a host of lawmakers have scrutinized how some trillion dollars worth of defense contracts were spent. On the contrary, how contractors are treated sparked little controversy. Only one member of the U.S. Congress, Elijah Cummings (D-Md) has called for overhauling the DBA to remove insurance companies out of the process.

Similarly, in Texas, where companies have won more than \$390 billion in military contracts over the last decade, advocacy and political representation for contractors are scant.

Houston-based KBR alone won \$40.8 billion worth of contracts from 2001 to 2012 to do military work in Iraq and Afghanistan, according to the U.S. Congress Commission on Wartime Contracting. In addition, Texas is home to more than a dozen private military giants, including Lockheed Martin and DynCorp. Altogether, 16,706 Defense Base Act claims have been filed against these dozen contracting behemoths taking up 14.3 percent of all DBA claims filed since 2001 nationwide. No Texas representative has taken up the plight of injured contractors thus far, according to contractor's advocates and House representative aids.

Although contracted employees grew in number, they possess little grassroots

organization and political clout. Congressional aids, therefore, say the mistreatment of contractors warrant little concern amongst lawmakers.

“I just don’t see [contractors] coming up on the agenda any time soon,” Scott Szymendera, a U.S. Congress’s disability policy analyst said. “The bigger issue is the military contracting in general. The workers’ comp[ensation] is an extremely small part of the much larger problem.”

Pitts, however, sees his clients’ physical and financial struggles as anything but small. With no institutionalized health or financial assistance programs, many injured contractors and their families struggle to stay afloat financially, Pitts said. Despite recent evidence showing a higher rate of PTSD among contractors than that of U.S. military personnel, injured contractors often do not receive proper treatment. When they file a claim under DBA, they wait months or even years, before receiving payment, if any. All the while, the public remains unaware and injured contractors too distressed with imminent struggles to demand better treatment.

“Folks who have served our country in their own right should be treated better,” Pitts said.

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Previous to the Afghanistan and Iraq wars, Pitts had represented a small number of injured contractors from the Gulf War. His clientele sharply increased, however, during the Iraq and Afghanistan wars as military contractors took center stage in war zones. The Iraq and Afghanistan wars represented a fundamental change in how the U.S. fights its wars.



“We have contractors in Iraq and Afghanistan doing tasks that generations ago were being performed by people in uniform,” Steven Schooner, the director for George Washington University’s government procurement program said.

Working in a war zone alongside soldiers means contractor’s duties are risky and dangerous. Their jobs vary from transporting equipment and weapons, cooking food, providing manual labor, to guarding high-ranking U.S. officials. Drivers who transport equipment have encountered the highest number of attacks according to a study by the RAND Corporation, a national security research group.

Tom Malhiot, 61, and a client of Pitts, was one such contractor. He worked for KBR for seven years in the Middle East before he got injured in Afghanistan. Malhiot started out in Iraq as a truck driver in 2004 and worked his way up to a project manager in Afghanistan.

“Food, bullets, building parts, weapon parts. You name it. Whatever they needed, we did our best to get it for them,” Malhiot recalled his work.

Malhiot sustained his first injury in 2011 when his base in Kandahar International Airport in Afghanistan came under mortar attack. While running for cover, he fell and collided with debris, badly injuring both knees. At first, doctors treated him with knee injections costing \$675 each, every five or six months. He stayed at the base and continued to work. But in 2012, a helicopter propeller he was transporting fell on top of him, injuring his neck and shoulder. He is back in Houston and underwent shoulder surgery.

Sustaining critical injuries is common among contractors. While the Department of Defense does not collect data on injuries or fatalities involving private military contractors, claims filed with the Department of Labor show more than 42,734 workers were significantly injured and 3,503 have died since 2001. According to Congressional

Research Services, the number of injuries and deaths of military contractors has exceeded those of soldiers in both Iraq and Afghanistan since 2009.

Under the DBA, Malhiot's insurance company, AIG, provided him temporary disability payments of \$1,207 every two weeks and paid his medical bills. These benefits will expire this August or sooner. "I'm in big trouble when that happens," he said.

Malhiot said his insurance company, AIG, has not yet processed his claim regarding his second injury, which was filed in December 2012.

While receiving treatment for his neck injury, Malhiot was diagnosed with deep vein thrombosis, a potentially fatal blood clot, in his neck. Malhiot then was not represented by an attorney and did not know what implications the blood clot would have for his workers' compensation—Malhiot said neither AIG nor the Department of Labor informed him what the diagnosis meant for his workers' compensation benefits.

"After I hired Gary, he told me my [blood clot] condition made me eligible for lifetime benefit," he said.

Malhiot, together with Pitts, is contending that AIG pay for his neck and shoulder medical bills and life-time long workers' compensation benefits, altogether which could amount up to as much as \$1.3 million. Malhiot, however, says he doesn't think he will get the full amount nor does he wish to.

"In the end, all I want them to pay for is my annual visits to my cardiologist," Malhiot said. He said visits to his cardiologist will help monitor his blood clot issues, since clots can cause heart attack and stroke. He plans on applying to work as a military contractor again if and when he recovers from his injuries.

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The high salary paid to military contractors has lured people to leave their jobs at home and work in a war zone. A base salary for U.S. military personnel starts at around \$19,000 a year while military contractors can earn \$80,000 or more driving trucks. The median income for truck drivers in the U.S. is \$38,664, according to Salary.com.

Lee Blanton, 56, initially decided to work for KBR as a truck driver in Afghanistan for financial reasons. “At the very beginning, you come over for the money,” he said. “After all my bills were caught up, it turned into something else. I was there because I wanted to serve my country. I see these young boys who didn’t have a clear-cut choice in being there, but I did.”

He worked as a contractor for nine years until heavy equipment fell on top on him during a delivery in 2011. The injuries were substantial. His left hand was paralyzed and he has been jobless ever since.

But, Blanton said the legal battle against his insurance company, AIG, has been more painful. “[AIG] is dragging out the case as much as they can hoping that I will either go away or die,” he said.

After his accident, Blanton was treated at a local military facility in Afghanistan for his blown-out knee and nerve damage to his shoulders and hand. He was then moved to a Canadian hospital in Dubai where he stayed for 10 days. He underwent multiple tests including MRIs and X-rays, but did not receive any treatment.

When Blanton came back to Phoenix, Arizona, he filed a claim under DBA to receive workers’ compensation and health care later that year. However, his insurance company,

according to Blanton, AIG, denied his claims. AIG said that his previous medical conditions, not the accident, caused his hand to be paralyzed.

After speaking with other injured contractors, Blanton hired Pitts in 2012 and filed a complaint against AIG. Few months later, he got a notice that his claim was denied again because he lacked documentations to sufficiently prove that the injury took place while on duty. His case is still pending.

“I have no regrets working in the war zone or for KBR,” Blanton said. “But AIG is a different story.”

The Defense Base Act is the only legal shield injured contractor like Blanton has. However, the Act, last amended in 1958, does not adequately address the evolved roles military contractors play and the Department of Labor has been unable to keep pace with the increasing number of claims.

“The biggest problem is that the Defense Base Act is just like any other workers’ comp[ensation] program,” Szymendera said. “It is designed for domestic work injuries, industrial accidents, car accidents, falling off of things; injuries of that nature. [DBA] isn’t the appropriate means to provide compensation for people working in a war zone.”

Under the domestic workers’ compensation programs, insurance companies assess the work environment by visiting worksites, interviewing coworkers and researching the history of injuries.

“DBA cases present significant challenges when compared to domestic workers’ compensation programs,” Ann Mangold, Public Affairs Specialist with U.S. Department of Labor, said.

“Due to language barriers, security issues, and limited access to injured workers and their dependents, DBA claims typically entail lengthy and more resource-intensive development.”

Difficulties in measuring occupational risks and hazards in the military contracting business translate into higher premium costs. The Act’s intention was to contain those higher premium cost by having insurance providers compete with each other and present better pricing since every contracting companies is mandated to provide workers’ compensation.

However, contracting companies don’t have incentives to go with a better pricing since the contracts they win from the government pays for insurance costs. In addition, Department of Labor or Department of Defense rarely audits how the contracts were spent, according to Congressional Research Service. Furthermore, the penalty for insurance companies that delay processing claims in bad faith carries a fine only up to 0.2 percent of the workers’ compensation benefits.

“When there is a delay, it means more time for insurance companies to hold on to their money,” Grossman with the Workers Injury Law and Advocacy Group said.

Insurance company advocates, meanwhile, say that the inherently weak Defense Base Act, not the corporation is at fault. Lehmann argues that as long as both contracting and insurance companies don’t have any financial incentive to bring down the cost of workers’ compensation and health care under the Act, they will continue to do operate in ways that maximize their earnings, and not accommodate injured contractors’ needs.

“There are in the business to make a profit ultimately,” Lehmann a reporter for Insurance Journal said.

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Claims on immediate or physical injuries, like broken limbs, usually get processed more promptly under the Defense Base Act. But not all injuries are immediate or visible.

Jeramey Bullock, a U.S. Army veteran turned former military contractor, said he knew better than to panic when he was ambushed while driving a truck in Iraq in 2007. His army training had taught him so. The attack happened near Ballad base in Iraq during his first week of working as a KBR driver.

“I got out of the truck and mortar started to land on the Ballad base,” he recalled. “I was in the military so I knew what they sounded like but I never had them shot at me.”

Bullock said he or other military contractors were not given any weapons or protective gear. Bullock said they are trained to flee the scene as quickly as possible when they come under attack.

“About 14 guys were hiding in the other side of the road,” Bullock said. “There were 13 [bullet] holes in my truck by the time I got back.”

Bullock did not return home immediately after the attack. He left Iraq later that year when he misjudged the height of the truck he was operating and injured his shoulder. Because his medical care payments and workers’ compensation came through, albeit four years after the injury, he feels grateful.

“I know I got lucky compared to what happened to other guys who got hurt out there,” Bullock said. But he still struggles with other injuries. “I get insomnia,” he said. “I get frustrated easily or go into these periods of time where I just shut down.”

Bullock is one of many contractors who experience PTSD symptoms. According to a 2013 report by RAND Corporation, 32 percent of contractors who responded to the survey said they had probable PTSD or depression symptoms, compared to 20 percent among active U.S. military personnel. Seventy-two percent of all respondents said they experienced insurgent attacks while working. But little attention is paid to such claims.

“There is no ownership of the problem,” Molly Dunigan, co-author of the RAND study said. “One of the questions we get often is ‘How do you know that the PTSD is from prior military or from the contracting job?’” Nearly half of the 660 contractors who responded to the study were veterans. “The question becomes then, is it the problem for the company or for the government?” she added.

The DBA covers both injuries from accidents and conditions like PTSD that develop later on. However, seeking mental health treatment that is covered by injured contractors’ insurance companies remains challenging.

Less than one-third of contractors who have PTSD symptoms said they received mental health treatment. Contractors are hesitant to seek immediate treatment out of fear that they might lose their jobs. In addition, in order for contractor to receive mental health care under the DBA, the claim must be filed within two years of the incident that induced PTSD symptoms.

“Most workers don’t want to admit that they have PTSD,” Grossman, a DBA attorney said. “Not until, they are out of the theater. They look it as a badge of dishonor.”

Although physicians at the Michael E. DeBakey VA Medical Center in Houston, Texas, do not keep track of how many military contractors seek treatment, they have seen a steady stream of contractors come in.

“I’ve been in the VA for 25 years,” Karen Thompson, the Houston VA medical center’s PTSD program director, said. “In the Vietnam era, we didn’t really see a lot of people who are veterans who had gone to work for military contractors. This is a new phenomena with Iraq and Afghanistan War.”

For veterans to be eligible for treatment at VA facilities, they must have served 24 consecutive months or the full period of which they were called to active duty and have been honorably discharged, according to Department of Veteran Affairs.

Thompson said treating PTSD outside the military facility has gotten easier with more licensed psychologists and trained social workers available.

“But the VA has done the most, in terms of research, education in the area of PTSDs,” Thompson said.

Veterans, who meet the eligibility requirements, can receive mental health treatment at veteran facilities, regardless of where and when they had sustained the injury that induced PTSD.

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In 2011, The U.S. Congress conducted hearings on ways to improve the DBA under the auspices of the Committee on Oversight and Government Reform. Pitts, other DBA attorneys and contractor advocates, gave testimony at the hearing

“There were a lot of heads nodding to what I was saying,” Pitts recalled. “But not much has changed since then.”



In fact, the changes that took place only further undermined the Department of Labor's ability to process filed complaints. Due to budget cuts in 2012 and 2013, the Department of Labor has not been able to replace retiring officials with new ones.

Currently, ten administrative law judges nationwide conduct hearings on the DBA cases. That is about 1,100 workers' compensation claims per chief judge in a given year. The Department of Labor officials complain that lack of funding has their hands tied.

Administrative Law Judge, Stephen Purcell, with the Department of Labor, and – who settle disputed claims filed under DBA, wrote an internal memo to the secretary of Department of Labor last April, 2013.

“Due to the ... sequestration... and what appears certain to happen regarding further cuts, we are fast reaching a point where the productivity of this Office will sustain a significant downturn from which we will likely not recover for years to come,” the memo reads.

“I cannot adequately describe for you the current level of frustration among ... judges and staff,” Purcell wrote.

In 2013, President Obama proposed the budget for 2015, which included a \$1 million increase in funding for the office that oversees the DBA. The proposal for the increase has not been finalized.

One congressional leader seeks to overhaul the entire system. U.S. House Representative Elijah Cummings (D-MD), calls for the government to be the sole provider for benefits and insurance and have government agencies who have hired the contractors, such as the Defense of Department, cover the insurance and workers' compensation cost, instead of paying private insurance companies.

"There is absolutely no reason American taxpayers should be lining the pockets of private insurance companies," Cummings said in a statement in 2013 regarding his DBA bill.

Rep. Cummings early last year introduced, "Defense Base Act Insurance Improvement Act of 2013." He submitted a similar plan in 2012 but his bill didn't get enough votes to make it out of either the House Armed Services or the House Education and the Workforce Committee. His 2013 DBA bill saw the same fate as his 2012 bill.

Even though, Rep. Cummings is a lone figure who voices concerns over the system, both advocates for insurance companies and contractors say his bill endorsing the government to be the sole provider for workers' compensation would only aggravate existing problems of DBA.

"Elijah Cummings's approach is wrong," Grossman said. "The government is not equipped to handle the plights of complaints that come in."

In addition, insurance advocates argue bringing down the number of providers may lead to even greater lack of oversight and an increase in fraudulent claims.

"What we should be concerned with is the insufficient amount of competition," Lehmann said. "The market is too closed."

No House representatives from Texas has authored or co-authored a measure relating to the DBA, despite the fact that Texas saw 112 contractor deaths: the most contractor fatalities in the country, according to claims filed under DBA in the last decade.

"This issue has not been brought to our office by anyone from our district," Melissa Kelly, communications director for Rep. Pete Olsen (R-Texas), said.

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Military contractors who have returned from the war zones in the Middle East know that it is difficult for people to understand why and what they did overseas.

The majority of contractors are veterans or have ties to the military. Both Blanton and Bullock served in the U.S. Army and Bullock has a son who was deployed in Iraq with the U.S. Army. They say they wanted to serve the country, more than they wanted to make money.

“I’m just a truck driver,” Bullock said. “I wanted to be a part of something bigger.”

However, only few saw their reasons for working in the war zone as a contractor to be patriotic.

“A lot of soldiers resented contractors,” T. Christian Miller a reporter for ProPublica said. Miller produced a series of articles on military contractors, “The Disposable Army,” in 2009.

“Even a truck driver for Halliburton made more money than high-ranking Army officials,” he said.

The chance for camaraderie between contractors and soldiers grew even thinner when a private security group formerly known as Blackwater Security Company, now called Academi, captured the media’s attention in 2007 for allegedly killing 17 and wounding 20 Iraqi civilians and in an incident in Baghdad. The security company said it mistook the civilians as insurgents while clearing a way for a U.S. convoy.

“You can certainly point to a lot of good things that [contractors] did. And you also find the damages like Blackwater had done,” he said.

According to Commission on Wartime Contracting report, guard or security service firms, like Blackwater, make up only four percent of all contracting services. Logistics support as delivering supplies and construction work took up nearly half of all services.

In addition to contractors getting a reputation as mercenaries in the public eye, contractors often are without support network amongst themselves. Upon returning from Middle East, they typically lose touch with one another when they settle in different parts of the States.

Georgia Faust, a widow of Arthur Faust who worked as a truck driver for KBR, said that even in the Houston area where relatively more contractors live, there was little effort to have gatherings.

“We didn’t have anyone to turn to,” Mrs. Faust said. “Military has the VA. People thank them for their service. There is nothing for contractors.”

In order for a group to obtain workers’ rights, they must overcome “hurdles after hurdles,” Rhonda Evan Case, a government professor at the University of Texas at Austin, said.

Evans said the affected group must stay politically and socially engaged. They also need tenacious, charismatic leaders, an informed society sympathetic to group’s hardships, and lawmakers with enough political incentives to take up the group’s agenda— none of which the contractors have.

“Getting people to even recognize that they have a common interest that is worth their time and effort, then to act to advance their interest -- it may sound easy, but it is so hard,” Evan Case said, “Especially when they have immediate needs to take care of such as their injuries or income.”

Over the next few years, more soldiers and military contractors will be headed home as U.S. military missions both in Iraq and Afghanistan are coming to an end. In 2013, President Obama announced that some 34,000 soldiers will be withdrawn from Afghanistan by February 2014, and fewer than 1,000 soldiers will remain in Afghanistan by 2017.

Last February, Defense Secretary Chuck Hagel proposed that because of the increasing budget cut, U.S. Army should shrink its reserves to around 440,000 soldier the smallest size since World War II. Downsizing the Army reserves implies that military contractors will be more in demand, according to Schooner with George Washington University.

“Congress, president and the media, all want a small military,” Schooner said. “But no one wants to be honest about what that means. The government has no choice but to rely on contractors.”

And the both future and returning contractors will need assistance adjusting to lives back home, especially the ones with injuries.

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