

WIN YOUR DEFENSE BASE ACT CASE:

The Ultimate Straight Talk Roadmap
To The Medical Treatment and Money
You and Your Family Deserve

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L O N G S H O R E F O R M S

For my parents,
Bob and Joyce Turley,

Who taught me to always do the right thing.
I love you and I owe you everything.

PART I GETTING STARTED

1. You are at the right place

Congratulations, you made an excellent decision to obtain this book. It is the best investment you will make for your Defense Base Act case. The information I provide here will help you win your Defense Base Act case. I personally guarantee it.

2. “Truth, you can’t handle the truth”

Jack Nicholson said, “Truth, you can’t handle the truth,” in the great movie “A Few Good Men.” I disagree, I can handle the truth. And so can you. This is why I give legal advice, with no B.S. I tell the simple, honest, truth. Just the way I would want it, if I were in your shoes.

If you are a seriously injured Defense Base Act worker, you may not be able to go back to work earning the kind of money you were before. You probably realize that you and your family are facing a tough future if that’s the case.

You might be asking yourself, “What next? What am I going to do now? What do I need to know about the Defense Base Act? Should I talk to the adjuster? Should I sign any forms? Should I give a recorded statement? Do I even need a lawyer?”

This book helps address these very issues for seriously injured Defense Base Act workers. I do it with plain English, so everybody can understand; with no lawyer talk, no double talk. I don’t give you fluff. I don’t give you generalities. I

give you an insider's view of the Defense Base Act system, with no sugar added, with simple 110% honesty.

I provide specific useful information about Defense Base Act Law. Use this book as a guide to help you win your DBA case. Along the way you will see I take a no holds barred, take no prisoners approach. You may not like what I tell you - - but I will tell you what you need to do and not do in order to get the best medical treatment and the most compensation. Use this book as a no B.S. roadmap to the money you and your family deserve.

3. *Why I wrote this book*

I wrote this book for four reasons. First, I wrote this book for my own clients. I believe informed clients get better results. So, originally, I compiled most of this information for my clients to better understand their case. This helps me get the best result possible for each of my clients.

The second reason I wrote this book is that I don't like seeing injured people get train-wrecked by the Defense Base Act legal system. You must proceed carefully when applying for Defense Base Act benefits. For example, one mistake in a doctor's record or a missing form can make the difference between immediate benefits or months, possibly years, of delay. You will encounter a bureaucratic morass. All the different hoops you need to jump through to get Defense Base Act benefits can be intimidating. So, I wrote this book to help you get all the benefits you deserve.

The third reason I wrote this book is to level the playing field between seriously injured workers and the DBA Defense Base Act insurance companies. Know this: the Defense Base Act insurance adjuster and defense lawyer

know the rules and nuances, inside and out, regarding DBA law. At times, it's appropriate to think of Defense Base Act insurance company lawyers as sharks. These sharks prey on the unprepared and unrepresented injured worker. I wrote this book to help you avoid being an easy mark and becoming just another victim.

I want you and your family to get the best result possible in your case. In order to do this, you need to know the law and the ins and outs of the Defense Base Act system. I cannot possibly represent every seriously injured DBA worker in America, much less the world. But, what I can do is provide you this informative book. I hope this guide helps you get all the Defense Base Act and War Hazards Compensation Act benefits you are entitled to and the best result possible, which you and your family deserve.

Finally, I am incredibly proud and privileged to represent Defense Base Act workers and their families. Before the Iraq and Afghanistan wars, U.S. wars were largely fought by U.S. military personnel. Not so with the Iraq and Afghanistan wars. For various reasons, the Iraq and Afghanistan wars have been fought by a combination of U.S. military personnel and civilian contractors. The employees of these civilian contractors are my clients. They perform many of the duties that in wars of the past, would have been performed by military personnel.

I want to thank each and every one of you. I have learned so much from you guys and gals. America owes you so much. Instead of a hero's welcome home - you now have to struggle to get vital medical treatment and the compensation you so justly deserve.

My Defense Base Act clients have paid the ultimate sacrifice in defending America's freedom. You deserve better than what you face now that you are seriously injured, disabled and broken. Your families deserve better. I just wish that your country was there for you now.

I thank you and your families for sacrificing for your country. I am here for you and your families. That is one of the reasons I wrote this book. So, you don't have to go it alone.

I serve brave warriors and their families. You deserve so much more than what you are getting. So it is with great pride, respect and admiration that I have been given the honor to help fallen warriors and their families. In many respects I feel duty bound to help you put your lives back together.

God bless America. God bless all of you and your families.

4. *Why Listen to Me?*

One of the first questions you should be asking yourself is, "Why I should follow the advice in this book?" It's a good question.

The Defense Base Act falls under the Longshore and Harbor Workers Compensation Act (LHWCA). The Defense Base Act (DBA) is an extension of the Longshore Act. Thus, the Defense Base Act is actually part of maritime law.

My Dad was a career Naval Officer. I grew up on the water. My maritime experience started while sitting on my Dad's lap, driving my Dad's boats. My first job was working a small crab boat. I went to law school to become a maritime lawyer. I have been practicing maritime injury law in San

Diego, California since 1988. My maritime law practice started in the shipyards and waterfront of San Diego.

I am based in San Diego, California. This is a benefit to you. Because I started practicing in San Diego as a Maritime Lawyer, I have been handling Longshore Act cases since 1988. Few lawyers have been handling these cases longer.

Because San Diego has the largest shipyard on the west coast with thousands of shipyard workers, I gained valuable experience with these cases long before the United States sent civilian workers to Iraq and Afghanistan. I have offices in San Diego, Oakland, San Francisco, Los Angeles and Bakersfield. I represent longshoreman from almost every port and harbor in California. This experience helps me win Defense Base Act cases.

San Diego is one of the largest military towns in the United States. The southern California area has countless ex-Special Forces and military types that were heavily recruited by overseas civilian contractors.

Similarly, California has large Afghanistan and Iraqi immigrant populations. These immigrants and their children have filled key roles as linguists and translators in the Afghanistan and Iraq wars. Many of these ex-military and linguists have been seriously injured defending our freedom.

Today my law firm represents more DBA workers than any law firm in the Western United States. My firm is asked to represent Defense Base Act workers from across America and from around the world. There are few law firms in America filing as many DBA claims as my law firm. I have

DBA cases against all the major DBA insurance companies and DBA employers. This is what we do.

5. *Awards, ratings, leadership and the like*

I am a trial lawyer. The Consumer Attorneys of San Diego (formerly called “San Diego Trial Lawyers Association”) elected me to be their President.

Super Lawyers (superlawyers.com) is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. It is an honor that Super Lawyers has repeatedly named me a Super Lawyer.

Avvo (avvo.com) is an independent rating service designed to provide information and better guidance for consumers to find and hire lawyers. Avvo has awarded me the highest rating.

California Supreme Court cases list me as Amicus Counsel over twenty times. I have been extensively published. Lawyer organizations and groups regularly ask me to lecture and/or teach other lawyers, including on the Longshore Act and Defense Base Act.

6. *Why fantastic ratings, awards, teaching, and leadership are a benefit to you*

I don’t mean to suggest the only way someone can be a really good DBA lawyer is to have fantastic ratings, win prestigious lawyer awards, be asked to teach other lawyers or be elected to lead lawyer organizations. What these things do mean is that people who do know good lawyers from bad lawyers have chosen me for these honors.

7. *Strength vs. Weakness*

You can’t be afraid to protect your rights. If you want to get what you are entitled to under the DBA - you have to be ready to take your case to court. You have to be prepared to win. Hoping for a good settlement is a fool’s errand. You want to and need to negotiate from a position of strength. You don’t do that unless you are prepared to win in court.

That is what this book is all about – helping you win your Defense Base Act case - from a position of strength. When you do this, you will have the best chance to win your DBA case at trial. And, the best way to get a good settlement is by being prepared to win at trial.

For more free information about how to approach and win your Defense Base Act case from a position of strength, email me at:

DBAbook@turleylawfirm.com

As always, I will not provide your contact information to anyone. Also, it would be great if you would provide some feedback on how you liked this book. Your feedback is greatly appreciated.

8. *Don’t Start Your Case Playing Catch-Up*

While this book is designed to help you understand the Defense Base Act claims process and provide the information you need to avoid being taken advantage of, there is no substitute for actual, experienced, legal representation. And the best time to hire an attorney is right at the beginning. From the start, the claims process is filled with strict time

deadlines and important choices you must make that will affect your entire claim.

The right DBA attorney will help you make the best choices and do so on time, before it's too late. The right DBA attorney will protect your rights, help you get the best medical care and all of your rightfully deserved disability benefits.

Don't take the chance that you will be playing catch-up with the Defense Base Act insurance company and their lawyers.

9. *Disclaimer*

Please keep in mind that although my goal is to inform, nothing in this DBA guide constitutes or is intended to constitute legal advice and should not be taken as legal advice. This guide provides an overview of Defense Base Act and War Hazards Compensation Act laws.

You need to be the judge as to whether your personal circumstances are similar or dissimilar to those described in this book. This book does not attempt to be exhaustive on any of these subject areas. I am simplistic in order to achieve clarity.

You are cautioned that the facts and circumstances described in this book may differ from your particular case or evidence. Every case is different, with its own unique facts and issues. In other words, your mileage may vary.

If you have been seriously injured while overseas, I highly recommend that you consult with an attorney who is

knowledgeable and experienced in the field of the Defense Base Act.

The circumstances, events and case studies described herein are not intended to describe actual events or persons. My wife and publisher encouraged me to tell you that any resemblance to real cases, events, insurance companies and/or persons is purely coincidence.

10. *Always Tell the Truth*

One thing is for certain, doing the right thing is what this book is all about. The very best advice I can give you is to always tell the truth.

You only have one Defense Base Act case. You only get one chance in court. If the judge sees that you have lied or that you have been untruthful at any point in your case, the judge will decide against you.

Always tell the truth when you pursue a legal case such as a Defense Base Act claim. Always. Defense Base Act judges will usually forgive a great deal if you are honest with them. Nobody forgives someone who lies to them. Would you?

Everyone has bad facts or bad evidence in their case, everyone. You must be painfully honest with the judge about these "bad facts." Sometimes when they are placed in the bright light of a courtroom, they don't seem so bad.

At times you are going to need to deal with the issue first. Tell the judge about the issue from the beginning of your case. In other circumstances you may be better off letting the defense bring up the difficult evidence. It depends. One thing that doesn't ever change is your being honest about

everything. You need to understand that you must be able to win your case despite the bad facts. You can usually get past just about anything. You just have to be honest about it and deal with it correctly.

Whatever you think is the biggest potential problem with your case is the very thing you need to talk to your lawyer about the most. You deserve a lawyer that is going to present your case honestly. They will help you win your case with the truth.

The single most important factor which determines whether you win or lose your DBA case is whether the Judge believes you. If the Judge believes your testimony, you have a 95% chance of winning your case. If the Judge doesn't believe your testimony you have about a zero percent chance of winning. This is why I always tell clients, nothing is more important than your credibility. Nothing else even comes close.

11. Your character and honesty

Your character and honesty is what will be on trial. Thinking anything else will lose your case.

Let's get one thing out of the way. People want to be believed. People who are injured want to be believed. If you are reading this book, chances are, you are injured and you want to be believed. Whether it's conscious or unconscious, some folks will exaggerate or fudge a tad, so that they will be believed. In everyday life, it really doesn't matter. In an injury claim, it's fatal to you and your case.

The surest way to give ammunition to the insurance defense lawyer that is out to attack you is to exaggerate or fudge your

symptoms, problems, limitations and/or disabilities. If you take anything away from this book, it must be this. If you exaggerate or fudge your symptoms, problems, limitations and/or disabilities you will lose your DBA case.

When you are bringing a high stakes court case like a DBA case, you cannot exaggerate or fudge. Not to your lawyer. Not to your doctor. Not to your family. Not to your friends. Not to your co-workers. Not to the defense lawyer. Not to the defense doctor. This is the voice of experience talking here. I want you to get the best result possible. The last thing you want to do is wreck your case.

PART II UNDERSTANDING THE DEFENSE BASE ACT**12. *The DBA falls under the Longshore Act/Maritime Law***

Traditionally, most states workers' compensation programs did not apply to workers that were injured on the waterfront such as longshoreman and harbor workers. Thus, Congress enacted federal law to provide workers' compensation benefits for these maritime workers. The Longshore and Harbor Workers' Compensation Act (LHWCA or Longshore Act) is a federal workers compensation program that covers longshoreman, ship yard workers, and harbor workers.

The Defense Base Act was created in 1941 as an "Extension" of the Longshore and Harbor Workers' Compensation Act. In essence, the Defense Base Act extended the federal workers' compensation program for longshore and harbor workers to DBA workers. The same laws, rules and benefits apply to DBA workers that apply to longshore and harbor workers. This is why the Defense Base Act actually falls under maritime law.

This is also why the most experienced and best DBA Lawyers cut their teeth, so to speak, handling Longshore cases. Almost all of the best Defense Base Act lawyers are maritime lawyers that have a long history handling Longshore cases.

I started my law career in San Diego, California as a maritime lawyer. I have been representing shipyard workers, longshoreman, and harbor workers since 1988. After the Iraq and Afghanistan wars, more and more seriously injured

DBA workers started coming back to the United States, including to California. Since the DBA was an Extension of the Longshore Act, it was natural that these DBA workers would be referred to my office.

13. *What is the Defense Base Act?*

The DBA initially applied to persons working on American military bases abroad. The DBA was then broadened to cover most federal contractors working outside of the United States.

The Defense Base Act provides benefits to employees working for defense contractors outside the continental United States. In recent years, there have been thousands of Defense Base Act workers seriously injured in Iraq and Afghanistan.

If you are an employee of a civilian contractor injured while working under a U.S. Government contract in Iraq, Afghanistan, Kuwait, or anywhere in the world, your claim possibly falls under the DBA. Civilian employees of contractors that support military and State Department operations worldwide usually fall under the Defense Base Act. The Defense Base Act is a federal workers compensation program for the employees of these civilian contractors.

The DBA requires that federal government contractors and subcontractors provide workers' compensation insurance for their employees who work outside of the United States. The DBA also covers both United States citizens and foreign nationals.

Basically all types of service contracts are covered under the DBA. Workers that work for contractors performing

service contracts, even those which do not directly provide for construction, alteration, removal or repair are included in the definition of public work.

14. Gates to Defense Base Act coverage

The Defense Base Act covers the following employment activities:

- a) Work for private employers on U.S. military bases outside the United States;
- b) Work for private employers on any lands used by the U.S. for military purposes outside of the United States, including those in U.S. Territories and possessions;
- c) Work on public work contracts with any U.S. government agency, including service contracts and construction contracts in connection with national defense or with war activities outside the United States;
- d) Work on contracts approved and funded by the U.S. under the Foreign Assistance Act, that are performed outside the United States, which provides for cash sale of military equipment, materials, and services to its allies;
- e) Work for welfare or similar services outside the US for troops authorized by the Department of Defense. For example, the Red Cross, United Service Organizations (USO), and The Salvation Army;
- f) Workers for contractors performing public works for the U.S. government in U.S. territories, at U.S. military

bases located outside the continental United States and in support of military aid programs within allied nations;

- g) Employees of any subcontractors of a contract involved in work listed herein-above.

For example, most civilian workers supporting the war efforts in Afghanistan and Iraq are covered by the Defense Base Act. Most workers performing construction and repairs on United States embassies and consulates are covered by the DBA.

15. Civil damages vs. Defense Base Act benefits

The DBA provides no-fault coverage to injured workers. Injured workers and the survivors of workers killed while overseas are entitled to benefits for overseas-related injuries, illnesses, and deaths.

The Defense Base Act, War Hazards Compensation Act, federal regulations, and case law establish rules and procedures for Defense Base Act claims. If you are injured on the job overseas your “exclusive remedy” against your employer is Defense Base Act benefits. Which means you can’t sue your employer if you have an injury.

Generally, Defense Base Act benefits are usually much less than civil damages. But this is not always the case. Let me explain. Under the DBA, you don’t have to prove your injury was caused by an unsafe workplace or that your employer was negligent in causing your injury. You are entitled to Defense Base Act benefits for overseas injuries, regardless of who is at fault.

All you have to prove is that your injuries were caused, aggravated and/or accelerated by your being overseas. It sounds so simple. But, of course, it isn't.

These are exceptions to the exclusive remedy doctrine which allow you, in certain circumstances, to sue your employer. These are called second-party cases.

For example, if you face sexual harassment or racial harassment, you may be able to sue your DBA employer in a second-party civil lawsuit.

If someone other than your employer is legally responsible for your injuries, then you may be able to sue the other person or entity. These are civil cases that are called third-party cases that can be filed in State Superior Court or United States District Court. You can recover pain and suffering, loss of enjoyment of life damages, and loss of earnings type damages in a third-party DBA case.

16. The Trade-Off

Despite the “no-fault” nature of the Defense Base Act system, there is a trade-off. On one hand, the injured worker is supposed to receive quick and easy access to medical treatment and disability benefits. On the other hand, the employer is usually protected from any civil lawsuits over the injury.

Generally, in this trade-off, employers do not have to face civil lawsuits when a worker is injured or killed. So instead of facing a multimillion dollar verdict for the needless death of a worker, the DBA insurance company only has to pay the widow and dependent children a relatively small weekly check.

This trade-off is not always in your favor. For example, Defense Base Act benefits do not include compensation for things like lost earnings and pain and suffering, which are allowed normally in a civil lawsuit.

17. What if my employer doesn't have Defense Base Act insurance?

All Defense Base Act employers are required to secure the payment of compensation. Meaning, they have to have Defense Base Act insurance. If a sub-contractor fails to obtain DBA insurance coverage, then the general contractor is required to provide DBA insurance for the worker.

If the employer fails to obtain DBA insurance, you can sue the employer for civil damages. In uninsured DBA employer cases, the employer cannot defend the claim based upon your injuries being caused by a co-worker, assumption of the risk, or due to your negligence.

PART III I GOT HURT, WHAT SHOULD I DO?**18. *Defense Base Act injury reports***

When speaking to a Defense Base Act client, one of the first things I ask to see is any incident reports/ injury reports. And, one of the first things the DBA insurance company asks to see is any incident reports/ injury reports. Obviously an incident report goes a long way to documenting your injury. That is why we both ask to see it. At some point, your DBA Lawyer will either be settling your case or presenting it to the Judge. The more documentation you have which corroborates your injury incident, the better.

19. *What if I don't have an incident report?*

But what if you don't have an incident/ injury report? What if your supervisor refused to fill one out? Or maybe you didn't realize you were as badly hurt as you turned out to be and you just didn't get an accident report filled out? What then?

20. *Report your injury*

Whatever the circumstances, 99% of the time you should report your injury as early as possible. If you haven't reported your injury yet, today would most likely be a good day to do so. Seriously, every day you wait to report your Defense Base Act injury increases the odds of your claim being denied by the DBA insurance company (they deny timely reported claims left and right also), and most importantly, having your claim denied by the DBA Judge.

21. *Do something*

If nothing else, send an email. Tell a supervisor or someone in the company that is higher in rank than you. "Hey, I got hurt on such and such day when I did such and such.... My back hurts...." You don't need to provide a huge amount of information: basic details are fine and probably preferable. Send a copy of the email to yourself so you can document that it was actually sent.

22. *Document your injuries (take photographs)*

If possible, you need to document your injuries. For example, take pictures of bruises, swelling, marks, etc. Then email the photos to yourself so you can document when the photos were taken.

23. *Get contact information*

Do you have the contact information for people that either saw you get hurt, saw you right afterwards and/or saw your injuries? If not, your economic future may depend on these people. A little hustle goes a long way here.

Ask them to email you a short statement of what they saw or witnessed. "Last month I saw Joe Smith step in a hole outside the mess tent and twist his ankle. Afterwards it was swollen and black and blue. He was limping pretty bad." Whatever they saw, ask them to document it in an email.

24. *The bottom line on injury reports*

The long and short of it is you should get an incident/ injury report. However, just because you don't have an incident report, doesn't mean you can't prevail in getting

your Defense Base Act benefits. And even if you don't have one shred of evidence corroborating your injury, you can still prevail. However, know this: the more evidence you can give your DBA Lawyer to work with, the more chance there is you will get a favorable result in your DBA case.

25. A lay of the land

In recent years there have been changes to Defense Base Act laws that have made it harder and harder for seriously injured workers to receive benefits. There have been United States Supreme Court decisions and some Court of Appeals decisions that have made it much more difficult to win a DBA case.

When I first started practicing law, under DBA law, ties would go to the runner (read: you, the injured worker). The United States Supreme Court has changed all of that. Today, ties go to the Defense Base Act insurance company. What does this mean? If the evidence is even between you and the DBA insurance company – you lose.

In reality, there are more and more hoops that you must jump through in order to receive your benefits. Disputed Defense Base Act cases can take years before you receive your benefits. It seems, at every step of the way, you must overcome Defense Base Act laws that are now heavily favored for Defense Base Act insurance companies.

26. It is even worse than it first appears

I'd like to tell you that it gets better. But it doesn't. On top of the Courts going out of their way to make it more difficult for injured DBA workers to get justice there is also something else going on.

The law allows DBA insurance companies to “game” the system by not paying benefits and trying to force DBA claimants to settle cheap. The DBA procedural quagmire allows DBA carriers to stop paying benefits and effectively force DBA workers to “die on the vine.”

The biggest single problem with the DBA / Longshore system is that there is no deterrent to prevent insurance companies from denying claims. All the insurance company has to do is to file an LS-207 Notice of Controversion and they can stop providing you benefits and there is nothing to stop them from doing this. There is nothing to prevent the Defense Base Act insurance company from simply cutting off your DBA benefits.

27. The DBA system of attrition

Attrition: A wearing down or weakening of resistance, especially as a result of continuous pressure or harassment.

Under the DBA system, many seriously injured DBA workers must outlast long litigation delays in order to receive Defense Base Act benefits. Truth is, America wasn't quite ready for wars with hundreds of thousands of civilian participants. All of which are covered by the DBA. The system was a tad broken even before the Iraq and Afghanistan wars. Now, with all of the injured DBA workers from Iraq and Afghanistan, the wheels have fallen off the DBA wagon.

Getting your case to trial is a slow, painful process. But that is simply the beginning of the waiting game. Some Judges are so backed up that their decisions are coming out two years after the trial. In case that didn't sink in - I am going

to repeat it: you may have to wait two years until after your trial before you can expect an Order Awarding Benefits. No kidding.

I would like to tell you that once the Judge's Decision And Order Awarding Benefits is issued (of course, this is assuming you win, which is about a 50-50 proposition it appears from reading the Judges decisions that get issued from *all* cases - not my firm's cases) is the end of the line.

I would like to tell you once you get your Decision and Order Awarding Benefits you are home free. Not a chance. You can expect the DBA insurance company to file a Motion for Reconsideration. This is simply another chance for your case to be denied. After the Motion for Reconsideration, your claim can be appealed to the Benefits Review Board (BRB). Think of this as yet another opportunity for your claim to be denied. That's right - you can win at trial and then lose your case on Appeal. This happens.

Problem is, we are just warning up. In some Circuits, appeals of BRB decisions are taken with United States District Courts. In case you are keeping score at home, the Federal District Court is the trial court for federal civil cases. So, in other words, you have to start all over again. Think of this as merely another way your case can be lost.

Next, your case can be appealed to the Circuit Court of Appeals. Again, some Circuits require a stop at the District Court and some don't. California DBA cases, for example, are appealed directly to the Ninth Circuit Court of Appeals (which is yet another court that can deny your case). While there is a very, very, very small chance your case will end up at the United States Supreme Court - it can and does happen.

What I am trying to tell you here is that it really is a "war of attrition." Some DBA claimants die before their case is legally over. In these instances, DBA insurance companies profit off death.

In essence, there is little downside to DBA insurance carriers to simply try and out-wait you. So, time and again, seriously injured DBA claimants are forced to live years without benefits waiting for a trial and an Order compelling the DBA insurance company to provide DBA benefits.

The system is broken. However, seriously injured DBA workers need to know the reality which they are facing. It is a system of attrition.

28. Winning the game of attrition - your long term strategy

In order to prevail over the DBA insurance company's game of attrition, you must develop a three part strategy. First, you need to immediately develop the evidence needed to prevail over the issues which the DBA carrier is denying your claim. Focus on why the DBA carrier is not providing you benefits. Usually, but not always, the DBA carrier will controvert your DBA claim and not provide benefits over some element of the evidence.

Sometimes, this strategy will either persuade the DBA carrier to reinstate your benefits or offer a fairer lump-sum settlement.

Second, you need to develop a strategy on how you and your family are going to survive over the long haul. That is, how to win the war of attrition. Don't think that just because you have a legitimate claim that the DBA carrier is going to pay you the Defense Base Act benefits which you

are entitled. Instead, you need to be planning how you are going to survive the many months and sometimes years without receiving any benefits. Not to suggest that every DBA claimant's benefits are cut while they are awaiting trial and the appeal process, but - it happens. You need to know this.

What I am suggesting is that you or your spouse, or both, may have to find gainful employment while you are waiting for your DBA case to get to trial and then get a Decision and Order Awarding Benefits.

I realize this is not what you want to hear. But I am trying to keep you from being homeless. Don't spend your last dime waiting. You need to start being very frugal today in anticipation. I realize this is extremely difficult because many of you may have gotten used to the good money you made working overseas.

Later in this book I will explain how getting a job, any job, even a low paying job will usually actually help your DBA case. And, it will help you and your family make ends meet while you wait on your case.

The important point here is you need to understand your weekly compensation benefits can be cut off at any time and if they are cut off, you may not be able to get your benefits reinstated for *years* to come. This is why I am telling you to not allow your savings to become completely depleted before you start thinking about what you are going to do in order to survive if you aren't getting DBA weekly compensation benefits.

Third, you need to have a Defense Base Act attorney that is going to advance your DBA claim as quickly as possible. That

is, marshaling the evidence, requesting and then holding an emergency informal conference, getting recommendations issued, filing an LS-18, and then proceeding to trial as quickly as possible.

29. The biggest misconception workers have of the DBA

There's a huge misconception about the Defense Base Act that needs to be dispelled in order for you to understand why you'll need a seasoned Defense Base Act Lawyer to fight for your DBA benefits: Just because you have a legitimate injury and cannot work, it does not mean that you will receive Defense Base Act benefits. That's because benefits are paid by your employer's insurance company, which has an arsenal of lawyers who are paid to deny your claim.

The fact that you have a legitimate injury means next to nothing when you are going into court asking for money. The only thing that matters is, "What can you prove?" Not, whether you have a legitimate injury.

The well paid lawyers hired by the DBA insurance companies have the ways and means to twist things around. By the time you get to court they may have you second guessing yourself. That is what they do. These lawyers get paid a lot of money to get you all mixed up. Don't think for a minute that it can't happen to you. This happens every day to hard working folks with legitimate injuries, just like you.

This is why it is so important for you to hire a seasoned Defense Base Act Lawyer. Not some local attorney that comes well recommended by your accountant or friend. The local lawyer may do fine with other types of injury or workers' compensation cases - - but the last thing you

want is your local lawyer to get steam-rolled by one of the big city DBA insurance company hired guns. In other words, you don't want a lawyer that is learning on the job, so to speak.

The Defense Base Act (DBA) is very, very different than State workers' compensation programs. Many DBA employees make the mistake of hiring a local workers' compensation attorney to represent them for their Defense Base Act case. This is usually a big mistake.

The most important single thing you can do if you are a seriously injured Defense Base Act employee is to hire a seasoned Defense Base Act attorney. Don't get lulled into thinking that just because your claim is "legitimate" that you won't need an experienced Defense Base Act lawyer. The DBA insurance companies depend on workers like you making this mistake, again and again. You don't want to go there.

Many seriously injured workers figure they can represent themselves in their Defense Base Act case. They figure they can save money on attorney fees by not hiring a Defense Base Act Lawyer. It is entirely understandable why these folks think they will be saving money. After all it's only a DBA claim, what can be so difficult? Why would I need a Defense Base Act Lawyer?

When the other side has a lawyer, you need one, too. Too often, injured workers are out-lawyered by the insurance company. You need a lawyer that can go toe to toe with the big DBA insurance company lawyers.

You need a lawyer that knows the ins and outs of gathering medical evidence, filing well-documented DBA claims, and

appearing at hearings. You need a lawyer that knows how to protect you from insurance company attempts to poke holes in your case.

While you aren't required to have a Defense Base Act attorney to file for DBA benefits, it is always in your best interest to do so. If you are about to file for DBA benefits, if your claim has been denied, or your benefits have been reduced or terminated don't wait - consult with a Defense Base Act lawyer today.

30. You can't get pain and suffering and loss of earnings under the DBA

I talk to DBA claimants every day. Many DBA claimants believe and expect that they will be compensated for their pain and suffering. Some DBA claimants expect to be compensated for the economic hardship brought on to them and their families based upon the DBA insurance company not providing timely compensation and medical treatment. They think that they should get money due to the DBA insurance company wrongfully denying (read: controverting) their claim.

I have to tell them that simply is not the case. You cannot recover pain and suffering, loss of enjoyment of life damages, and loss of earnings type damages in a Defense Base Act case like you can with a civil lawsuit. Under Defense Base Act laws, you are only entitled to Defense Base Act benefits, not civil damages.

When I was in law school I heard an expression that applies quite well to the DBA. "Sometimes the law is an ass." Meaning, the law is not fair at times. This would be a good

example. Under the Defense Base Act, the DBA insurance carriers can deny claims for the flimsiest of reasons.

All the DBA insurance carrier has to do is file an LS-207 Notice of Controversion and there is nothing that you or the Judge can do about it under the law. They type “Investigating the claim.” And the law says that is a perfectly fine reason for the DBA insurance company to deny your claim, even if you have the most rock-solid evidence to support your claim.

Please understand that the DBA insurance carrier doesn’t even have to actually investigate your claim in order to file the LS-207 Notice of Controversion and stop providing you your DBA benefits. In other words, the DBA insurance company can lie and get away with it. And it’s all part of the “DBA system.” This is the single most unfair and unjust part of the Defense Base Act.

At the end of the day, the Defense Base Act is a workers’ compensation system. Most workers’ compensation systems do not provide benefits for pain and suffering type damages. And truth be told, the DBA compensation benefits are more generous than most workers’ compensation systems.

However, where the DBA system is seriously broken is the part where the DBA insurance carriers can deny legitimate claims with no penalties being assessed. There is no carrot or stick to encourage the DBA insurance carriers to provide benefits. So, oftentimes, the DBA insurance carriers will deny benefits and try and out-wait, so to speak, seriously injured DBA workers.

I see, first hand, the economic pain and despair caused by DBA insurance carriers denying legitimate claims, willy-

nilly. Good families are placed in the worst position of their lives. Dad (or Mom) can’t work due to severe injuries. He/she can’t get medical treatment, can’t pay their mortgage / rent. They are facing the street.

Then I read that the DBA insurance carriers are making as profits, 50% of all premiums collected, and I am upset. It isn’t fair. It isn’t right. It’s “business” to them. They don’t care about the families they destroy. They are getting paid a lot of money not to care.

PART IV JURISDICTION AND THE DEFENSE BASE ACT***31. Jurisdiction - an Overview***

Jurisdiction under the Defense Base Act is the determination of whether a particular claim is covered under the DBA. However, there is more going on here than DBA jurisdiction. Thus, a more expansive view of jurisdiction must be addressed.

Jurisdiction generally describes any authority over a certain area or certain persons. In the law, jurisdiction sometimes refers to a particular geographic area containing a defined legal authority. For example, the federal government is a jurisdiction unto itself. Its power spans the entire United States. Each state is also a jurisdiction unto itself, with the power to pass its own laws. Smaller geographic areas, such as counties and cities, are separate jurisdictions to the extent that they have powers that are independent of the federal and state governments.

Jurisdiction also may refer to the origin of a court's authority. A court may be designated either as a court of general jurisdiction or as a court of special jurisdiction. A court of general jurisdiction is a trial court that is empowered to hear all cases that are not specifically reserved for courts of special jurisdiction. A court of special jurisdiction is empowered to hear only certain kinds of cases.

Courts of general jurisdiction are often called district courts or superior courts. In New York State, however, the court of general jurisdiction is called the Supreme Court of New York. In California, for instance, they are called the

Superior Court. In most jurisdictions, other trial courts of special jurisdiction exist apart from the courts of general jurisdiction; some examples are probate, tax, traffic, juvenile, and, in some cities, drug courts.

32. Federal jurisdiction

At the federal level, the district courts are courts of general jurisdiction. Federal courts of special jurisdiction include the U.S. Tax court and Bankruptcy court.

Jurisdiction can also be used to define the proper court in which to bring a particular case. In this context, a court has either original or appellate jurisdiction over a case. When the court has original jurisdiction, it is empowered to conduct a trial in the case. When the court has appellate jurisdiction, it may only review the trial court proceedings for error. As I described them earlier in this book, the DBA has layer after layer of appellate courts. In other words, more and more chances for the DBA insurance companies to convince a court to deny your claim.

33. Jurisdiction under the Defense Base Act

In addition to whether a particular claim is covered under the DBA, jurisdiction also concerns what law applies to any particular case. In general, jurisdiction under the Defense Base Act is determined by two factors. Where you live determines which district office will issue your Compensation Order. The district office where your compensation order is issued determines what Circuit Court of Appeals law applies to your DBA case. This determines what law applies to your case.

34. Winning, losing, doing what it takes and making winning decisions

In order to stay abreast of Defense Base Act law, I do a lot of reading. You can learn a lot by reading. I know I do. I try and read all of the Benefits review Board cases (the first Appeals level for DBA cases). I also try and read a fair share of DBA trial court decisions. Whenever I get a new Judge assigned to one of my DBA cases, I try and look up previous DBA decisions by the Judge. I don't have to do any of this. Except I hate to lose, anything. I especially hate to lose a case.

So, I do what it takes to win. And sometimes that means telling a client that they really need to try and settle their case. You don't want a lawyer that is going to Kamikaze your case into the side of the mountain, so to speak. You need a lawyer that can see whether you are going to win your case at trial or whether you need to seriously consider trying to settle your case. There is no honor in losing. Many of the cases that I read where the DBA worker loses, it seems fairly obvious that the case is going to be lost.

Think about this. What is better for you and your family? To lose and get nothing or receive a settlement that isn't what you had hoped it would be. If you would rather lose your case based upon "principal" then you need an agonizing reappraisal. I am not a Kamikaze lawyer. I don't like to lose. Even for the "principal." Principal is not going to put food on your family's table.

That all being said - - many DBA cases have to go to trial. If the DBA insurance company is not making a decent settlement offer (either a lump sum settlement or stipulating [Read: agreeing] to pay a weekly payment for life) and you

have a good case - - then your case should be taken to trial. What you need is a lawyer that knows the difference. You need a lawyer that isn't going to get their ego in the way of what is best for you and your family.

Which is why I do so much reading: so I can better determine which cases will "win" at trial and which cases will "lose" at trial. If your lawyer isn't a DBA specialist - they are not going to have the time and motivation to put in the time needed to "forecast" whether your case can and will be won at trial.

I also subscribe to a particular publication that is, in essence, written for DBA insurance companies, DBA insurance adjusters, and DBA defense lawyers. Without a doubt, this particular publication is extremely slanted in favor of the DBA insurance companies. I buy this publication not because I want to support them. I buy it and read it regularly so I will learn all the latest ways the DBA insurance companies try and screw-over our clients. It is all part of what I do in order to stay on top of our game, so to speak.

This is why you need a law firm that specializes in DBA law. It really helps to have a lawyer that can help you make the right decisions.

35. Department of Labor - District Offices for Defense Base Act claims

Region I - Boston

Boston District Office

Jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. Defense

Base Act jurisdiction - east of the 75th degree west longitude, Newfoundland, and Greenland

Longshore District Office #1,

U.S. Department of Labor

JFK Federal Building, Room E-260

Boston, MA 02203

Phone #: 617-624-6750

District Director: David B. Groeneveld

Regional Director: Zev Sapir

Region II - New York

New York District Office

Jurisdiction: New Jersey, New York, Puerto Rico, Virgin Islands. Defense Base Act jurisdiction - Mexico, Central and South America (including coastal islands); areas east of the continents of North and South America to the 60th degree east longitude, including Iraq, Afghanistan and Iran, and any other areas or locations not covered under any other district office.

Longshore District Office #2,

U.S. Department of Labor

201 Varick Street, Room 740

Post Office Box 249

New York, NY 10014-0249

Phone #: 646 264-3010

District Director: Richard V. Robilotti

Regional Director: Zev Sapir

Region III - Philadelphia

Jurisdiction: Delaware, District of Columbia, Maryland, Pennsylvania, West Virginia

Longshore District Office 4,

U.S. Department of Labor

31 Hopkins Place Room 410-B - Federal Building

Baltimore, MD 21201

Phone #: 410-962-3677

District Director: Theresa Magyar

Regional Director: John W. Mckenna (Acting)

Norfolk District Office

Jurisdiction: Virginia

Longshore District Office 5,

U.S. Department of Labor

Federal Building, Room 212

200 Granby Mall

Norfolk, VA 23510

Phone #: 757-441-3071

District Director: Theresa Magyar
Regional Director: John W. Mckenna (Acting)

Region IV - Atlanta

Atlanta District Office

Jurisdiction: Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee

Longshore District Office 6,

U.S. Department of Labor

Charles E. Bennett Federal Building
400 West Bay Street, Room 63A, Box 28
Jacksonville, FL 32202
Phone #: 904-357-4788

District Director: Charles Lee
Regional Director: Magdalena Fernandez

Region VI – Dallas

New Orleans District Office

Jurisdiction: Louisiana, Arkansas, Mississippi

Longshore District Office 7,

U.S. Department of Labor
600 S. Maestri Place, Suite 617
New Orleans, LA 70130

USPS Mailing Address:

Longshore District Office 7,
U.S. Department of Labor
P.O. BOX 30728
New Orleans, LA 70190-0728
Phone #: 504-589-2671

District Director: David A. Duhon
Regional Director: Dean Woodard

Houston District Office

Jurisdiction: Texas, Oklahoma, New Mexico, Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, Wisconsin, Missouri, Nebraska, Kansas. Defense Base Act jurisdiction - Canada, west of the 75th degree and east of the 110th degree west longitude.)

Longshore District Office 8,
U.S. Department of Labor
8866 Gulf Freeway Suite 140
Houston, TX 77017
Phone #: 713-943-1605

District Director: David Widner
Regional Director: Dean Woodard

Region IX - San Francisco

San Francisco District Office

Jurisdiction: California (north of the northern boundaries of the counties of San Luis, Obispo, Kern, and San Bernardino), Arizona, Nevada

Longshore District Office 13,
U.S. Department of Labor
71 Stevenson Street, Room 1705

Post Office Box 193770
San Francisco, CA 94119-3770
Phone #: 415-848-6675
District Director: R. Todd Bruininks
Regional Director: Sharon Tyler

Honolulu Longshore District Office

Jurisdiction: Hawaii. Defense Base Act cases jurisdiction - all areas west of the continents of North and South America (excluding coastal islands) to 60 degrees east longitude (excluding Iran).

Longshore District Office 15,
U.S. Department of Labor
300 Ala Moana Blvd., Room 5-135
Post Office Box 50209
Honolulu, HI 96850
Phone #: 808-541-1983
District Director: R. Todd Bruininks
Regional Director: Sharon Tyler

(Please note - all mail for the Honolulu office must now be sent to the San Francisco Office).

Long Beach Longshore District Office

Jurisdiction: California (south of the northern boundaries of the counties of San Luis, Obispo, Kern, and San Bernardino)

Longshore District Office 18,
U.S. Department of Labor
401 East Ocean Blvd., Suite 720
Long Beach, CA 90802
Phone #: 562-980-3577

District Director: Marco Adame
Regional Director: Sharon Tyler

Region X - Seattle

Seattle District Office

Jurisdiction: Alaska, Oregon, Washington, Colorado, Idaho, Montana, N. Dakota, S. Dakota, Utah, Wyoming. Defense Base Act jurisdiction - Canada, west of the 110th degree west longitude, and all areas in the Pacific Ocean north of the 45th degree north latitude.

Longshore District Office 14,
U.S. Department of Labor
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PART V DEFENSE BASE ACT INSURANCE COMPANIES

36. Your enemy is the Defense Base Act insurance company

Your enemy is the Defense Base Act insurance company. The reason I call the insurance company the “enemy” is because that is exactly what they are. Let’s not beat around the bush. Here is your reality: the Defense Base Act insurance company is trying to keep you from getting the benefits you deserve under the law.

At the end of the day they are trying to take food off your family’s table. Thinking anything else will prove to be very costly to you and your family. I think of anyone trying to take food off my family’s table as an enemy. So should you.

37. Dealing with the DBA insurance adjuster

If you have a Defense Base Act claim and you have not hired a Defense Base Act Lawyer yet, then you need to know how you should deal with the Defense Base Act insurance adjuster.

Once you have a DBA injury you are at war with the DBA insurance company. No matter how nice the Defense Base Act claims adjuster is to you - - at the end of the day, their job is to keep you from getting the medical benefits and money compensation benefits you are entitled to under the law.

However, just because you are at war with the insurance company does not justify or permit you to be rude or short with the DBA insurance adjuster.

You should be polite when dealing with the adjuster. Remember, at the end of the day, the insurance adjuster decides whether they are going to admit or deny your injuries and/or provide you benefits.

Just as your mother may have once said, “You catch more flies with honey than vinegar.” It is the same with insurance adjusters. They usually have hundreds of files. They have files where they approve the benefits and files where they fight on every issue. Your job is to not give additional incentive to the adjuster to deny your benefits. Be polite. But remember, they are the enemy.

38. Be careful about what you say

You should be careful when talking to the DBA insurance adjuster. In many instances, they tape all your phone calls (for “quality review”) and they will try to get you to say things or do things that will hurt your case. These adjusters are taught how to phrase questions and get you to say things that are literally, DBA case killers.

Don’t be all gabby and talkative with the adjuster. Everything you say to the adjuster can and will be used against you in court.

39. Don’t take legal advice from the DBA insurance adjuster

The DBA insurance adjusters’ job is to save the insurance company money. Their job is not to help you. Don’t be one of the hundreds of DBA claimants who don’t receive all the benefits they deserve because they took their legal advice from the DBA insurance adjuster.

40. Beware of the nice adjuster

Don’t get lulled by a nice Defense Base Act insurance company adjuster. They are trained to be likable and nice. Be careful what you say to the adjuster or the defense lawyer.

41. Don’t be a jerk

When you must speak with the DBA insurance adjuster it is best to be polite and then get off the telephone. You don’t want to be a jerk either. Nice, polite and short should be your mantra when talking to the adjuster. The adjuster is not only evaluating your claim, but they are evaluating YOU. If they don’t like you, they will conclude the Judge won’t like you either. This means you have less chance of winning your case. Right or wrong - that is what is going on here.

42. Don’t give a statement

Don’t ever give a recorded or written statement. They know exactly what they need you to say in order to defeat your Defense Base Act claim. Your case could be over before it even starts. You don’t have to give a statement in order to receive DBA benefits. They are only going to use it as a tool in order to deny your claim.

43. Don’t sign any medical/work authorizations

Never sign any insurance company medical releases/ work authorizations. The Defense Base Act insurance company is only looking for reasons to deny your claim. Why would you try to help the Defense Base Act insurance company deny your claim?

“But, the adjuster says they are going to have to deny my claim because I won’t cooperate with their investigation.”

Even if the DBA adjuster tells you that they have to deny your claim because you won’t “cooperate” with their investigation and provide a written statement or a signed authorization - - don’t give a statement or sign any authorizations. The DBA insurance adjuster is simply looking for reasons to deny your claim. Giving statements or signing authorizations is not going to make them or convince them to provide you with DBA benefits. At the end of the day, the only thing they are going to use your statement or authorization for is to find reasons to deny your claim.

My strong advice is this. If the DBA adjuster is telling you that they need you to give a statement or sign an authorization in order to provide you with DBA benefits - - it is time to lawyer-up. You need to find the very best DBA lawyer that you can. Thinking anything else is going to cause you and your family more agony and hardship. Read on, and I will explain.

44. Defense Base Act insurance carriers

Contractors covered by the DBA may purchase workers’ compensation insurance from private carriers approved by the DOL. Currently, the major providers of DBA insurance coverage are ACE-USA, American International Group (AIG), and CNA. The following are the largest Defense Base Act insurance companies or carriers with their percentage of DBA cases from 2000 - 12-31-2009:

AIG/Chartis/Insurance Company of the
State of Pennsylvania: 79%

ACE - USA:	9%
CNA:	9%
All others:	3%

As you see, AIG/ Chartis/ ICSP have the lion’s share of DBA cases. Of the 55,988 new DBA cases created between September 2001 and the end of December 2009, 54,449, or 97.3% were insured by one of these three companies or their subsidiaries. The largest single insurer of DBA cases during this period was the Insurance Company of the State of Pennsylvania, an AIG company that insured 43,901 DBA cases.

Our office represents hundreds of DBA workers. Because of this, we see the DBA insurance carriers close up. What is particularly striking to me when I see this list of DBA insurance carriers is: where is Zurich? We have a lot of cases against Zurich. Your claim may be against Zurich.

As it turns out, Zurich didn’t get into DBA insurance, at least not in a major way, until 2008 – 2009 time frame. The above stated list is between 2000 and 12-31-2009. Thus, the list doesn’t reflect the current reality of Zurich now being one of the major players in providing DBA coverage.

In addition, the list also doesn’t seem to reflect that CNA has really increased their market share above 9% in recent years. Today, we might have more cases with CNA than any other insurance company.

I need to point out another reality. Please understand that I can say this based upon my experience of dealing with DBA insurance adjusters on a daily basis. Not all DBA insurance companies and insurance adjusters are the same.