



**IRMI**<sup>®</sup>

**Workshop H**

***COVERING EMPLOYEES IN POSTWAR  
RECONSTRUCTION***

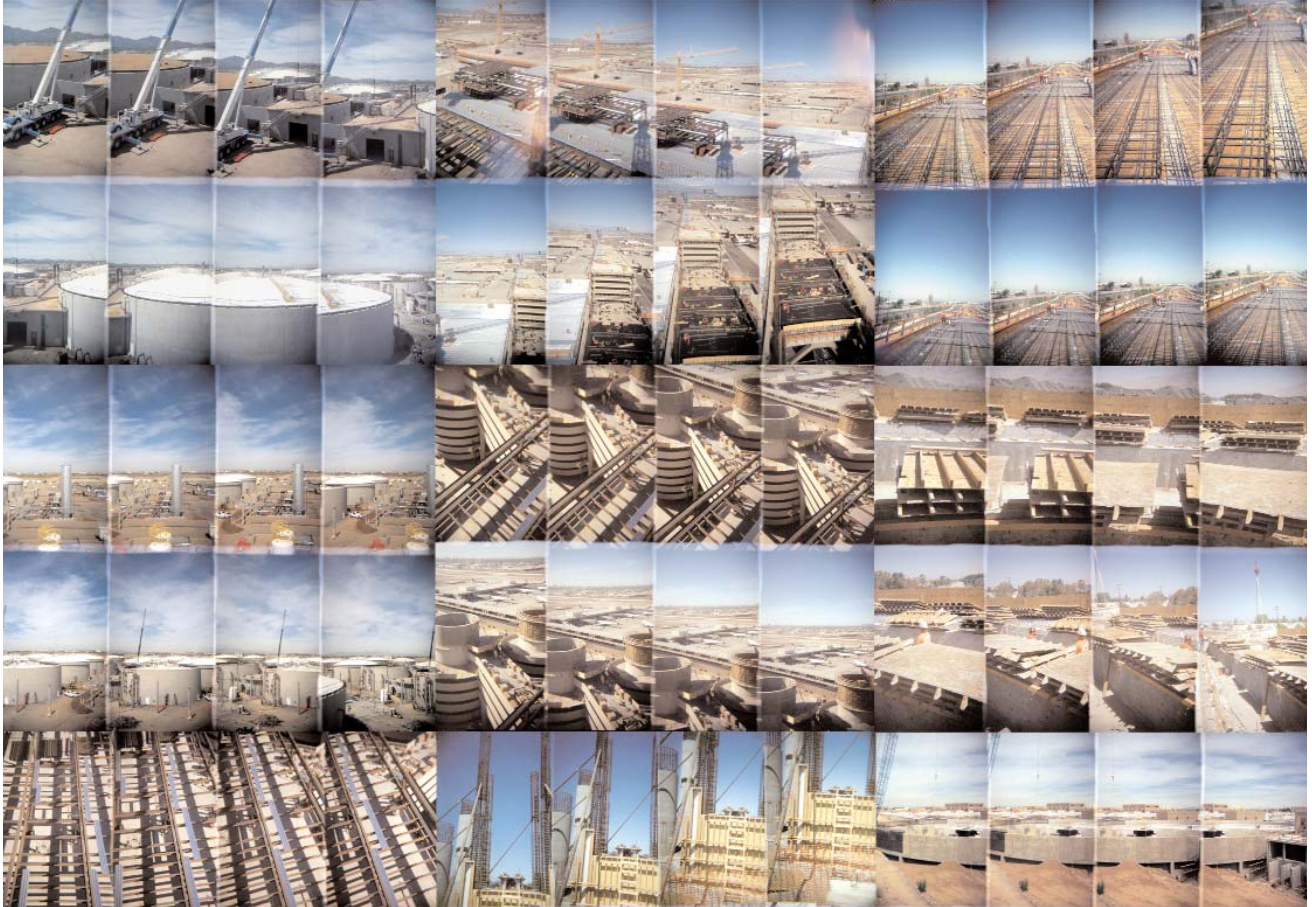
**Presented by**

**John E. Russo  
Assistant Vice President  
American International Underwriters**

***Tuesday, November 9, 1:30–3:00 p.m. and 3:30–5:00 p.m.***

**Workshop H**

# UNDERWRITING THE FUTURE OF CONSTRUCTION



At Construction Program Group we pride ourselves on the ability to respond to the needs of our clients. As a single-source Managing General Underwriter (MGU) dedicated exclusively to the construction industry, CPG is the go-to team of underwriting, loss control and claims specialists. We offer a comprehensive, creative approach to handling risk by providing innovative, custom-designed solutions tailored to our client's unique requirements.

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**John E. Russo**  
**AVP**  
**American International Underwriters**

Mr. Russo is presenting Workshop H, "Covering Employees in Postwar Reconstruction," on Tuesday afternoon. He is an assistant vice president in the Claim Management Department of AIG, located in New York. He focuses on workers compensation claims issues around the world. Mr. Russo has been with American International Group for 12 years and has 30 years of experience in the industry. He serves as the point person for all claims coordination at AIG as it pertains to Defense Base Act coverage. Prior to joining AIG, Mr. Russo worked for the Department of Labor based in its New York offices.

## ***Notes***

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# **COVERING EMPLOYEES IN POSTWAR RECONSTRUCTION**

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**John E. Russo**  
**American International Underwriters**

## **I. Background and History of Defense Base Act**

- A. Historical Origins
- B. Original Intentions of the Plan
- C. Reconstruction efforts in places like Japan, Korea, Vietnam and Bosnia after conflicts

## **II. Defense Base Coverage Today**

- A. What it does and does not cover
- B. Triggers to the policy
- C. Zone of Danger definition and example
- D. Waiver Process
- E. Role of Department of Labor
- F. Issue of Third Country and Local Nationals
- G. Issue of 24 Hour Coverage
- H. Government Body Doing Contract Issuing

## **III. What Insurers Need from Contractors and their Broker**

- A. Clear Definition of Assignment
- B. Payroll
- C. Breakdown of Employees
- D. Safety Measures on Location
- E. Use of Sub-Contractors

## **IV. Hot Button Countries/Regions for DBA Coverage**

- A. Iraq

- B. Afghanistan
- C. South American
- D. Examples of Assignments

**V. Claims/Servicing Issues**

- A. Post Incident Response
- B. Importance of Insurer's Own Claims Staff on the Ground
- C. Loss Mitigation Strategies
- D. Examples of Claims and Loss Trends

**VI. Future of DBA Coverage**

- A. Potential DBA based projects
- B. Changes to the Policy
- C. Role of Department of Labor

# **COVERING EMPLOYEES IN POSTWAR RECONSTRUCTION**

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## **History of the Defense Base Act**



- The concept of CIVILIAN CONTRACTORS is as old as the concept of armies themselves.
- The SPANISH AMERICAN WAR gave the United States its first overseas possessions.
- Early 20<sup>th</sup>-century U.S. military on campaigns in Latin American, Central America, and the Pacific.

## **History of the Defense Base Act**



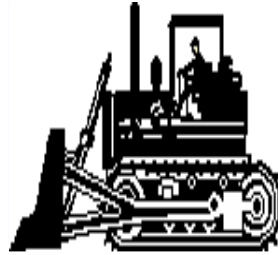
- Lend-lease program gives U.S. more military bases overseas.
- Congress realizes overseas bases possess unique liabilities for civilian workers.
- August 16<sup>th</sup>, 1941, U.S. Congress passes the Defense Base Act.

## History of the Defense Base Act



The **MARSHALL PLAN** and the **COLD WAR** see the addition to the DBA of public works contracts and the construction overseas of:

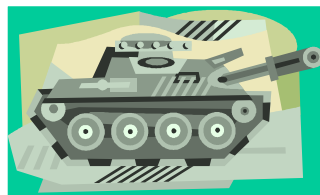
- Dams
- Schools
- Roads
- Harbors



## History of the Defense Base Act

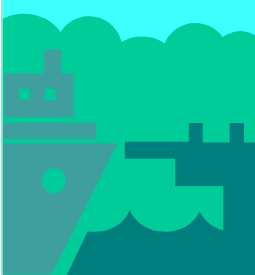


- Mutual Security Act
- Wide sweeping inclusion the defense of allies
- Executive orders for overseas involvement
- Dayton Peace Accords



### USL&H & Defense Base Act

- U.S. Longshore & Harbor Workers Compensation Act
- Provides framework for the administration of the Defense Base Act



### When is Defense Base Act required?

- Military bases or reservations outside the United States
- Specific U.S. government contract for work outside the United States
- Public works contract through an agency of the United States to be performed outside the continental United States
- Public works in or on any U.S. territory or possession

## TYPES OF WORK



- ❖ Weapons/Aircraft maintenance
- ❖ Construction
- ❖ Support services

## Who is covered under Defense Base Act?




- All U.S. citizen employees on the job site
- All third-country national employees on the job site(unless waiver obtained)
- All local national employees on the job site (unless waiver is obtained)

## Who is covered under Defense Base Act?




- All employees on the job site of all subcontractors
- If subcontractor doesn't have coverage, it becomes incumbent upon prime or letting contractor

**WAIVERS**



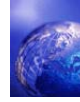
- Who can be granted a waiver?
  - Third-country nationals
  - Local nationals
- When can a waiver be granted?
  - When there is a local workers compensation program available
  - There is some other suitable forum for benefits

**WAIVERS**



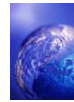
- How is a waiver granted?
  - The letting agency recommends that a waiver be granted.
  - The contractor makes an application to the U.S. Department of Labor.
  - The Secretary of Labor grants application.

## REGULATION



- ❖ U.S. Department of Labor
- ❖ Special DOL filings are required of insurer and insured
  - ❖ coverage
  - ❖ claims
- ❖ Penalties to insured for not providing DBA

## Unique Coverage Situations



- Reasonable recreation
- Zone of danger
- Arising out of and in the course of employment
- ***NOT 24-hour*** coverage!

## Medical & Evacuation



- ❖ Note that sickness is not covered by DBA as employees' health insurance kicks in here. Hired help need to check their medical insurance situation before coming over.
- ❖ Currently, the U.S. Army is coordinating medical evacuations but that is proving costly and will soon change.

## Completing DBA Coverage



- Accident and Emergency  
Sickness Medical
- Repatriation
- Medical Evacuation
- Accidental Death & Dismemberment
- Travel Assistance
- War Risk

## IRAQ



## On The Ground



- ❖ Suni Triangle is obviously the most dangerous area but trouble is also occurring in the south where the oilfields are—that's where a lot of the Halliburton/KBR folks are.
- ❖ The incident in Fallujah was not the first deaths of American workers but because of the graphic nature, it sent shockwaves throughout the world. These workers were transporting food to the troops.
- ❖ Big point here is that convoys are targets!!!
- ❖ Baghdad Airport is a very safe place to have a meeting and then leave. That's what American CEOs have done.

## Multiple Threats



- ❖ Weapon of choice over there is called the IED (Improvised Explosive Device) which can be dug into trenches the night before and then sent off.
- ❖ Snipers and bandits are other threats facing these contractors - while off base, contractors should wear flak jackets and never stroll!!!!
- ❖ Kidnappings are becoming a major concern for both U.S. and third-country nationals. Halliburton has been a recent victim with four employees kidnapped in mid-April.
- ❖ Bottom line is the nature of the terrain is very rough and will only get worse as summer approaches—130 degrees in the shade.

## The Claims Story



- ❖ Majority of claims coming in are from construction-type accidents.
- ❖ Some claims examples: Copilot for an American airline used to bring in supplies at Baghdad Airport. He is helping to off-load stuff and severely injures his knee, meaning he can't fly ever again. The broker advised the airline not to buy DBA coverage but this has been ruled a DBA incident. Now the client has a gap in coverage. Just because the pilot was only to be in Baghdad for a few hours does not make a difference.
- ❖ Another example is the jungles of Colombia where contractors working for the government to help eradicate cocaine crops were shot down by rebels and killed. Another company was then hired to go find them. Their plane was shot down and they are currently being held hostage.
- ❖ Another example is of an American contractor working in Turkey who hires a local national for a construction gig. This worker is approached by a U.S. military guard who asks him for ID. The Turk can't understand him and is then shot in the chest and dies.

## War Hazards Act



- Assumption of risk by the U.S. government for losses resulting from war
- Includes civil uprisings and terrorism in most cases



## ***Submission Requirements***



- ❖ Completed application
- ❖ Copy of contract award notification
- ❖ Description & location of operations
- ❖ Historical loss information
- ❖ Payroll information
- ❖ Details of transportation
- ❖ Waivers requested

## **Benefits payable under the Defense Base Act DBA**

- Medical treatment
- Temporary total disability TTD
- Temporary partial disability TPD
- Permanent partial disability PPD
- Permanent total disability PTD
- Funeral benefits
- Death benefits

### **What's NOT covered under the Defense Base Act?**

- Injuries incurred outside of the workplace or outside the scope of employment—There is NOT 24-hour coverage under DBA.
- Nonoccupational illnesses—i.e.: appendicitis, pancreatitis, non-accidental dental problems
- Injuries or illness arising out of willful misconduct
- Injuries or illness arising out of intoxication
- Injuries arising out of an act intended to harm oneself or another
- Injuries arising from unsanctioned or unreasonable recreational activities

### **Medical Benefits**

- Medical treatment under DBA is intended to cure, aid, and relieve those physical or mental conditions that are causally related to a traumatic injury, occupational disease, or aggravation of a pre-existing condition.
- The employer/carrier is required to furnish appropriate care for those conditions once a determination of liability is made.
- DBA entitles the injured worker to the initial free choice of physicians, provided liability for the specific injury has been established.
- Treatments payable under this title included the following:

## Medical Benefits

- Surgery
- Medical evacuation
- Vocational rehabilitation
- Physical rehabilitation
- Prosthesis
- Psychiatric treatment
- Diagnostic Testing, such as CAT, MRI, X-ray, etc.
- Hospitalization
- In-patient and out-patient treatment
- Prescription drugs



## Benefits for Temporary Total Disability

- The average weekly wage (AWW) is determined by the injured worker's earnings from the previous 52-week period.
- As of October 2004, the maximum weekly indemnity, also known as compensation rate, is U.S. \$1,047.16.
- The maximum compensation rate is adjusted annually each October.
- There is NO minimum weekly indemnity or compensation rate under the Defense Base Act.

### **Permanent Partial Disability Schedule Loss of Use**

- When a covered worker sustains an injury, permanent in nature, that does not preclude him from his regular employment, but is permanent in quality, he is entitled to an award based on percentage of disability, paid on a weekly indemnity basis, not to exceed the maximum U.S. \$1,047.16.
- These benefits are paid in addition to TTD or TPD.
- The statute contains a chart that lists all scheduled disabilities and the number of weeks of compensation payable.
- Note: there is no schedule for the back, neck, head, or internal organs.

### **Permanent Total Disability**

- When a covered worker sustains an injury, permanent in nature, that precludes him from any and all employment, he is entitled to weekly indemnity benefits, called permanent total disability or PTD.
- Weekly indemnity benefits {PTD} are payable after and in addition to temporary total disability benefits.
- This benefit is payable for the duration of the disability.
- Weekly indemnity benefits are computed on the basis of two-thirds of the injured workers average weekly wage (AWW), not to exceed the maximum of U.S. \$1,047.16.

### **Funeral Benefits**

- Reasonable funeral expenses not to exceed U.S. \$3,000

### **Death Benefits Widow & Children**

- A surviving spouse is entitled to 50% of the deceased workers average weekly wage (AWW), if there is a surviving child or children of the deceased, the additional amount of 16 2/3 percent (total 66 2/3%), not to exceed the maximum of U.S. \$1,047.16.
- If there is more than one child of the deceased worker, the children share and share alike, again, not to exceed the maximum of U.S. \$1,047.16.
- Children are eligible for benefits until age 18 or 23, if enrolled in an institution of higher learning above the high school level.
- If the widow dies or remarries, any remaining dependent children receive benefits at the higher child alone rate.