

**\*\*Preliminary Transcript\*\***

1 | Court Reporting Services, Inc. "This is a preliminary  
2 | HGO136000 transcript of a Committee  
3 | HEARING ON DEFENSE BASE ACT INSURANCE: Hearing. It has  
4 | ARE TAXPAYERS PAYING TOO MUCH? not yet been subject to a  
5 | Thursday, May 15, 2008, review process to ensure  
6 | House of Representatives, that the statements  
7 | Committee on Oversight and within are appropriately  
8 | Government Reform, attributed to the witness or  
9 | Washington, D.C. member of  
Congress who made them, to  
determine whether there are  
any  
inconsistencies between the  
statements within and what  
was actually  
said at the proceeding, or  
to make any other  
corrections to ensure the  
accuracy of the record."

10 | The committee met, pursuant to call, at 10:00 a.m., in  
11 | Room 2154, Rayburn House Office Building, the Honorable Henry  
12 | A. Waxman [chairman of the committee] presiding.

13 | Present: Representatives Waxman, Tierney, Watson,  
14 | Cooper, Sarbanes, Davis of Virginia, Duncan and Issa.

15 | Staff Present: Phil Barnett, Staff Director and Chief  
16 | Counsel; Karen Lightfoot, Communications Director and Senior  
17 | Policy Advisor; David Rapallo, Chief Investigative Counsel;  
18 | Brian Cohen, Senior Investigator & Policy Advisor; Margaret  
19 | Daum, Counsel; Mark Stephenson, Professional Staff Member;  
20 | Denise Wilson, Professional Staff Member; Earley Green, Chief

21 Clerk; Jen Berenho Iz, Deputy Clerk; Caren Auchman, Press  
22 Assistant; Ella Hoffman, Press Assistant; Leneal Scott,  
23 Information Systems Manager; Sam Buffone, Staff Assistant;  
24 William Ragland, Staff Assistant; Lauren Belive, Staff  
25 Assistant; and Miriam Edelman, Staff Assistant; Larry  
26 Halloran, Minority Staff Director; Jennifer Safavian,  
27 Minority Chief Counsel for Oversight and Investigations;  
28 Mason Alinger, Minority Legislative Director; John Brosman,  
29 Minority Senior Procurement Counsel; Ashley Callen, Minority  
30 Counsel; Emile Monette, Minority Professional Staff Member;  
31 Patrick Lyden, Minority Parliamentarian & Member Services  
32 Coordinator; Benjamin Chance, Minority Professional Staff  
33 Member; and Ali Ahmad, Minority Deputy Press Secretary.

34 Chairman WAXMAN. The meeting of the Committee will come  
35 to order.

36 One of the primary issues this Committee has tackled,  
37 this Congress, has been the waste and abuse of taxpayers'  
38 dollars from crop insurance in Kansas to an Air Force base on  
39 Ramstein, Germany. We have held over a dozen hearings into  
40 Federal programs that don't seem to be using taxpayer money  
41 wisely.

42 Today and next week we turn back to Iraq. Our subject  
43 today may seem obscure, insurance payments under the Defense  
44 Base Act of 1941, but the costs to the taxpayers are high.

45 The Defense Base Act requires contractors operating in  
46 Iraq and Afghanistan to purchase workers' compensation  
47 insurance for their employees. Three agencies--the State  
48 Department, USAID, and the Corps of Engineers--have  
49 approached this requirement responsibly. They conducted a  
50 competition to select an insurance carrier to offer this  
51 insurance at low rates to their contractors.

52 The Defense Department has taken a completely different  
53 approach. It allows contractors to negotiate their own  
54 individual insurance contracts. This approach has produced a  
55 boondoggle for the insurance companies and the private  
56 contractors and saddled the taxpayer with enormous costs.

57 Typically, insurers offering workers' compensation pay  
58 out as much in claims and expenses as they take in through

59 | premiums. The carriers make their real money off of  
60 | investment returns they earn during the interval between when  
61 | they receive premiums and pay claims and expenses.

62 | This has been the experience of the State Department,  
63 | USAID, the Corps of Engineers. In fact, the company that won  
64 | these contracts, CNA, has actually paid out 8 percent more in  
65 | claims and expenses than it has received in premiums.

66 | But these contracts represent only 10 percent of the  
67 | insurance market in Iraq and Afghanistan. Ninety percent of  
68 | the DBA market is controlled by the Defense Department, and  
69 | the experience in the DOD market has been completely  
70 | different.

71 | Under the DOD approach, private contractors negotiate  
72 | with private insurers, but bill the taxpayers for the costs.  
73 | This arrangement has been exceptionally lucrative for the  
74 | private insurers and the contractors. Over the last five  
75 | years, the four largest private insurers have made  
76 | underwriting profits of nearly 40 percent. That is almost  
77 | \$600 million in profits.

78 | The LOGCAP troop support contract--the largest single  
79 | contract in Iraq--illustrates what is going on. As a series  
80 | of charts will illustrate--and we will have them on the  
81 | screen to the right and the left--KBR paid an insurance  
82 | company, AIG, \$284 million for workers' compensation  
83 | coverage. Since KBR's contract is a cost-plus contract, this

84 | \$284 million premium plus a markup for KBR of up to \$8  
85 | million gets billed to the taxpayers bringing the total costs  
86 | to the taxpayers of \$292 million.

87 |         Out of this amount, just \$73 million actually goes to an  
88 | injured contractors, and AIG and KBR pocket over \$100 million  
89 | as profit.

90 |         Well, this is really disgraceful. The taxpayer is  
91 | paying nearly \$300 million to deliver less than \$75 million  
92 | in benefits to injured contractors. Rube Goldberg could not  
93 | design a more inefficient way to help employees wounded or  
94 | injured in Iraq.

95 |         The Defense Department as argued that the fact that Iraq  
96 | is a war zone justified the high costs of the insurance  
97 | program, but under the Defense Base Act, the taxpayer, not  
98 | the insurance company, has to pay the costs when a contractor  
99 | is wounded in action. The insurance companies only pay for  
100 | the types of injuries that could occur at any work site.

101 |         What makes the situation even worse is the people this  
102 | program is supposed to benefit--the insured employees working  
103 | for contractors. They have to fight the insurance company to  
104 | get their benefits. Delays and denials in paying claims are  
105 | the rule. Audit after audit has said that the Defense  
106 | Department model doesn't work, but still the Defense  
107 | Department won't change.

108 |         When Congress passed a law in 2006 requiring the Defense

109 | Department to rethink its approach, the Department reported  
110 | that it would be too expensive to collect the necessary data  
111 | and ``there are no compelling procurement reasons for DOD to  
112 | initiate any efforts.''

113 |       My staff prepared an analysis of the Defense Base Act,  
114 | which has been distributed to the members as a supplemental  
115 | memo, and based on new data from the insurers, it identified  
116 | 600 million reasons why the Defense Department should care.  
117 | That is the amount of the excessive profits that insurance  
118 | companies have earned at taxpayer expense in just five years.

119 |       I would ask that this memorandum and the documents it  
120 | cites to be made part of today's record. Without objection  
121 | that will be the order.

122 |       [The referenced material follows:]

123 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

124 Chairman WAXMAN. In the course of our hearings into  
125 Government waste, fraud, and abuse, we have learned to  
126 recognize the recipe for wasteful government spending, and  
127 all the key ingredients are here: an obscure Federal program,  
128 a procurement approach that leaves federal taxpayers, not  
129 private contractors, liability for the biggest risks, and  
130 officials who ignore warning after warning.

131 We need to stop this flagrant abuse of taxpayers'  
132 dollars, and this hearing is an important step in this  
133 process.

134 [Prepared statement of Chairman Waxman follows:]

135 \*\*\*\*\* INSERT \*\*\*\*\*

136 Chairman WAXMAN. Mr. Davis, I want to recognize you for  
137 an opening statement.

138 Mr. DAVIS OF VIRGINIA. Thank you, Mr. Chairman, for  
139 holding this hearing on the Defense Base Act Insurance  
140 Program. The DBA provides vital insurance coverage for the  
141 brave men and woman employed by the companies performing  
142 critical parts of our Government's overseas operations around  
143 the globe.

144 This once obscure program has dramatically expanded  
145 since 2003 with an unprecedented number of contractors  
146 working under wartime conditions supporting our efforts in  
147 both Iraq and Afghanistan. Thousands of contracts and  
148 subcontracts throughout the world are subject to DBA  
149 insurance requirements.

150 Agencies and the contractors use several models to  
151 acquire the mandatory coverage. In general, Defense  
152 Department contractors purchase DBA insurance on their own  
153 and recover their costs under the terms of the contract. In  
154 contrast, the Department of State preselects one primary  
155 insurance carrier to provide the DBA insurance at a fixed  
156 rate for all of its various covered contracts.

157 A few years ago the Army Corps of Engineers launched a  
158 pilot program based on the State Department model, and the  
159 Corps is here today to discuss that trial effort. Recently,  
160 the Congressional Budget Office suggested DOD adopt that



161 | single source method, but that approach may not be a panacea.

162 |       Efficiencies and cost controls possible at lesser levels  
163 | of operations may be overwhelmed by the vastly increased  
164 | scale of the Pentagon's DBA responsibilities, which dwarf  
165 | those of the State and the Corps both in size and the  
166 | diversity of requirements. The CBO acknowledged such in an  
167 | arrangement that presents a number of challenges.

168 |       It is not clear that any insurance provider would be  
169 | willing to underwrite DBA insurance for all DOD contractors,  
170 | or the contractors who would be willing to participate on  
171 | those terms. Concentrating so large a portion of current DBA  
172 | coverage in the hands of one carrier could have the perverse  
173 | effect of driving carriers out of the market, the resulting  
174 | loss of competition risks making it easier to raise rates.  
175 | The cost of initiating and administering such a centralized  
176 | DOD-run program could further endanger any savings for any  
177 | preselected master contract.

178 |       Mandating a single source for all DOD contractors to  
179 | obtain this insurance may in fact result in economies of  
180 | scale and lower cost for the insurance in Iraq and  
181 | Afghanistan where risks are higher, but it doesn't take into  
182 | account the myriad places around the globe where Federal  
183 | contracts are performed, and the risks are much lower.

184 |       In those places where operational risks are lower, the  
185 | cost of DBA insurance will almost certainly go up under a

186 | single-source contract. The effect is like pushing on an  
187 | inflated balloon. If you squeeze the balloon in one place, a  
188 | bulge has to pop out somewhere else.

189 |         This is a good opportunity for us to conduct some real  
190 | oversight into whether we are spending the taxpayers' dollars  
191 | in the most costs-effective manner. If there is a better,  
192 | cheaper way to obtain DBA insurance, we need to pursue that  
193 | route.

194 |         However, Mr. Chairman, I think it is important we  
195 | conduct balanced oversight, and that means bearing in mind  
196 | this program covers thousands of contractors performing work  
197 | in almost every country in the world. Viewing the entire DBA  
198 | program through the lens of one audit of one contractors,  
199 | even if the contractor is KBR, a former Halliburton  
200 | subsidiary, risks missing the larger picture.

201 |         The problem appears to be as much with Government  
202 | controls and oversight of this increasingly expensive program  
203 | as it does with any alleged contractor overcharges.  
204 | Oversight focused on the general case, not the outlier, is  
205 | far more likely to yield reforms that lead to meaningful  
206 | savings.

207 |         Thank you again, and we look forward to today's  
208 | testimony.

209 |         [Prepared statement of Mr. Davis of Virginia follows:]

210 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

211 Chairman WAXMAN. Thank you very much, Mr. Davis.

212 Mr. Cooper?

213 Mr. COOPER. Thank you, Mr. Chairman. I want to  
214 congratulate you and the Committee for the latest in the  
215 remarkable series of hearings that really benefit the  
216 taxpayer.

217 Taxpayers are really upset that they don't feel that  
218 they are getting more value for their taxpayer dollars. The  
219 latest book reviewed in The Wall Street Journal said that, on  
220 average, taxpayers get about 24 cents of value for every  
221 dollar they pay in taxes. That obviously means 76 cents in  
222 something else, and a lot of that is waste, fraud, and abuse.

223 So I appreciate your looking into this little known area  
224 of the law. I think that if this were used as a case study  
225 in business school in pretty much any business school in  
226 America, the students would be appalled.

227 I have been teaching at Vanderbilt Business School now  
228 for over a decade, and I think the students at the ON School  
229 of Management in Nashville, Tennessee, would be able to craft  
230 a much better system than the one we have today.

231 So let's get the facts out, and let's see how we can  
232 help the taxpayer. Thank you, Mr. Chairman.

233 [Prepared statement of Mr. Cooper follows:]

234 \*\*\*\*\* INSERT \*\*\*\*\*

235 Chairman WAXMAN. Thank you, Mr. Cooper.

236 Ms. Watson?

237 Ms. WATSON. Thank you, Mr. Chairman, for holding today's  
238 hearing concerning the importance of safeguarding taxpayers  
239 from incurring the costs of high insurance premiums related  
240 to the Defense Base Act.

241 As you all know, DBA insurance is required for all  
242 private contractors and subcontractors who do business  
243 overseas with any Government agency currently. Our Nation's  
244 state of affairs has us occupying Iraq and Afghanistan where  
245 we rely heavily on large numbers of Government contractors  
246 which, consequently, has increased the amount spent on DBA  
247 insurance by the hundred millions of dollars.

248 However, both the Federal Government and insurers do  
249 accept the risk of injury or death to contractors, but the  
250 Government absorbed the entire cost of injury or death if it  
251 is related to war risk hazards.

252 Since the start of the wars in Afghanistan and Iraq,  
253 there have been 1,292 contractors killed and another 9,610  
254 wounded as a result of their employment with various  
255 Government agencies, although DBA insurance is meant to  
256 protect contractors and their families by providing death,  
257 disability, and medical benefits for injuries sustained  
258 during the course of employment. This Committee has found  
259 that adequate controls weren't in place to ensure the cost of

260 DBA insurance were minimized.

261 In order to make sure that the taxpayer dollar is used  
262 wisely and effectively, potential cost-saving measures should  
263 be explored to relieve the burden on the taxpayer from paying  
264 unusually high and unfair insurance premiums.

265 Thank you, Mr. Chairman. I yield back.

266 [Prepared statement of Ms. Watson follows:]

267 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

268 Chairman WAXMAN. Thank you very much, Ms. Watson.  
269 Mr. Sarbanes, do you want to pass on the opening  
270 statement?

271 Mr. SARBANES. Yes.

272 Chairman WAXMAN. We will get to the witnesses. Thank  
273 you.

274 We are pleased to have the following people here to  
275 testify before us: Mr. Richard Ginman, Deputy Director of  
276 Defense Procurement and Acquisition Policy, U.S. Department  
277 of Defense; Mr. Shelby Hallmark, Director of Workers'  
278 Compensation Programs, U.S. Department of Labor; Mr. William  
279 H. Moser, Deputy Assistant Secretary of Bureau for  
280 Administration Logistics Management, U.S. Department of  
281 State; Mr. James Dalton, P.E., Chief, Engineering and  
282 Construction, U.S. Corps of Engineers; Mr. Joseph P. Mizzoni,  
283 Deputy Auditor General for Acquisition and Logistics, U.S.  
284 Army Audit Agency; and Mr. John K. Needham, Director,  
285 Acquisition and Sourcing Management Issues, Government  
286 Accountability Office.

287 We are pleased to welcome all of you to our hearing  
288 today. It is the practice of this Committee that all  
289 witnesses that testify before us do so under oath, so if you  
290 have no objections, I would like to ask you to please stand  
291 and raise your right hands.

292 [Witnesses sworn.]

293 Chairman WAXMAN. Thank you. The record will indicate  
294 that each of the witnesses has answered in the affirmative.

295 Your prepared statements that have been submitted to us  
296 will be in the record in full. We would like to ask, if you  
297 would, to try to limit the oral presentation to around five  
298 minutes. We have a clock. When it is turned on, it will be  
299 green for four minutes, and then turn yellow for one minute,  
300 and after five minutes will be red. When you see the red  
301 light, it would be a good time to summarize and conclude.

302 Mr. Ginman, we are pleased to have you, and there is a  
303 button on the base of the mic, be sure it is on. We are  
304 looking forward to hearing from you.



305 | STATEMENTS OF RICHARD GINMAN, DEPUTY DIRECTOR FOR DEFENSE  
306 | PROCUREMENT AND ACQUISITION POLICY, OFFICE OF THE DEPUTY  
307 | UNDER SECRETARY OF DEFENSE; SHELBY HALLMARK, DIRECTOR, OFFICE  
308 | OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR;  
309 | WILLIAM H. MOSER, DEPUTY ASSISTANT SECRETARY OF STATE FOR  
310 | LOGISTICS MANAGEMENT, UNITED STATES DEPARTMENT OF STATE;  
311 | JAMES C. DALTON, CHIEF OF ENGINEERING AND CONSTRUCTION, U.S.  
312 | ARMY CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY; JOSEPH P.  
313 | MIZZONI, DEPUTY AUDITOR GENERAL FOR ACQUISITION AND  
314 | LOGISTICS, UNITED STATES ARMY AUDIT AGENCY; AND JOHN K.  
315 | NEEDHAM, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT  
316 | ISSUES, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE

317 | STATEMENT OF RICHARD GINMAN

318 |       Admiral GINMAN. Chairman Waxman, Ranking Member Davis,  
319 | distinguished members of the Committee, thank you for the  
320 | opportunity to appear before you today to discuss Defense  
321 | Base Act insurance. I am Dick Ginman, and I serve as Deputy  
322 | Director, Defense Procurement of Acquisition Policy in the  
323 | Office of the Under Secretary of Defense for Acquisition,  
324 | Technology, and Logistics. I have more than 37 years in  
325 | government and commercial business in a variety of

326 acquisition positions.

327 Before assuming this job, I held several private sector  
328 positions, including Vice President of a line of business at  
329 General Dynamics. I also served in the United States Navy  
330 for 30 years, retiring as a Rear Admiral, Supply Corps.

331 In the past, DOD permitted its overseas contractors to  
332 purchase the required DBA insurance from any insurance  
333 company approved for this purpose by the Department of Labor.

334 In our April 1996 Report to Congress, we compared the State  
335 Department's and AID's DBA rates to a sampling of rates paid  
336 by DOD contractors. We found that in most cases our rates  
337 were lower than those paid by State and AID, sometimes  
338 significantly lower.

339 We found that many firms purchased DBA insurance at very  
340 favorable rates, as riders to their regular state-side  
341 Workers' Compensation insurance programs. In addition,  
342 except for a few isolated instances DOD contractors were not  
343 having problems obtaining DBA coverage.

344 We were concerned that the umbrella contracting approach  
345 did not provide an incentive for improving a company's safety  
346 record. Since all companies pay the same rate, there is no  
347 incentive for a company to be proactive about keeping rates  
348 down through better safety records, and thus be more  
349 competitive in the marketplace.

350 Further, with a single contract with one rate, we would

351 | not be able to take advantage to the lower premiums available  
352 | to industry for the majority of areas to which we were  
353 | sending contractors at the time. After 9/11 and during the  
354 | beginning of the Iraq War, however, we received complaints  
355 | from companies doing business in Iraq concerning DBA  
356 | insurance. They complained that the rates for the insurance  
357 | had increased significantly going from \$4 to over \$20 per  
358 | \$100 of employee's salary, and in some cases they could not  
359 | obtain DBA insurance at all.

360 |         Also, minimum premium payments of \$15,000 to \$25,000  
361 | dollars hit small businesses particularly hard. To determine  
362 | if a single mandatory contract approach for DBA would provide  
363 | cost savings for DOD, we sponsored a pilot program with the  
364 | U.S. Army Corps of Engineers. Although the Corps' pilot  
365 | program was competed, only CNA International submitted and  
366 | offer. CNA's initial contract established worldwide DBA  
367 | insurance rates of \$5 to \$8.50 per employee salary for  
368 | services and construction, respectively. which were below the  
369 | range of \$10 to \$21 GAO cited for contract workers in Iraq in  
370 | their 2005 Report.

371 |         While the Corps found that several small and local  
372 | businesses were now able to obtain lower DBA insurance rates  
373 | for Iraq and obtained insurance where they were previously  
374 | denied, the Corps also discovered that in certain non-war  
375 | zone areas, the umbrella DBA rates were sometimes higher than

376 | what individual contractors were previously obtaining. This  
377 | is expected under the concept of risk-pooling where lower  
378 | risk areas would pay a higher premium than the higher risk  
379 | areas.

380 |         In April of 2008, CNA and the Corps agreed to a contract  
381 | modification setting up two additional labor categories for  
382 | security and for aviation with materially higher rates. This  
383 | occurred because CNA was incurring significant losses in the  
384 | war zone such as Iraq and that it could no longer continue  
385 | contract performance at the current rates. They agreed to a  
386 | \$10.30 and a \$17.50 rate per \$100 of employee's salary for  
387 | security in aviation, respectively, which are similar to the  
388 | same rates at State.

389 |         A pilot program goal is to provide data to build and to  
390 | present to our office in the Army a formal business case to  
391 | determine if the Pilot should be expanded Army or DOD-wide.  
392 | To help the Corps develop such a case, the Army Audit Agency  
393 | recently agreed to review the results of the pilot program to  
394 | determine if it warranted permanent placement at the Corps  
395 | and warrant further extension into the Army.

396 |         To build this business case, the Department will pursue  
397 | collecting DBA data from the top 50 defense contractors.  
398 | Once Army's audit review is complete and we have collected  
399 | the additional data, the Corps will develop the business  
400 | case, and we will review the results to determine the

401 Department's next steps.

402 Mr. Chairman, I thank the Committee for your interest in  
403 our efforts, and we would be happy to address any questions.

404 [Prepared statement of Admiral Ginman follows:]

405 \*\*\*\*\* INSERT \*\*\*\*\*

406 Chairman WAXMAN. Thank you very much. We have  
407 questions, but we will wait until all the witnesses have  
408 testified first.

409 Mr. Hallmark?

410 STATEMENT OF SHELBY HALLMARK

411 Mr. HALLMARK. Good morning, Mr. Chairman, and Ranking  
412 Member Davis and other members. I am Shelby Hallmark. I am  
413 the Director of OWCP, the Office of Workers' Compensation  
414 Programs at the Department of Labor. I have served in that  
415 position, or its Deputy, since 1990.

416 The Longshore and Harbor Workers' Compensation program  
417 is the smallest of OWCP's programs. Our Longshore Division  
418 oversees the Defense Base Act enacted, as we know, in 1941 to  
419 provide workers' compensation protections for employees of  
420 Federal contractors overseas. Our Federal Employees'  
421 Compensation Division runs the War Hazards Compensation Act,  
422 providing Federal reinsurance for DBA losses incurred as a  
423 result of war.

424 The DBA is a private sector insurance driven workers'  
425 compensation system similar to those run by each state.  
426 DOL's role is oversight. We assure that Federal contractors  
427 overseas procure the necessary DBA insurance coverage. We  
428 oversee insurers' handling of claims activities and issuance

429 | of payments, and we resolve disputes between insurers and  
430 | employees when they arise.

431 |         DOL has no authority to regulate insurance premiums  
432 | under the Longshore and DBA statutes. In effect, the system  
433 | is self-regulating. The market determines premiums, and  
434 | purchasers, contractors, or Federal contracting agencies can  
435 | negotiate for better prices. Most claims are resolved  
436 | without Federal intervention.

437 |         In 2003, contracting subject to DBA rose dramatically.  
438 | DOL launched a major effort to educate the many players in  
439 | the system, insurers, contracting agencies, contractors, and  
440 | attorneys, defense and plaintiff, on their roles and  
441 | responsibilities. We sponsored numerous seminars and round  
442 | tables aimed at clarifying requirements, addressing the  
443 | special problems arising in the Middle East environment, and  
444 | sharing best practices.

445 |         Although all participants in the DBA system were  
446 | challenged by the unique difficulties presented in Iraq and  
447 | Afghanistan, we believe compliance assistance effort and the  
448 | efforts of our stakeholders have improved the extension of  
449 | DBA coverage and the delivery of services to workers.

450 |         Two of the three major insurers have opened claims  
451 | processing offices in the Middle East to over come distance,  
452 | language, and cultural barriers, and have translated forms  
453 | and brochures into Arabic. While claims processing is

454 | elongated due to distance and war zone conditions, overall  
455 | outcomes are improving. Contracting agencies have acted to  
456 | ensure that contractors and subcontractors have DBA coverage,  
457 | and claims filing compliance has risen.

458 |         The volume of DBA claims from Iraq and Afghanistan rose  
459 | quickly from 2003 through 2007. DOL staff are acutely aware  
460 | of the significant numbers of both American and foreign  
461 | citizens injured or killed in the course of DBA employment,  
462 | and our staff have worked extremely hard to ensure that the  
463 | program functions as intended for these workers.

464 |         While it appears that Iraq/Afghanistan claimants are  
465 | somewhat less successful in obtaining benefits than domestic  
466 | claimants in the Longshore program, we believe this  
467 | discrepancy is largely explained by the unique circumstances  
468 | involved in implementing an insurance program in a conflict  
469 | zone where just finding and communicating with injured  
470 | workers can be a huge challenge.

471 |         I am proud to note, however, that Iraq/Afghanistan cases  
472 | that do enter DOL's dispute resolution system receive very  
473 | comparable outcomes, indicating that our efforts to reach out  
474 | to these claimants are working.

475 |         My written testimony provides examples of complex cases  
476 | involving multiple vests of foreign nationals in which DOL  
477 | was able to achieve relatively rapid payment of the large  
478 | majority of the families involved, despite significant



479 | obstacles. Our New York office worked very hard to get  
480 | benefits to scores of Nepalese, Iraqi, and Turkish families  
481 | in just these three cases.

482 |         Mr. Chairman, you voiced a specific interest in  
483 | post-traumatic stress disorder, PTSD cases. While the major  
484 | insurers have generally handled DBA claims the same way they  
485 | do domestic workers' compensation claims, PTSD presents  
486 | challenges that are not normally faced in workers'  
487 | compensation.

488 |         In 2006, we determined that additional focus was needed  
489 | in this area, specifically in DBA community. Relatively  
490 | clear-cut PTSD cases were being reported but not getting  
491 | appropriate resolutions swiftly enough. Employers were not  
492 | providing counseling services that military members get, and,  
493 | of course, these workers did not receive VA services.

494 |         We, of course, push for proper resolutions in the  
495 | individual cases we became aware of, but we also took action  
496 | systemically working closely with insurers to raise awareness  
497 | of PTSD issues and encourage best practices.

498 |         My written testimony outlines OWCP's implementation of  
499 | the War Hazards Compensation Act. This reinsurance program,  
500 | paid from Federal entitlement funds, is being administered  
501 | effectively. We have received less than 300 claims for  
502 | reimbursement from insurers so far. We expect many more to  
503 | be filed in the coming years.

504 Thank you for this opportunity, and I will be glad to  
505 answer questions.

506 [Prepared statement of Mr. Hallmark follows:]

507 \*\*\*\*\* INSERT \*\*\*\*\*

508 Chairman WAXMAN. Thank you very much, Mr. Hallmark.  
509 Mr. Moser?

510 STATEMENT OF WILLIAM MOSER

511 Mr. MOSER. Chairman Waxman, Representative Davis, and  
512 distinguished members of the Committee, thank you for the  
513 opportunity to appear before you today to discuss Defense  
514 Base Act insurance and the War Hazards Compensation Act  
515 program. As the Deputy Assistant Secretary for Logistics  
516 Management, the Department of State's central contracting  
517 authority reports to me, and I am happy to address the  
518 Department of State's contracting for DBA insurance.

519 The Defense Base Act of 1941 mandates that Federal prime  
520 and subcontractors provide and maintain a broad form of  
521 workers' compensation insurance coverage for their personnel  
522 working on construction and service contracts outside the  
523 United States. The cost of DBA insurance is ultimately borne  
524 by the contracting agency, often, as we have heard here  
525 today, as a reimbursable cost. The Department's goal,  
526 however, is to ensure that all of our contractors, both large  
527 and small, are able to obtain legally compliant coverage at a  
528 manageable cost.

529 DBA insurance covers U.S. citizens as well as host  
530 country and third country nationals who are working under

531 State Department contracts. A waiver of DBA insurance is  
532 often available for local national employees who are employed  
533 under a Department contract if they are covered by a local  
534 host country workers' compensation program that provides  
535 effective compensation for work-related illnesses and  
536 injuries.

537 In Iraq and Afghanistan, however, the lack of an  
538 effective local worker compensation program requires that DBA  
539 coverage be extended to local nationals. All Iraqi and  
540 Afghani citizens working under State Department contracts in  
541 these countries are covered under the DBA. When any employee  
542 working under a Department of State contract is injured or  
543 killed, a determination must be made by the insurance carrier  
544 and, if there is a dispute the Department of Labor, as to the  
545 reason for injury or death and whether it might be covered by  
546 the DBA. The Department of Labor, subsequently, will  
547 determine eligibility for reimbursement under the War Hazards  
548 Compensation Act program, which we are very proud to work  
549 with.

550 Prior to 1990, the Department of State required  
551 contractors to obtain DBA insurance independently, and rates  
552 varied based on the contractor's number of employees, claims  
553 history, and work location. Small businesses with limited  
554 overseas experience often found it difficult to obtain DBA  
555 insurance, or were required to pay very high premiums. The

556 | people that were working in our Authority at that time really  
557 | talked about how many times they had to pay an entry fee,  
558 | essentially, to get DBA coverage.

559 |         In 1990 a State Department Office of Inspector General  
560 | audit concluded that the Department's DBA insurance costs  
561 | could be significantly reduced if a blanket insurance  
562 | contract were awarded to a single insurance provider.  
563 | Subsequently, in an effort to control costs and provide  
564 | uniform DBA insurance rates and coverage for all our  
565 | contractors, both large and small, the Department  
566 | competitively awarded a multi-year contract in 1991 to CIGNA  
567 | Property and Casualty Insurance Company.

568 |         The follow-on DBA insurance contract was completed in  
569 | 2000 with four offerors competing: CIGNA, AIU, Ace  
570 | International, and CNA. The contract was awarded to CNA in  
571 | 2001 and remains in place today. So this is the same  
572 | contract that we have had since 2001, is the one we are using  
573 | today in Iraq and Afghanistan.

574 |         This blanket contract business model has stabilized  
575 | rates from 2000 to 2007. Premium rates were unchanged: \$3.87  
576 | to \$6.45 per \$100 of employee salary for services and \$5 to  
577 | \$8.34 of employee salary for construction. In July 2007, the  
578 | CNA contract was extended for one year with two additional  
579 | specific service categories, which Mr. Ginman has also  
580 | addressed, services without aviation and security services

581 | with aviation. Due to the high risk in claims associated  
582 | with these categories, CNA proposed higher rates for these  
583 | categories: \$10.30 per 4100 of employee salary for security  
584 | services without aviation and \$17.50 for services with  
585 | aviation.

586 |         These rates became effective with the July extension,  
587 | however, since most contractor policies are not renewed until  
588 | June 2008, the effect of these rates have not yet been  
589 | realized by our contractors or by the Department.

590 |         In April 2008, the Department issued a synopsis in  
591 | FedBizOpps announcing the availability of a fully competitive  
592 | solicitation to continue to provide DBA insurance coverage.  
593 | That solicitation is expected to be issued later this month.

594 |         Mr. Chairman, thank you and the members of the Committee  
595 | for your interest in DBA insurance, and I would be happy  
596 | later to address your questions.

597 |         [Prepared statement of Mr. Moser follows:]

598 | \*\*\*\*\* INSERT \*\*\*\*\*

599 Chairman WAXMAN. Thank you very much, Mr. Moser.

600 Mr. Dalton?

601 STATEMENT OF JAMES C. DALTON

602 Mr. DALTON. Chairman Waxman, and members of the  
603 Committee, thank you for the opportunity to testify before  
604 you today concerning the methods used by the Corps of  
605 Engineers to reduce DBA insurance costs, to the extent which  
606 other methods are used and how successful they have been, and  
607 the lessons learned from these efforts.

608 Due to the increase in DBA insurance in 2003, the Corps  
609 of Engineers and the Office of the Secretary of Defense  
610 agreed to conduct a Centrally Managed DBA Insurance pilot  
611 program, centralizing the management and acquisition of  
612 Defense Base Act insurance for Corps contracts worldwide, and  
613 modeled the USAID and the Department of State.

614 The pilot objectives were the following: make DBA  
615 insurance affordable through economies of scale; leverage  
616 lessons learned under DBA insurance undertaken by USAID and  
617 the State Department; pool the risk; centrally manage DBA  
618 insurance; and develop a business case analysis.

619 This pilot, which is a series of two contracts, made the  
620 DBA insurance carrier the party responsible for dealing  
621 directly with Corps contractors requiring DBA insurance

622 during performance of their contract. Insurance rates were  
623 based on category of labor and considered all risks and all  
624 possible geographic locations of contract performance,  
625 including hostile and non-hostile environments and safety  
626 considerations.

627 The pilot provided a single entry point for coverage and  
628 access to DBA insurance for all Corps contractors and  
629 subcontractors at all tiers, no matter the business size or  
630 location of the firm requiring insurance. Insurance premiums  
631 were paid directly to the insurance carrier based on the  
632 rates in the Corps DBA insurance contract.

633 Under the pilot, there were no minimum premiums paid by  
634 contract. When contractors independently acquired DBA  
635 insurance coverage, they could expect to pay a minimum  
636 premium of \$15,000 to \$25,000 per contract. This adversely  
637 affected overall contract pricing and likely precluded small  
638 and local business firms from competing on supporting Global  
639 War on Terrorism programs.

640 The first Corps DBA contract was solicited on a  
641 competitive best value basis and was awarded in November 2005  
642 to the sole offeror, CNA insurance. The terms of the  
643 contract was one year and provided a coverage for services  
644 and construction labor at a premium of \$5 per \$100 of  
645 employee labor for services, and \$8.50 per \$100 for  
646 construction labor. These rates were well below the 2005 GAO



647 Report which stated the contractors performing work in Iraq  
648 were paying DBA insurance rates between \$10 and \$21 per \$100  
649 of employee salary cost.

650 The Phase I contract premiums proved lower than the  
651 GAO's report, and the Corps continued to a Phase II contract  
652 to gather additional data for the business case. The Phase  
653 II pilot contract was competitively solicited on the lowest  
654 price technically acceptable basis, and again one offer was  
655 received from CNA Insurance. The proposed Phase II premiums  
656 continued to decline with the CNA premiums now at \$3.50 per  
657 \$100 for services, and \$7.25 per \$100 for employee labor  
658 costs on construction.

659 A Phase II pilot contract was awarded to CNA on March  
660 31st, 2007. During performance of the contract, two  
661 additional labor categories were added for security and  
662 aviation. The contract also included standard insurance  
663 industry definitions of all labor categories. The stand  
664 definitions clarify the labor category applicable to the work  
665 performed in the contract and the rate applied for insurance.

666 In March 2008, the contract was extended with the CNA  
667 insurance until 2008 to allow the Corps to solicit and obtain  
668 an award a follow-on DBA contract.

669 A major success of the Corps' centralized DBA insurance  
670 is the ability to reach all tiers of subcontractors. The  
671 smallest subcontractor in Iraq has access to DBA insurance.

672           To close, I would like to thank you once again, Chairman  
673 Waxman, for allowing the Corps the opportunity to appear  
674 before this Committee today. I will be glad to answer any  
675 questions you or the members of the Committee may have.

676           [Prepared statement of Mr. Dalton follows:]

677           \*\*\*\*\* INSERT \*\*\*\*\*

678 Chairman WAXMAN. Thank you very much, Mr. Dalton.

679 Mr. Mizzoni?

680 STATEMENT OF JOSEPH P. MIZZONI

681 Mr. MIZZONI. Mr. Chairman, Mr. Davis, and distinguished  
682 members of the Committee, thank you for the opportunity to be  
683 here today to discuss our work related to Defense Base Act  
684 insurance for LOGCAP operations. I have submitted my full  
685 statement to the Committee, and I ask that it be made part of  
686 the hearing record.

687 I have been with the U.S. Army Audit Agency for 31 years  
688 and became the Deputy Auditor General for Acquisition and  
689 Logistics in October 2005. The Agency is the Army's internal  
690 audit organization, and throughout our history we have  
691 deployed with our troops in Vietnam and Bosnia, during Desert  
692 Shield and Desert Storm, and lately in support of Operations  
693 Iraqi Freedom and Iraqi Enduring Freedom.

694 In December 2004, General Casey, then Commander of the  
695 Multinational Force Iraq, asked us to help him reduce the  
696 overall costs of LOGCAP operations supporting OIF. To help  
697 General Casey achieve his goal, we established two audit  
698 objectives. These objectives were to determine if overall  
699 management of the LOGCAP program was adequate and determine  
700 if LOGCAP operations was providing the needed services in a

701 | cost-effective manner.

702 |         Our LOGCAP audits have covered many topics to include  
703 | Defense Base Act insurance. DBA insurance is basically  
704 | workers' compensation insurance. It provides benefits to  
705 | contractor and subcontractor employees who are injured or  
706 | killed as the result of normal working conditions while  
707 | working on U.S. Government-financed contracts performed  
708 | outside the United States. Because DBA insurance is required  
709 | by law and because a LOGCAP contract is primarily a  
710 | cost-reimbursable contract, the cost of this insurance is  
711 | openly paid by the U.S. Government.

712 |         The objective of DBA audit was to determine if adequate  
713 | controls were in place to minimize costs paid for DBA  
714 | insurance under the LOGCAP contract. We concluded that the  
715 | Army was at risk at paying more than needed. Here is what we  
716 | found:

717 |         DBA insurance represented a significant cost of the  
718 | LOGCAP contract. The LOGCAP contractor paid about \$284  
719 | million in premiums for DBA insurance between fiscal year  
720 | 2003 and fiscal year 2005. The premiums increased steadily  
721 | each year from about \$5 million in fiscal year 2003 to about  
722 | \$165 million in fiscal year 2005.

723 |         DBA rates, which were a percentage of the contractor's  
724 | total payroll costs for both contractor and subcontractor  
725 | employees, increased substantially between fiscal year 2003

726 | and fiscal year 2004. These rates then declined in fiscal  
727 | year 2005 and fiscal year 2006.

728 |         The premium increases and year-to-year rate fluctuations  
729 | seemed inconsistent with the risk associated with providing  
730 | workers' compensation and with the contractor's good safety  
731 | record.

732 |         The estimated amount of claims expected to be paid was  
733 | substantially less than the DBA premiums the Army paid.  
734 | Excessive DBA premiums may have been paid because DBA rates  
735 | are applied against total payroll costs. However, benefits  
736 | paid under the DBA program are based on an employee's average  
737 | weekly wage and are capped by statute. Many of the  
738 | contractor's employees earned wages that exceeded the cap.

739 |         The LOGCAP contractor pays many of its employees danger  
740 | pay for working in areas such as Iraq and Kuwait. As a  
741 | result, the LOGCAP contractor paid premiums on the danger pay  
742 | component of the payroll. To address these issues, we  
743 | recommended that the Office of the Assistant Secretary of the  
744 | Army for Acquisition, Logistics and Technology use more  
745 | cost-effective means of providing workers' compensation  
746 | insurance.

747 |         Although the Office didn't fully agree with all parts of  
748 | the recommendation, the actions it proposed met the intent of  
749 | the recommendation.

750 |         In closing, I would like to thank you once again, Mr.

751 Chairman, for inviting me to appear before this Committee.  
752 DBA insurance under contracts issued by the U.S., we are  
753 currently reviewing DBA insurance under contracts issued by  
754 the U.S. Army Command in Kuwait, and we have also recently  
755 agreed to review the cost-effectiveness of the Corps of  
756 Engineers DBA pilot program.

757 We will remain responsive to Army leadership in  
758 continuing working to provide the best possible solution to  
759 Army challenges. I am very proud of my auditors in Southwest  
760 Asia. Their dedication and hard work has provided valuable  
761 real-time support to the Army.

762 I appreciate the opportunity to testify before you today  
763 and would be glad to answer your questions.

764 [Prepared statement of Mr. Mizzoni follows:]

765 \*\*\*\*\* INSERT \*\*\*\*\*

766 Chairman WAXMAN. Thank you very much, Mr. Mizzoni.  
767 Mr. Needham?

768 STATEMENT OF JOSEPH K. NEEDHAM

769 Mr. NEEDHAM. Chairman Waxman, Ranking Member Davis, and  
770 members of the Committee, thank you for inviting me here  
771 today to discuss the Defense Base Act and GAO's observations  
772 on the actions by the Departments of Defense and Labor, to  
773 address the findings from our 2005 Report on DBA's  
774 implementation in Iraq.

775 We initiated our review of DBA in 2004 after concerns  
776 were raised over the cost of workers' compensation insurance  
777 provided under DBA. According to recent DOD data, there were  
778 over 163,000 contractor personnel working in Iraq. We  
779 obtained the rates spent on DBA insurance for 21 contracts  
780 held by 13 prime contractors performing work under Iraq under  
781 cost-reimbursable contracts.

782 These contracts at the time represented 69 percent of  
783 U.S. appropriated contracting dollars awarded. We selected  
784 companies of difference sizes performing a range of services  
785 for DOD, the Department of State, and the U.S. Agency for  
786 International Development. We did not obtain DBA rates from  
787 subcontractors in our review.

788 We were limited in what we can conclude about the cost

789 | of DBA insurance because investigations by several States  
790 | into the practices of a number of insurance companies and  
791 | brokerages during the course of our review, raised questions  
792 | over the reliability of the information we obtained from the  
793 | insurance industry.

794 |         In April 2005, we reported that the total cost of DBA  
795 | insurance to the Government, or the extent to which Iraq  
796 | reconstruction funds were being spent on DBA insurance, could  
797 | not be calculated due in part to the difficulty of gathering  
798 | data on the large number of contractors and the multiple  
799 | levels of subcontractors performing work in Iraq.

800 |         There were wide variations in the amounts Federal  
801 | agencies were paying for DBA insurance. We reported that  
802 | eight DOD prime contractors paid from \$10 to \$21 per \$100 of  
803 | salary cost, a rate that was significantly higher than the  
804 | rates paid by the State Department and USAID contractors,  
805 | which are at that time \$2 to \$5 per \$100 of salary costs to  
806 | their respective and self-insurer programs.

807 |         Lastly, what we found was that there were challenges in  
808 | implementing the DBA insurance requirements for Iraq, such as  
809 | the lack of clarity in DBA requirements, delays in processing  
810 | claims, and difficulty in monitoring contractor compliance.  
811 | As a result of our work, Congress directed DOD to work with  
812 | other agencies to address these challenges.

813 |         Where do things stand today? As other witnesses have



814 | noted this morning, since the Army Corps implemented its  
815 | single insurer program in December 2005, its insurance rates  
816 | have decreased from what DOD was previously paying. While  
817 | DOD has taken steps to reduce DBA insurance rates through the  
818 | Army Corps' program, it has not yet implemented similar  
819 | efforts Department-wide. DOD continues to lack reliable  
820 | aggregate data on the total cost of DBA insurance.

821 |         It should be noted that Congress directed DOD to  
822 | identify methods to collect data on DBA insurance costs in  
823 | fiscal year 2006. While State, USAID, and the Army Corps can  
824 | now obtain aggregate DBA cost data for their single  
825 | respective insurer programs, DOD recently reported to us that  
826 | it had not collected this data Department-wide.

827 |         GAO has issued several reports on best practices, noting  
828 | that agencies can analyze financial data to leverage their  
829 | buying power, reduce costs, and better manage suppliers of  
830 | goods and services. This is referred to as strategic  
831 | sourcing, which calls for an organization to analyze its  
832 | spending and use that information to make more effective  
833 | business decisions about the acquisition of commodity  
834 | conservatism.

835 |         As we have noted on other occasions--and it bears  
836 | repeating today--in discussing DBA insurance premiums, DOD  
837 | needs to be more strategic, as it has been in the acquisition  
838 | of other services. In short, it needs to manage the

839 | suppliers of insurance and not have the suppliers managing  
840 | DOD.

841 |       Turning to Labor's actions, Department officials told us  
842 | that they have taken steps to address several of DBA's  
843 | insurance implementation challenges that we identified in our  
844 | 2005 Report. For example, GAO found that there was  
845 | uncertainty among Agency officials regarding when DBA  
846 | insurance was required as well as problems in processing  
847 | claims and monitoring compliance.

848 |       Labor officials recently told us they have been  
849 | receiving fewer questions after holding seven seminars  
850 | through 2006 on DBA insurance for contractors, insurance  
851 | companies, and Agency officials, as well as attorneys, to  
852 | clarify what the DBA requirements were. While Labor  
853 | officials also noted improvements in processing insurance  
854 | claims, they still face challenges in verifying that  
855 | subcontractors in Iraq have obtained DBA insurance.

856 |       In conclusion, Mr. Chairman, there is one overriding  
857 | issue, and that is DOD's need to manage the cost of DBA  
858 | insurance premiums. While DOD has taken steps for the Army's  
859 | Corps Insurer Program to reduce its Dod rates, it does not  
860 | know what it is spending Department-wide on such insurance.  
861 | Without this information, DOD is limited in its ability to  
862 | make fully-informed decisions regarding its options for  
863 | minimizing Department-wide insurance costs and limiting its

864 | ability to manage its suppliers strategically.

865 |       Furthermore, the lack of detailed information on these  
866 | costs makes it difficult for Congress to conduct full  
867 | oversight of the reconstruction funds.

868 |       Mr. Chairman, this concludes my statement. I thank you  
869 | for the opportunity, and I will be happy to answer any  
870 | questions.

871 |       [Prepared statement of Mr. Needham follows:]

872 | \*\*\*\*\* INSERT \*\*\*\*\*

873 Chairman WAXMAN. Thank you very much, Mr. Needham.

874 I want to thank all of you for your testimony. We are  
875 now going to have questions from members of the panel, and I  
876 want to start off those questions.

877 To illustrate this program which might seem very  
878 complex, I wanted to focus my questions on a particular  
879 example. The insurance purchased by KBR under the Army  
880 LOGCAP contract, the LOGCAP contract is the single biggest  
881 contract in Iraq. It is worth more than \$27 billion.  
882 Halliburton's KBR Division won this Cost Plus Contract in  
883 2001, and this Committee has raised a number of questions  
884 about it since then.

885 Mr. Mizzoni, your agency, the Army Audit Agency, issued  
886 a report about KBR's charges under the LOGCAP contract for  
887 DBA insurance, and the Committee obtained a copy of the  
888 report, and we are making it public today. I thought your  
889 findings were pretty astounding.

890 KBR hired AIG as its insurance company. Your report,  
891 page 5, says that AIG charged KBR about \$284 million for DBA  
892 insurance from

893 Mr. MIZZONI. That is correct. One clarification,  
894 though, sir. My understanding is that KBR actually did not  
895 buy the insurance. I am not an insurance expert, but I  
896 understand that KBR actually had to use an insurance broker  
897 in the state of Texas, and that insurance broker then bought

898 | the insurance for KBR.

899 | Chairman WAXMAN. And did the insurance broker get a fee  
900 | for doing that, that purchase?

901 | Mr. MIZZONI. I honestly don't know, sir.

902 | Chairman WAXMAN. Okay. The total cost of providing this  
903 | insurance is actually higher than the \$284 million. KBR has  
904 | a Cost Plus Contract so it can add up a markup up to \$8  
905 | million on top of the \$284 million premium to AIG. This  
906 | makes a total cost to the taxpayers as much as \$292 million,  
907 | all of which I mentioned in my opening statement.

908 | Your report, page 8, also says that of that \$292 million  
909 | AIG will pay out about \$73 million in claims after all  
910 | adjustments and reimbursements. Is that right, \$73 million?

911 | Mr. MIZZONI. That is what we found, sir, yes.

912 | Chairman WAXMAN. So looking at it from a taxpayers'  
913 | perspective, the purpose of this insurance is to provide  
914 | injured workers with benefits, yet under this contract the  
915 | taxpayer is paying nearly \$300 million, and the injured  
916 | workers are getting less than \$75 million. I am trying to  
917 | figure out if this makes any sense.

918 | Mr. Needham, you represent GAO. Do you think the  
919 | taxpayers are getting a good return on their investment?

920 | Mr. NEEDHAM. Based on the data that has been presented  
921 | today, Mr. Chairman, it is not apparent that they are. One  
922 | of the concerns that we have had is that DOD needs to be more

923 | on top of this in terms of what it is that we are spending.  
924 |       DOD took on a practice of doing spend analysis several  
925 | years ago after we had issued reports on these best  
926 | practices. They have done this for other areas, clerical  
927 | services, they do it for software, wireless services. This  
928 | represents an opportunity for DOD to get on top of that so  
929 | they could get a better return.

930 |       Chairman WAXMAN. Well, that is certainly one of the  
931 | purposes of the hearing, but we are trying to see where we  
932 | are before we push them even harder to get where we should  
933 | be. KBR and AIG set the price of the insurance. Neither of  
934 | them pays the bills.

935 |       Mr. NEEDHAM. Right.

936 |       Chairman WAXMAN. The taxpayer does. That means they  
937 | have no incentive to keep costs low. Because KBR is  
938 | operating under a cost plus contract, the higher the premiums  
939 | it pays AIG the more money it makes.

940 |       Now, Mr. Mizzoni, do you think it makes sense to rely on  
941 | a contractor like KBR which has a cost plus contract and  
942 | negotiate its own insurance premiums?

943 |       Mr. MIZZONI. Again, sir, the way I understand it, they  
944 | did not negotiate it; it was the insurance broker in Texas.

945 |       Chairman WAXMAN. They relied on their broker, but none  
946 | of them paid the bills?

947 |       Mr. MIZZONI. None of them paid, correct.

948 Chairman WAXMAN. And they had no reason to hold down the  
949 costs?

950 Mr. MIZZONI. It is a cost reimbursable contract. We do  
951 pay the cost. One or two things I would like to mention is  
952 that the KBR safety record was actually very good, and the  
953 safety record is used when negotiating award fees.

954 During our audit, when we brought this to the attention  
955 to the KBR as far as the rate increases from fiscal year 2003  
956 to fiscal year 2004, they did question their broker.

957 Chairman WAXMAN. Well, the concerns about this problem  
958 are not new. Since 2005, auditors and experts have been  
959 warning that the taxpayers are being overcharged, but it has  
960 been hard to get a definitive picture of what is really going  
961 on with this program because the Administration has not  
962 wanted to compile the data. So that is what we tried to do.

963 We asked the top four insurance companies that account  
964 for more than 99 percent of the DBA market to provide the  
965 Committee with profit and pay out data, and we are now able  
966 to see some concrete trends. What the data shows is that  
967 from 2002 through 2007 these four insurance companies  
968 received \$1.5 billion in premiums under contracts negotiated  
969 with private contractors in Iraq and Afghanistan. These  
970 companies will pay out \$928 million in claims and expenses,  
971 and they will retain net underwriting gains of \$585 million.  
972 In other words, these four insurance companies have retained

973 | as profit 39 percent of the premiums they receive.

974 |         Now my time has expired, but I certainly want to pursue  
975 | this with Mr. Ginman and others because it seems to me it is  
976 | quite excessive. But other members may want to question on  
977 | this point, and I think it is well worth going into.

978 |         Mr. DAVIS OF VIRGINIA. May I answer your--

979 |         Chairman WAXMAN. Well, I had a long series of questions,  
980 | so why don't you go ahead.

981 |         Mr. DAVIS OF VIRGINIA. Thank you very much.

982 |         Chairman WAXMAN. If not, other members on the second  
983 | round.

984 |         Mr. DAVIS OF VIRGINIA. Mr. Moser, let me start with you.

985 |         You note in your testimony there were four offerors during  
986 | State's most recent DBA competition, is that correct?

987 |         Mr. MOSER. Yes, that is correct.

988 |         Mr. DAVIS OF VIRGINIA. When was that contract awarded?

989 |         Mr. MOSER. In 2001.

990 |         Mr. DAVIS OF VIRGINIA. Could you speculate for us why  
991 | State gets more offers than the Army Corps?

992 |         Mr. MOSER. Well, it is very difficult for me to make  
993 | comments about any other agency's contracting activity. I  
994 | will say for our contracting activity, we very much want to  
995 | promote as much competition as we can get, so I will turn  
996 | that over to Mr. Dalton for comments about the Army Corps.

997 |         Mr. DALTON. I think maybe one of the reasons why we get



998 fewer offerors than the State Department is because we  
999 concentrate heavily in more hostile areas than perhaps the  
1000 State Department. A large part of our work is in Iraq, is in  
1001 Afghanistan, and some over in the Balkans, and so when we get  
1002 our prices and contractors take a look at where we are  
1003 working, there is a higher risk associated with bidding on  
1004 Corps of Engineer contracts than perhaps State Department  
1005 that are more spread out across the world.

1006 Mr. DAVIS OF VIRGINIA. Thank you. Last year the CBO  
1007 estimated that creating a single DBA insurance pool for the  
1008 entire DOD would save the Government millions of dollars.  
1009 But the CBO also warned that due to the increased Government  
1010 administrative costs and the uncertainty over whether  
1011 insurance providers would be willing to underwrite such a  
1012 massive policy, the creation of such a pool would not  
1013 necessarily result in savings for the Department of Defense.

1014 Creating a pool would also effectively subsidize  
1015 contractors in more dangerous areas by charging inflated  
1016 rates to those in safer areas than subsidized  
1017 contractors--you understand what I am saying. Would the  
1018 creation of this type of Department-wide insurance pool  
1019 result in savings to the Government, let me just ask? I will  
1020 start with the GAO.

1021 What effect would it have on contractor safety systems?  
1022 Would this type of arrangement result in more contractors

1023 moving to self-insurance model? What is your thought on  
1024 that?

1025 Mr. NEEDHAM. Mr. Davis, in terms of looking at options,  
1026 one of the things we recommended back three years ago was  
1027 that DOD begin to assess the various options. What they  
1028 actually did was adopt the Army Corps single insurer program  
1029 for the Corps.

1030 What we would like to see them do is to look at  
1031 possibly--the Government has a self-insurer, but that is one  
1032 option--but you could create multiple pools. There are  
1033 tradeoffs, and according to Admiral Ginman, they are going to  
1034 be looking at these possible business cases on this and what  
1035 they can do in terms of what the risks are with various job  
1036 categories in various parts of the world.

1037 This is what we are looking for is that they make this  
1038 kind of a tradeoff analysis. They haven't done this yet.

1039 Mr. DAVIS OF VIRGINIA. Let me ask this, Admiral Ginman.  
1040 Could you, for example, do a single provider system for Iran  
1041 and Iraq, another in other regions of the world, and do three  
1042 or four single provider systems? Would that work, seeing  
1043 that it is so large and diverse?

1044 Admiral GINMAN. Mr. Davis, I think, as Mr. Needham just  
1045 said, there are a lot of options available to us. We,  
1046 frankly, don't have the data today, and we have committed  
1047 that we will go collect the data. A single contractor for in

1048 | a risk pool for Iraq/Afghanistan is certainly an option. The  
1049 | single contract concept that State and AID and the Corps are  
1050 | using is an option.

1051 |         Mr. DAVIS OF VIRGINIA. Well, let me ask you this.  
1052 | Wouldn't a single contractor for Iraq/Afghanistan make more  
1053 | sense than one across all regions given the different  
1054 | diversity and risks?

1055 |         Admiral GINMAN. I think from risk pool perspective,  
1056 | having a single contractor in Iraq and Afghanistan would make  
1057 | sense to me, personally, but I am doing that without the  
1058 | benefit of the business analysis to make that determination  
1059 | behind it.

1060 |         Mr. DAVIS OF VIRGINIA. Right. How many insurers are  
1061 | there in Iraq and Afghanistan, do you have any idea?

1062 |         Admiral GINMAN. Department of Labor has worked with the  
1063 | Joint Contracting Command in Iraq and Afghanistan. There are  
1064 | currently three that are being used, and Department of Labor  
1065 | is working to add a fourth. So that the contractors doing  
1066 | work, particularly the local contractors, have an option of  
1067 | three today and, hopefully, they will have an option of four  
1068 | soon.

1069 |         Mr. DAVIS OF VIRGINIA. What generally happens is the  
1070 | contractor hires the company?

1071 |         Admiral GINMAN. Absolutely. It is the contractor's  
1072 | responsibility to get the insurance.

1073 Mr. DAVIS OF VIRGINIA. And they have to take it off an  
1074 approved list?

1075 Admiral GINMAN. Yes. It is approved by the Department  
1076 of Labor.

1077 Mr. DAVIS OF VIRGINIA. Okay, that is fine.

1078 Chairman WAXMAN. Thank you, Mr. Davis.

1079 Mr. Cooper?

1080 Mr. COOPER. Thank you, Mr. Chairman. What we are really  
1081 talking about here, folks, is war profiteering. Private  
1082 companies making money, profits, off of people who are  
1083 injured or killed in a war zone. When Mr. Waxman left off  
1084 his questioning, he pointed out that the profit margins are  
1085 unusually large, 39 percent, whereas a domestic ratio would  
1086 be maybe closer to 1 percent.

1087 That is not a pretty picture. Now, I suppose there are  
1088 a lot of bureaucratic reasons for this, but, Admiral Ginman,  
1089 as the DOD representative here, are you concerned that  
1090 insurance companies have made nearly \$600 million in profits  
1091 as a result of the War in Iraq and Afghanistan?

1092 Admiral GINMAN. Am I concerned. I think any time the  
1093 Government is taken advantage of, it is a concern.

1094 Mr. COOPER. Can you speak louder?

1095 Admiral GINMAN. I said any time the Government is taken  
1096 advantage of, it is a concern.

1097 Mr. COOPER. Well, you have been on duty in this

1098 assignment since October 2006.

1099 Admiral GINMAN. Yes, sir.

1100 Mr. COOPER. Has the Government been taken advantage of  
1101 during your time on duty?

1102 Admiral GINMAN. I don't have the data that the Chairman  
1103 provided, so based on simply what he said and the data that  
1104 was there, if in fact 1 percent, as you provided, is a  
1105 correct number, and 39 percent is in fact the percentage that  
1106 is being made, that would certainly be an opportunity to go  
1107 look in more detail at those specifics.

1108 Mr. COOPER. Admiral Ginman, you are acting like this is  
1109 a new issue. This was raised in 2005, 2006, 2007. Congress  
1110 passed a law in 2006 requiring the Secretary of Defense to do  
1111 exactly what the GAO has been recommending. So this isn't  
1112 news.

1113 Admiral GINMAN. And we implemented the pilot program  
1114 with the Corps of Engineer to go collect the necessary data  
1115 so that we would have the data to do a reasonable business  
1116 case analysis to make a determination on a DOD-wide or an  
1117 Army-wide or service-wide approach.

1118 Mr. COOPER. Who completed those?

1119 Admiral GINMAN. And the pilot program showed \$19 million  
1120 in savings that DOD did nothing to implement it more broadly.

1121 So here you had a very encouraging result, and we are  
1122 dragging our feet. I mean the pilot program has not been

1123 completed and has not reported out all of the analyses, and  
1124 we are looking for support from the Army Audit Agency and  
1125 from the Corps of Engineers to be able to provide us the data  
1126 to make that business case analysis.

1127 Mr. COOPER. Mr. Needham, you represent GAO. Don't you  
1128 think these are high-profit levels for these insurance  
1129 companies and for the KBR contractor?

1130 Mr. NEEDHAM. Based on what the norm is for the insurance  
1131 industry, that is what I have been told, that these are high.

1132 I would mention, too, that part of that is driven by  
1133 what the loss rate is, and the loss rate that was cited by  
1134 the Army Audit Agency for the contract that they looked at  
1135 was 26 percent. That is pretty low. The normal is about 68  
1136 percent according to AIM. Best that has done studies of this.

1137 So if you have a high rate of losses over a period of years,  
1138 you may try to increase your profits in some years so you can  
1139 compensate for those losses in those later years.

1140 This is the kind of analysis that needs to be done:  
1141 What should we be paying so that we are a smart buyer when it  
1142 comes to these kinds of insurance products?

1143 Mr. COOPER. Let's try to put it in plainer English. If  
1144 you were a private insurance contractor and you faced a risk  
1145 in a war zone, you would essentially be trying to exaggerate  
1146 that risk so that you would protect your ability to make  
1147 money. You would essentially be betting against our

1148 Government and our servicemen because you would want to be  
1149 prepared for the worst possible case. That puts our private  
1150 companies in a terribly awkward and unpatriotic position in  
1151 anticipating a worst case scenario for the outcome of the war  
1152 and for the welfare of our contractors, when there are other  
1153 ways to do this.

1154 Mr. Mizzoni mentions one in his testimony talking about  
1155 retrospective risk analysis rating plans where you can see  
1156 the actual results in the field, so you are not betting  
1157 against the Government and our Army and our military, so you  
1158 can see what the losses are and compensate insurance  
1159 companies appropriately, based on their actual losses so that  
1160 they can make a profit but not an extraordinary war  
1161 profiteering profit.

1162 Mr. Mizzoni, has the retroactive approach been used?

1163 Mr. MIZZONI. I believe other parts of the Government  
1164 have used it, but certainly the Army has not. Like you say,  
1165 sir, our recommendations to the Assistant Secretary for  
1166 Acquisition and Logistics technology gave them several  
1167 options. One was to use retrospective pricing plans.

1168 In their reply back to us, they indicated they wanted to  
1169 see the end of the pilot program, which was supposed to be  
1170 March of 2008, and decide the success of the program to see  
1171 if it should be expanded Army-wide.

1172 Our position, or my position, is if that program does

1173 | not get expanded Army-wide, our recommendations to include  
1174 | retrospective pricing plans or self-insurings are on the  
1175 | table again.

1176 |         Mr. COOPER. I apologize, I see my time has expired, but  
1177 | this is May 2008. The decision was supposed to have been  
1178 | made in March 2008, and that has not been done, right?

1179 |         Thank you, Mr. Chairman.

1180 |         Mr. TIERNEY. [Presiding] Thank you, Mr. Cooper.

1181 |         Mr. Sarbanes?

1182 |         Mr. SARBANES. Thank you, Mr. Chairman. I have a little  
1183 | bit of a cold so I apologize for my voice.

1184 |         I am listening to this and I remember the images way  
1185 | after we invaded Iraq of the terrible looting that occurred.  
1186 | You all may remember that. I saw those images on television.  
1187 | I think Secretary Rumsfeld ascribed that to the enthusiasm of  
1188 | democracy or something in a way that later didn't prove out  
1189 | as a particularly sensible observation.

1190 |         But listening to this and thinking back over the various  
1191 | hearings that we have been having about what Congressman  
1192 | Cooper, I think, has accurately referred to as war  
1193 | profiteering, that initial spate of looting was immediately  
1194 | followed by another round of looting. This is kind of white  
1195 | collar looting. It is looting with a tie sitting in an  
1196 | office someplace.

1197 |         The definition of looting I just found on my Blackberry



1198 | is to plunder, to seize booty in a conquered or sacked city.  
1199 | And this one was interesting: to carry off as plunder, or to  
1200 | secure a prize lawfully by war. So whatever definition you  
1201 | want to use, I view this as looting: high-end, upscale, white  
1202 | collar looting.

1203 |         Now, what is the most troubling, and it is really  
1204 | grotesque, the whole thing, but what is most troubling is the  
1205 | profit margins that we have discussed already, and that is  
1206 | troubling for two reasons.

1207 |         One is it can mean that the premiums are being  
1208 | exaggerated beyond what the risk is so that, in other words,  
1209 | there is a dedicated effort to make money off the enterprise  
1210 | beyond what is appropriate or acceptable.

1211 |         That is bad enough, but there is also evidence that  
1212 | maybe the profits are the result of not paying out the claims  
1213 | that are deserved, which is even more offensive. I mean in  
1214 | the first instance you are making more money in a situation  
1215 | in which maybe you are paying the premiums that people ought  
1216 | to have, so at least those being injured as being fairly  
1217 | compensated, even if the taxpayers are being taken advantage  
1218 | of.

1219 |         But there is evidence that not only were the premiums  
1220 | exaggerated to get some of these profits, but in addition,  
1221 | there was denial of the claims going on, on the other end to  
1222 | help maximize the profits, which is supremely offensive

1223 | because that means people who are injured were not getting  
1224 | the compensation they deserve.

1225 |       I think my time has started but isn't being accounted  
1226 | for there, so I wanted to ask about these insurance companies  
1227 | delaying the benefits because, in the Committee's  
1228 | investigation, the Committee staff spoke with a number of  
1229 | injured employees, their families, physicians, and others who  
1230 | have been engaged first hand in trying to get their claim  
1231 | satisfied, and they indicated that despite receiving massive  
1232 | profits under this DBA program, many of the insurance  
1233 | companies are fighting which are to make claims.

1234 |       So I guess, Mr. Hallmark provided a briefing on the  
1235 | DOL's role in monitoring the DBA claims and told us that the  
1236 | insurance companies are contesting at the outset virtually  
1237 | every DBA claim that is being filed. Is that essentially  
1238 | correct for substantial numbers of those claims?

1239 |       Mr. HALLMARK. I don't believe I indicated that  
1240 | statistic. The Longshore DBA process is a complicated one,  
1241 | and there are filings that occur on many, many cases called  
1242 | contraversions which are filed oftentimes routinely. They  
1243 | don't necessarily mean that the insurer is not paying the  
1244 | claim.

1245 |       So it could be viewed as opposition of claims when it is  
1246 | simply an ineffective administrative filing.

1247 |       Mr. SARBANES. Well, I gather we discovered that about,

1248 | in 45 percent of the claims made by the employees' insurance  
1249 | companies were filing formal disputes, and when it goes up  
1250 | the chain to a judge, the companies are winning those  
1251 | disputes at only a rate of five percent.

1252 |         So this just gets back to the notion of them fighting as  
1253 | hard as they can to secure profits against these exorbitant  
1254 | premiums that they are getting.

1255 |         Then I will just finish up, let me just finish up  
1256 | because I know I am probably out of time here--

1257 |         Mr. TIERNEY. That would be appropriate.

1258 |         Mr. SARBANES.--by noting--I won't ask you to answer this  
1259 | question--but I gather that the way the benefit capping works  
1260 | as it was described, the premium is set against the salary,  
1261 | and so it can be, if you have a salary of \$180,000 versus  
1262 | \$90,000, the premium that is being charged by the insurer can  
1263 | be double, so they are obviously getting a higher premium.  
1264 | But the payout is capped by law at ninety as it would be for  
1265 | the person making a hundred and eighty. So there is  
1266 | obviously something wrong with that system.

1267 |         So in any event, clearing insurance companies have been  
1268 | taking advantage, and setting up these pools seems like a  
1269 | better approach.

1270 |         Thank you, Mr. Chairman.

1271 |         Mr. TIERNEY. Mr. Sarbanes.

1272 |         Mr. Issa?

1273 Mr. ISSA. Thank you, Mr. Chairman. Mr. Dalton, if the  
1274 reports of widespread fraud by mostly, we will just say,  
1275 Iraqi-based companies, contractors, who in fact are charging  
1276 for insurance that is never purchased and thus the absence of  
1277 benefits often comes from the fact that there was no  
1278 coverage, and the company may selectively decide to take care  
1279 of their employees.

1280 What are you able to do to end that double-billing,  
1281 billing for a service not received?

1282 Mr. DALTON. Actually, what we are taking a look at right  
1283 now is part of our normal--I will call it the Q/A process of  
1284 contract, which is contract administration--is we are  
1285 requiring contractors to provide those certificates of  
1286 insurance prior to us allowing them to proceed with  
1287 construction work.

1288 Now, certainly, there are cases where we might miss  
1289 some, and we are trying to be a lot more diligent in  
1290 following up on those. Recently, a case was cited where we  
1291 had a contractor doing just exactly what you just mentioned.  
1292 That was found through just part of our routine oversight of  
1293 the contracts.

1294 While we don't have it perfect yet, and we are still  
1295 learning as we go with the DBA insurance how to administer  
1296 it, what we are doing is making sure that we train our people  
1297 to watch for those areas that might be fraudulent. We train

1298 folks before they actually go in the theater, and that is how  
1299 this particular case got identified.

1300 Mr. ISSA. Mr. Dalton, I served with the Corps of  
1301 Engineers before most of the people sitting behind me were  
1302 born, so we have been doing contract oversight for a long  
1303 time, both domestically and around the world.

1304 If Congress empowered or passed a law, today we seem to  
1305 be concentrating in some cases on profit made rather than  
1306 real oversight and reform, if we in fact said, look, your  
1307 general contractor must supply the umbrella for all subs, and  
1308 then they have to administer it, and then we have a single  
1309 point of contractor on each prime, would that make it easier  
1310 for you to ensure, one, that there was insurance, and, two,  
1311 that there was, in fact, a single point of accountability on  
1312 multiple contracts, but comparatively few? Would that make  
1313 it more possible for your inspectors to actually accurately  
1314 inspect?

1315 Mr. DALTON. I think it definitely would. I mean, the  
1316 contracts that we administer now, as you well know, we have  
1317 multiple subs, and to try and reach into and look at all the  
1318 tiers of subs to verify they have insurance is not an easy  
1319 task.

1320 Mr. ISSA. So it would be fair to say that right now the  
1321 system is a system in which you only hope to get better, and  
1322 in fact a change in the system would be what would allow us

1323 | to have a confidence that you would be able to get to 100  
1324 | percent compliance.

1325 |         Mr. DALTON. I think it is fair to say that if we had the  
1326 | ability to do, as you described, a one contractor being  
1327 | responsible that it makes it a lot more easier to administer,  
1328 | and it places the responsibility within that prime  
1329 | contractor.

1330 |         Mr. ISSA. Mr. Needham, we are supposed to be the  
1331 | Committee on Oversight and Reform, and as I was alluding to,  
1332 | once you find out there is a problem the question is, should  
1333 | we be part of the reform?

1334 |         Let me pose a question from my years in business. On  
1335 | the size contract that we are dealing with, I have to tell  
1336 | you, long before I got to the size of KBR, and certainly long  
1337 | before I got to the size of USA, Inc., I would have a  
1338 | administrative-only contract in which I would bear the  
1339 | responsibility as the Federal Government with no markups for  
1340 | the actual payouts, effectively realizing that I have more  
1341 | money as the U.S. Government than any insurance company, and  
1342 | I would be paying for an administrative-only fee, meaning  
1343 | that that \$73 million in payout, I would have paid, and  
1344 | whatever the delta is that was mentioned by the Chairman  
1345 | earlier by AIG, that would be on a fee basis, an  
1346 | administrative cost plus basis, if you will.

1347 |         Why in the world haven't we looked at that? That is

1348 | one-step removed from the scenario I gave Mr. Dalton. That  
1349 | is saying, why is it, in fact, we don't treat these  
1350 | contractors under best case scenario similar to the way we  
1351 | dealt with maneuver damage in Europe when you ran over a  
1352 | chicken. You didn't call somebody's insurance company. We  
1353 | had active duty personnel whose job it was to go out and deal  
1354 | with that in order to not have a premium paid over and above  
1355 | the payout.

1356 |         Mr. NEEDHAM. Your question being, why haven't we looked  
1357 | at that?

1358 |         Mr. ISSA. Yes. Why wouldn't you say today in your  
1359 | opening remarks that the system is fundamentally wrong to  
1360 | begin with, that on these size dollars we should only be  
1361 | paying for administration because the actual payout,  
1362 | numerically, we don't--we could absorb the risk as the  
1363 | Government much easier for less money than AIG or any other  
1364 | company, even if it was a single contractor is doing today.

1365 |         Mr. NEEDHAM. Right. That is one of the options we  
1366 | wanted to have explored that we talked about with OMB and DOD  
1367 | back in 2005. When that was put into legislation for them to  
1368 | look at options, we expected that there would be a full range  
1369 | of options looked at: the self-insuring, also the single  
1370 | contractor which--the idea of a single insurer, though, there  
1371 | is a question about whether or not any one company would step  
1372 | up and take that on.

1373 Mr. ISSA. And I am not proposing a single insurance  
1374 company. I think it is pretty easy for us all to see that  
1375 the size and scope, you could split this up into different  
1376 theaters, different administrative contracts, but the idea  
1377 that we would essentially not self-insure at the size of our  
1378 exposure seems to be absurd, considering this Committee  
1379 regularly sees us self-insuring, if you will, the success of  
1380 a new destroyer coming out of the Coast Guard. And when it  
1381 fails, we pay the bill. By the way, we are paying a big bill  
1382 on some of these new ships.

1383 But why? Is it that we failed you, to give you the  
1384 right, or that you failed to be able to exercise that,  
1385 administratively?

1386 Mr. NEEDHAM. The reason this is now an issue is because  
1387 of the size of the premiums we are paying. I think the Army  
1388 Audit Agency mentioned that they were paying \$5 million in  
1389 2003, and it was up to \$165 million two years later.

1390 I mean it is DOD's responsibility now with this kind of  
1391 increase to go back and look at what are the reasonable  
1392 tradeoffs here, and what should we be doing--not continuing  
1393 business as usual, which is what they have allowed to happen  
1394 without the--I mean, aside from the Corps' program of the  
1395 single insurer.

1396 DOD-wide, there has not been anything else looked at,  
1397 and that needs to be done.



1398 Mr. ISSA. Then I guess I will close by saying, when will  
1399 this Committee know what the comparative cost would have been  
1400 had we simply, essentially self-insured and paid  
1401 administrative costs and not allowed, whether it is true or  
1402 not, contractors to essentially go out and bid a local broker  
1403 to get an insurance policy on this size. It seems to me like  
1404 that is a question we would like to have answered coming out  
1405 of this hearing, if possible. Is that something you can help  
1406 us with?

1407 Mr. NEEDHAM. Certainly. I mean, we can begin to look at  
1408 that. We looked at this three years ago. We stopped the  
1409 work because we couldn't rely on the data we were getting  
1410 from the insurance industry at that time. So we focused our  
1411 efforts on what DOD was doing or not doing in that case.

1412 Mr. TIERNEY. Thank you, Mr. Issa.

1413 Mr. ISSA. Mr. Chairman, I appreciate that, but I hope  
1414 the record can indicate that that is something that I think,  
1415 on a bipartisan basis, the Committee should follow up on,  
1416 because this could represent billions of dollars that a  
1417 system change would have to be implemented to do. That is  
1418 what we do best is when we ask for system changes that save  
1419 America money.

1420 Mr. TIERNEY. Thank you, Mr. Issa.

1421 Mr. Cooper, you are recognized for five minutes.

1422 Mr. COOPER. Thank you, Mr. Chairman. I would like to

1423 congratulate my friend from California on his line of  
1424 questioning because it is a fundamental business point that I  
1425 had actually hesitated to bring up in a hearing like this.  
1426 It is who is the appropriate risk-bearing entity? And my  
1427 friend from California hit the nail on the head: even a large  
1428 company can effectively self-insure, but certainly the United  
1429 States Government is the best insurance company of all, and  
1430 we don't have to pay the premium, the overhead, the stuff  
1431 like that. It is an amazingly efficient mechanism if we allow  
1432 ourselves to use it.

1433         Sadly, the rhetoric of recent years has called that big  
1434 government, even though it might save the taxpayer the most  
1435 money. So it actually ends up being smaller government than  
1436 relying on all sorts of contractors who each have to have  
1437 their huge profit margins.

1438         But another key point, we have been sold a bill of goods  
1439 here, and again my friend from California hit the nail on the  
1440 head. We did not need to buy insurance from a private  
1441 carrier. All we needed to buy was administrative services  
1442 only, ASL, maybe a little help with the paperwork because we,  
1443 the United States Government, are the best risk-bearing  
1444 entity. It sounds like the GAO was discouraged from even  
1445 seriously considering this first best solution. Instead we  
1446 have been paddling around with pooling and things like that  
1447 that are second or third-best solutions.

1448 But I would join my friend from California, and let's  
1449 put all the solutions on the table because our job is to get  
1450 the taxpayer the best deal. But the key point here is  
1451 clearly seeing what is at stake.

1452 I have seen this over and over in health care. Giant  
1453 academic medical centers with billions of dollars in the bank  
1454 hiring a little puny insurance company to provide HMO  
1455 services when they should have been buying ASO services, not  
1456 HMO services. So let's think large. So that has been one  
1457 problem, failure to clearly perceive.

1458 Another problem is foot-dragging. Again, Admiral  
1459 Ginman, you know, the deadline was March 2008. I know you  
1460 haven't been eager to pursue this topic, but this hearing  
1461 would have been a great opportunity to announce a bold new  
1462 initiative from DOD to save the taxpayer money.

1463 Admiral GINMAN. Yes, sir.

1464 Mr. COOPER. That opportunity has not happened.

1465 Admiral GINMAN. One, it is my understanding that the  
1466 pilot has been extended out to September 2008.

1467 Mr. COOPER. Can you talk louder?

1468 Admiral GINMAN. I said it is my understanding the pilot  
1469 has been extended out to September of 2008 and that we don't  
1470 have the data and the business case analysis back. We will  
1471 happily work with the GAO to take a look and evaluate the  
1472 option of, does it make sense to be a self-insurer in this

1473 instance.

1474 Mr. COOPER. Could you repeat that last sentence?

1475 Admiral GINMAN. I said we will happily work with GAO to  
1476 make a determination as we look at the business case analysis  
1477 as to whether it makes sense as one of the options on the  
1478 table to look at being a self-insurer.

1479 Mr. COOPER. Well, here we have a three-year pilot  
1480 program that in the first six months we knew it saved \$19  
1481 million, and now the pilot program has apparently been  
1482 extended. You don't seem anxious to tackle this problem.

1483 If the FDA discovers a new medicine that is clearly  
1484 superior and lifesaving, do you know what they do--and  
1485 doesn't have bad side effects? They go ahead and allow the  
1486 people to buy the new medicine. This is an example like  
1487 that. We could have saved tens of millions of dollars, but  
1488 you don't appear eager to tackle this project.

1489 Admiral GINMAN. I don't know the impact that that  
1490 decision has on the rest of the insurance programs that we  
1491 have around the world when I go to the single program that  
1492 has today four rates: one for construction, one for services,  
1493 one for aviation, and one for security services that I am now  
1494 going to apply not just in Iraq and Afghanistan but to all of  
1495 the insurance coverages throughout all of the countries that  
1496 we operate in.

1497 Mr. COOPER. There are always uncertainties, but can you

1498 | guarantee this Committee you will not be going to work for  
1499 | one of these companies, because I assume your tour of duty is  
1500 | going to be about up this fall, right?

1501 | Admiral GINMAN. Well, one, I retired in 2000 from the  
1502 | Navy. I worked in private industry for six years, and I made  
1503 | a decision to come back to the Federal Government. It is my  
1504 | intention to stay with the Federal Government. I am not a  
1505 | political appointee, I am a career civil servant.

1506 | Mr. COOPER. So you are planning on staying. Well, that  
1507 | is good.

1508 | Admiral GINMAN. So I plan to be around to help work this  
1509 | issue.

1510 | Mr. COOPER. I would hate to have to educate a new group  
1511 | right when the Pilot Study is finally completed. Can you  
1512 | help this Committee understand? Have you received any memos,  
1513 | phone calls, or other contacts from superiors asking you to  
1514 | slow-walk this issue?

1515 | Admiral GINMAN. We have not been asked to slow-walk this  
1516 | issue by anyone, sir.

1517 | Mr. COOPER. So you have done the slow walking on your  
1518 | own?

1519 | [Laughter.]

1520 | Admiral GINMAN. Again, I would like to think that we are  
1521 | waiting until we had adequate data to do a significant  
1522 | business case analysis so that we understand the decision we

1523 | are making, as opposed to making a decision based on  
1524 | information that is not yet complete.

1525 |         Mr. COOPER. Well, what was the key factor that requires  
1526 | the Pilot Study to be extended another six months? What  
1527 | information was lacking? Why wasn't it wrapped up March 2008  
1528 | and you have a great report for us here today?

1529 |         Admiral GINMAN. I would have to ask the Army the  
1530 | question as to why it was extended another six to eight  
1531 | months. I know when we just--

1532 |         Mr. COOPER. You would have to ask who to know?

1533 |         Admiral GINMAN. I would have to ask the Army why the  
1534 | pilot program was extended another six months. I do not know  
1535 | the answer to that question.

1536 |         Mr. COOPER. Can the Army answer that?

1537 |         Mr. DALTON. I can answer that. So the reason why we  
1538 | extended for another six months was because we were not  
1539 | necessarily just to collect the data. The data is something  
1540 | that we have ongoing to try and provide to OSD so that they  
1541 | can have the business case analysis.

1542 |         But the reason we extended it for six months was because  
1543 | we needed to have time to actually get a new contract in  
1544 | place because this contract simply would expire and we would  
1545 | be left with no DBA central insurer. So it was not to just  
1546 | collect additional data; it was actually just to maintain  
1547 | continuity in having an insurance company, single DBA

1548 insurance company.

1549       Some of the things that we need to provide to OSD to  
1550 help approve the business case are things like, for instance,  
1551 the impact across the rest of the work that we do. For  
1552 instance, there have been claims that if you have DBA  
1553 insurance and pay higher rates, or lower rates in places like  
1554 Iraq/Afghanistan, then--I think it has been alluded to  
1555 here--that if there is an increase in places that are more in  
1556 a non-hostile environment--we are looking at that now to try  
1557 and help us to help OSD with the business case, in the few  
1558 that we have found, we haven't found there has been a  
1559 substantial increase in those insurance premiums as was  
1560 certainly mentioned in the beginning.

1561       Just as an example, in one contract in the Balkans, we  
1562 only found it was about a \$2,000 increase, I think. So there  
1563 is information that we are gathering in terms of overall  
1564 costs on contracts, subcontracts that we need to provide to  
1565 prove the business case.

1566       Mr. COOPER. Thank you. Mr. Chairman, I know my time has  
1567 expired, but foot-dragging seems to be contagious.

1568       Mr. TIERNEY. Well, I think the point is well taken. If  
1569 you look back in 2005 when the GAO issued a report, you know,  
1570 then you follow that up in 2006 when Congress made a  
1571 particular ruling on this; 2007 the Defense Department issued  
1572 a paper about its pilot program, did nothing to extend the

1573 | program, the obvious factor is the information that you are  
1574 | now looking for is information that you probably should have  
1575 | started collecting and had mostly done since 2005.

1576 |         So the frustration of the Committee I hope is  
1577 | appreciated, that there are just so many times you have to be  
1578 | told to do something before you actually get off the back  
1579 | side of your lap and do it. That is the frustration that is  
1580 | here.

1581 |         Mr. Needham, at the General Accountability Office you  
1582 | issued a report on the DBA program in 2005. In it you stated  
1583 | that the agencies lack reliable data on how many contractors  
1584 | and subcontractors are in Iraq, the cost of the Government of  
1585 | DBA coverage of contractors and whether all contractors  
1586 | operating in Iraq provided their employees required DBA  
1587 | coverage. Is that right?

1588 |         Mr. NEEDHAM. Yes.

1589 |         Mr. TIERNEY. Mr. Hallmark, as I understand it, the  
1590 | Department of Labor has the responsibility to process DBA  
1591 | claims to ensure the workers get the benefits they are  
1592 | entitled to. You don't track how many employees are covered  
1593 | or how DBA rates are determined, or the overall cost to the  
1594 | employer, is that correct?

1595 |         Mr. HALLMARK. That is correct. We don't actually  
1596 | process claims, we oversee the delivery of those claims  
1597 | through the insurance companies.



1598 Mr. TIERNEY. And, Mr. Ginman, turning to the Department  
1599 of Defense, can you tell us the total amount of Pentagon  
1600 expenditures on DBA insurance.

1601 Admiral GINMAN. I do not know the answer to that  
1602 question.

1603 Mr. TIERNEY. Mr. Moser, can you tell us how many State  
1604 Department contractor employees are covered by DBA insurance?

1605 Mr. MOSER. No, we can't, but we feel that that figure is  
1606 not really important, because we felt that we got good rates  
1607 out of our contract for DBA insurance, and we are satisfied  
1608 with that contract. Then the number of employees employed by  
1609 each of our individual contracts depends on the nature of the  
1610 work that they are doing.

1611 Mr. TIERNEY. Mr. Dalton, can you tell us how many  
1612 contract employees are covered by DBA insurance at the Army  
1613 Corps?

1614 Mr. DALTON. I can't do that at this point in time. I  
1615 can tell you how many contracts we have, but certainly not  
1616 the number of contracting employees.

1617 Mr. TIERNEY. So, Mr. Needham, it doesn't look to me like  
1618 everybody is following your advice here. At least they are  
1619 not putting the kind of attention to it that we would have  
1620 thought would be warranted by that report.

1621 What, exactly, did your report recommend back in 2005?  
1622 Didn't you recommend at that point in time that the Office of

1623 Management and Budget, the OMB Office, get involved?

1624 Mr. NEEDHAM. Yes, we did, Mr. Chairman. We met with the  
1625 Office of Management and Budget prior to--we had been  
1626 discussing this with DOD. We then had formulated a  
1627 recommendation. We met with OMB, they looked at it, and they  
1628 said this makes perfect sense.

1629 We then put the recommendation into the draft report and  
1630 went to the Department of Defense. When it came back, there  
1631 was disagreement from both OMB and DOD as to what we were  
1632 recommending. At that point we met with Senate Armed  
1633 Services Committee, and they took our recommendation and  
1634 placed it into legislation.

1635 Mr. TIERNEY. What, specifically, was the White House's  
1636 response to your recommendation?

1637 Mr. NEEDHAM. I don't know if there was any White House  
1638 response. There was a Department of Defense response.

1639 Mr. TIERNEY. Okay. And OMB didn't make a response?

1640 Mr. NEEDHAM. No.

1641 Mr. TIERNEY. Okay.

1642 Mr. NEEDHAM. I don't think so.

1643 Mr. TIERNEY. Mr. Waxman.

1644 Chairman WAXMAN. [Presiding] Thank you very much.

1645 Before we conclude the hearing, I just wanted to say that I  
1646 am very grateful for the witnesses that have appeared today  
1647 to talk about this issue. I am disappointed, and I have to

1648 | say it, about what I have heard from the Department of  
1649 | Defense.

1650 |         For three years Congress, auditors, and other experts  
1651 | have raised concerns about DOD, about the cost of the Defense  
1652 | Base Act insurance, and we have tried to get this whole issue  
1653 | moved forward. I don't think Congress can simply allow a  
1654 | waste of money to continue. I have prepared legislation that  
1655 | would require DOD to establish an agency-wide single insurer  
1656 | risk pool for Defense Base Act insurance, the same approach  
1657 | successfully used by the Department of State and the Corps of  
1658 | Engineers, to hold down costs.

1659 |         We have already submitted it to CBO, and under their  
1660 | analysis it would save taxpayers over \$360 million over the  
1661 | next year. I have determined to end the waste and abuse in  
1662 | the Defense Base Act Insurance Program. This legislation I  
1663 | think will do that. We are going to look to both sides of  
1664 | the aisle to see if we can get this legislation enacted.

1665 |         This hearing was to be constructive. I hope it will be  
1666 | constructive, and I hope we will get the kind of result that  
1667 | will make sure we have the insurance we need at a price that  
1668 | the taxpayers can afford.

1669 |         Mr. Davis?

1670 |         Mr. DAVIS OF VIRGINIA. Oh, thank you. Just very  
1671 | quickly, I want to thank all the witnesses. I know how CBO  
1672 | scored it, I would like to see GAO take a look at this as

1673 well.

1674 Chairman WAXMAN. Yes.

1675 Mr. DAVIS OF VIRGINIA. One of the concerns is when the  
1676 Corps of Engineers went out there, they just got one bidder.  
1677 I don't know that you can save money under those  
1678 circumstances where we have real competition going on. But I  
1679 am open on the question.

1680 Let me just particularly thank Admiral Ginman for coming  
1681 back into Government service after you retired. I appreciate  
1682 your service both before and after and your willingness to  
1683 step out from the big salaries in the private sector to come  
1684 back and serve the public.

1685 Admiral GINMAN. Thank you.

1686 Mr. DAVIS OF VIRGINIA. And to all of you who serve the  
1687 public, thank you as well.

1688 Chairman WAXMAN. I thank you all and Admiral Ginman, and  
1689 I also want to praise you for your service. My criticisms,  
1690 of course, in no way are personal to you. It is the issue  
1691 that we are looking at.

1692 Thank you. That concludes the hearing. We stand  
1693 adjourned.

1694 [Whereupon, at 11:40 a.m., the committee was adjourned.]

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