



ACE International Insurance

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Office of Workers' Compensation Programs

Division of Longshore & Harbor Workers' Compensation

OUTLINE

- The Defense Base Act (DBA): Background & History
- Roles & Responsibilities
- Insurance
- Waivers
- Contact Information; Q&A

DBA BACKGROUND & HISTORY

History and Purpose of The Act

1. Extension of LHWCA; passed in 1941 & amended later,
2. To cover overseas civilian workers,
3. On government contracts,
4. Both US or foreign nationals.
5. 1958 Amendment clarified that service contracts, even those which do not directly provide for “construction, alteration, removal or repair”, are included in the definition of public work.

Six Gates to Coverage

1. Any defense base acquired from any foreign government
2. Lands occupied or used by the US for military purposes outside the continental US
3. Public work in any Territory or possession under a contract with the US
4. Public work outside the US not covered under (3)
5. Contract outside the US approved and financed by the US.
6. Welfare or similar services outside the US for troops authorized by DOD.

Coverage

- DBA applies to injuries and deaths that arise out of and in the course of employment.
- Under the “Zone of Special Danger” doctrine, injuries and deaths that occur outside of regularly assigned job duties or work hours may be covered.

ROLES & RESPONSIBILITIES

Contracting Officer Responsibility

- **Ensure contractor compliance with the requirements of the Federal Acquisition Regulation for Defense Base Act Insurance.**
- **Federal Acquisition Regulation (FAR) at 48 CFR 28.309 requires Defense Base Act insurance in contracts for public works and contracts approved and financed under the Foreign Assistance Act of 1961, if work is performed outside the United States.**
- **Federal Acquisition Regulation (FAR) at 48 CFR 52.228-3 & 4 requires that solicitations and contracts include the requirement for Defense Base Act insurance where applicable.**

Employer Responsibility (1 of 2)

- **Secure Defense Base Act insurance before employees are deployed overseas.**
- **Post Notice to Employee, Form LS-241.**
- **Inform employees about DBA benefits and how to report a work-related injury.**
- **File Employer's Report of Injury within 10 days of employer's knowledge of employee injury or death (DIRECTLY TO OWCP).**
- **Notify the insurance carrier of employee injury or death.**

Employer Responsibility (2 of 2)

- Authorize medical care when requested or upon knowledge of injury.
- Provide earnings, employment, medical, and other records to the OWCP when requested.
- Assist the employee or survivors to file claim for benefits.

Insurance Carrier Responsibility (1 of 2)

- Educate the insured employer of its rights and responsibilities under the LHWCA and the DBA.
- The insurance carrier stands in the shoes of the employer.
- Upon receiving notice of injury or death, investigate the compensability of the claim, and determine if compensation and medical care are payable.
- Ensure necessary medical care has been authorized and medical providers have been given billing and reporting instructions.

Insurance Carrier Responsibility (2 of 2)

- **First payment is due 14 days from the first day of disability. No compensation due if time loss is < 3 days.**
- **If carrier determines that benefits should be delayed or denied, a Notice of Controversion must be filed with the OWCP within 14 days of the compensation due date.**
- **File the required forms and records with the OWCP to apprise the District Director of the claimant's status.**
- **File medical reports with the OWCP to apprise the District Director of the employee's medical progress and status.**

Employee Responsibility (1 of 2)

- Report injury to employer as soon as possible.
- Request authorization for medical care when needed. Employee has a free choice of treating physician.
- Cooperate with employer/carrier in the investigation of the claim.
- Provide documents and medical reports to the OWCP upon request.

Employee Responsibility (2 of 2)

- **Attend medical examination arranged by employer/carrier or by the District Director, when requested.**
- **Complete Employee's Report of Earnings, Form LS-200, when requested (no more than twice a year).**
- **File a written Claim for Compensation within one year of the date of injury or one year of last payment of compensation, whichever is later.**

DLHWC Role (1 of 3)

- **Authorize insurance carriers and self-insured employers to secure compensation liability and maintain insurance coverage records.**
- **Create and maintain case files for injury reports/claims filed under the Act.**
- **Ascertain the prompt and proper payment of compensation when due.**
- **Monitor and supervise medical care.**

DLHWC Role (2 of 3)

- **Assist in the informal resolution of disputes via phone, correspondence, and informal conferences.**
- **Provide Information and Assistance on claim and reporting procedures.**
- **Approve and issue orders for stipulated awards and settlement of claims when all parties are in agreement.**

DLHWC Role (3 of 3)

- Issue discretionary orders on attorney fees and on medical care, and supplemental orders of default.
- Refer cases to the Office of Administrative Law Judges for formal hearing when informal claim resolution fails.
- Provide vocational rehabilitation services.
- Assess statutory penalties and fines.

INSURANCE

Insurance

- The provisions of the Longshore and Harbor Workers' Compensation Act and its Regulations apply to the Defense Base Act
- 4(a) makes the employer
 - *Liable for the benefits*
 - *Obligated to secure the benefits*

Insurance

- 32(a) (1) provides for insurance by an authorized carrier
- 32(a) (2) provides for self-insurance
- 5(a) Failure to secure payment allows employee either to collect compensation, or to sue employer for damages
- The defenses of “fellow servant”, “assumption of risk” and “contributory negligence” are not available

Insurance

- 38(a) The *corporation* and its *president, secretary and treasurer* are severally liable for a fine of \$11,000 and imprisonment for not more than one year.
- The *president, treasurer and secretary* are also severally liable jointly with the *company* for the benefits during the period it fails to secure insurance.

Insurance

- The Employer is in violation of the law if it is:
 - Uninsured
 - Insured by an unauthorized carrier
 - Insured by an authorized carrier, but have no DBA endorsement, or
 - Operating under a waiver which is not effective

Insurance

- Ultimately, the Employer is responsible for all liability imposed under the Act, not:
 - The broker or agent
 - The government contracting officer
 - The insurance company
 - The attorney
 - The Department of Labor

Insurance

- **The Prime Contractor is also liable for benefits due if its**
 - **Subcontractors and**
 - **Subordinate contractors**are uninsured.

WAIVERS

Waivers

The Secretary of Labor

- On the recommendation of
 - The head of any department or agency
- In the exercise of her discretion, may
- Waive the application of this section with respect to
 - Any contract, subcontract or subordinate contract
 - Work location under such contracts
 - Or classification of employees

Waivers

Waivers are routinely granted when

- Submitted by the proper person
 - In the proper form
 - Subject to limits and conditions
-
- Waivers apply to Guam for all employees including US nationals.

Waivers

Do not apply to

- US Citizens
- Workers hired in the US
- Legal residents of the US

- Do not apply unless waived employees will receive compensation under local laws providing for workers' compensation for injuries, illness or death.

Waivers

- Each contractor must before commencing performance
- Provide and maintain
- For all waived employees
- Workers compensation insurance as required by the law of the place of the work
- With no exclusions e.g. for war hazards

Waivers

If there is no local workers compensation law

- All workers (US, local and third country nationals) are covered under DBA

- If a worker is NOT covered by another compensation act for any reason
 - Employers face penalties
 - Brokers face E & O claims

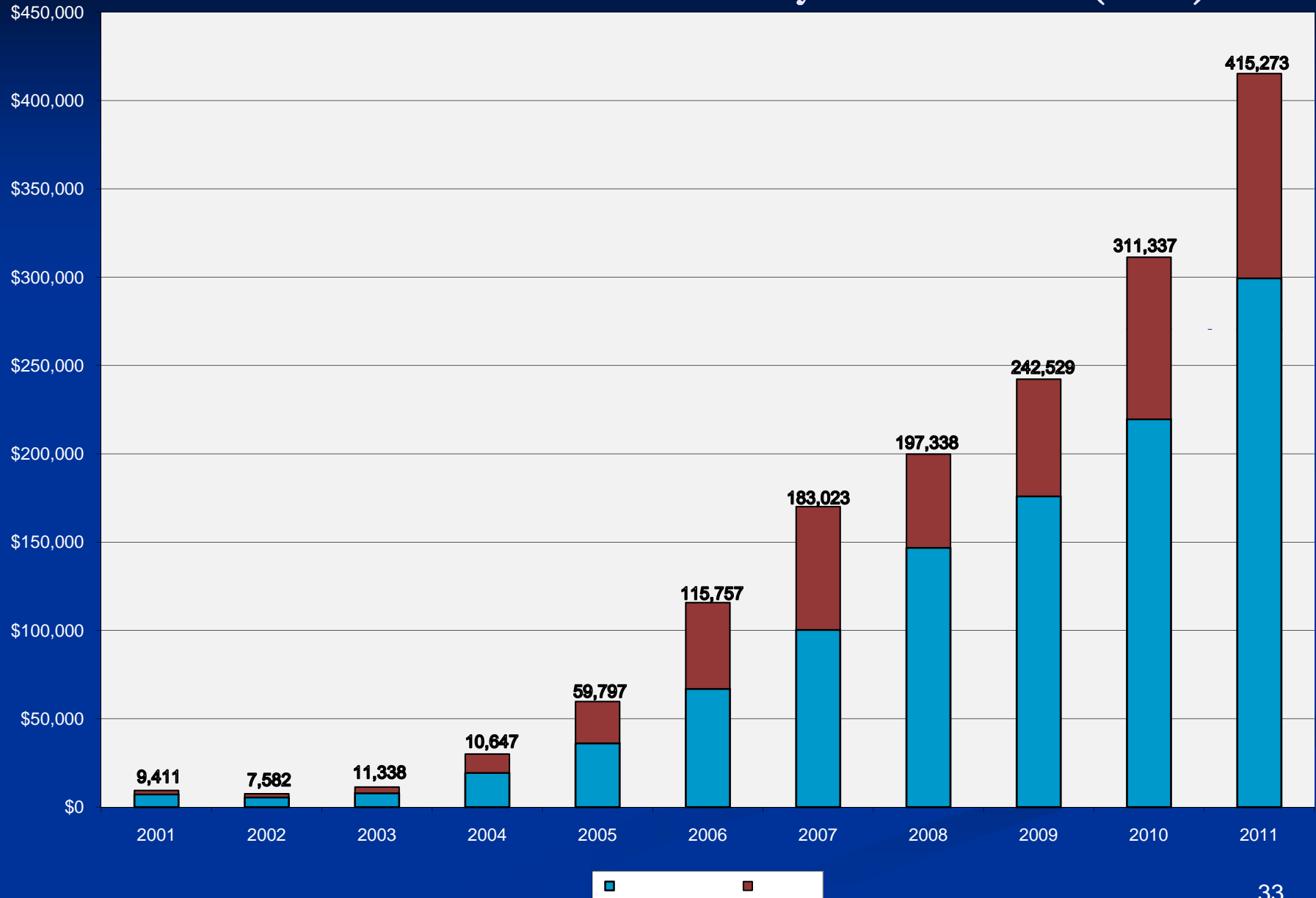
- If in doubt, buy protection

SUMMARY & QUESTIONS

Other Topics and Developments

- Commutations
- DOL updates – New staff and budget status
- Recent reports
 - SIGAR – USACE
 - DoD

DBA costs CY 2001-2011 Indemnity and Medical (\$000)



DLHWC Website

<http://www.dol.gov/owcp/dlhwc/>

- Statutes and Regulations
- Contact Information for all Longshore Offices
- Longshore Forms
- Defense Base Act Page
- Max and Min, NAWW, Mileage, and Interest Rates

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