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SHORTCOMINGS OF DEFENSE BASE ACT INSURANCE--THE STRUGGLES OF TWO YOUNG INTERPRETERS



Introduction

Congress passed the Defense Base Act (DBA), 42 U.S.C. §1651 *et seq.*, in 1942 to protect overseas civilian workers employed by government contractors while those employees are performing work for branches of the U.S. Government. The DBA requires employers to provide their employees injury and death benefits akin to state workers' compensation benefits. These benefits include medical benefits, disability benefits, and death benefits. Government contractors are required to provide DBA benefits to overseas employees regardless of the employee's nationality. The DBA requires employers of civilian workers to "secure compensation" for these benefits. Most overseas defense contractors purchase insurance to secure DBA compensation. Similar to other federal compensation acts like the Outer Continental Shelf Lands Act (OCSLA), the DBA incorporates and is dependent upon the compensation scheme set forth in the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 901 *et seq.* Both the LHWCA and the DBA are overseen by the Department of Labor (DOL).

This article illustrates some of the shortcomings of DBA insurance through its application to two brave young men who were injured by bombs while working as interpreters for American soldiers in Iraq and Afghanistan.

Operation Iraqi Freedom (OIF)¹: Iraqi Interpreter Omar Nadheer

Omar Nadheer was born and raised in Iraq. After the U.S. invasion of Iraq, Nadheer became an interpreter for L-3 Communications-Titan (Titan), a government contractor headquartered in New York. Nadheer lived on the U.S. base near Baghdad and was required to be available to U.S. Army personnel 24 hours a day, 7 days a week. He was paid extra comparable to other interpreters to be available at any time. He collected his monthly pay, \$1,050.00 in cash, at the Titan office on base.

On missions with U.S. soldiers, Nadheer usually rode in the lead vehicle to be readily available as an interpreter when the soldiers leading a convoy needed to speak with local civilians

and Iraqi military personnel. Needless to say, travelling in the lead vehicle of a U.S. convoy in war-torn Iraq is dangerous. Nadheer was subjected to hostile fire, rockets, and bombs just like the soldiers with whom he traveled. The most common form of bomb is commonly called an IED, an acronym for Improvised Explosive Device.

Nadheer was well-liked and respected by the U.S. soldiers. A captain who used Nadheer as his interpreter wrote a recommendation for Nadheer that provided, in part:

I met [Nadheer] upon my arrival and he instantly gained my respect. He provided me basic knowledge of the land and some information about the area. [Nadheer] would always go out of his way to help the unit, by working during his off time, working late to transcribe documents, and motivating other soldiers in the unit to improve their physical fitness. As the commander, I fought hard to get [Nadheer] as my interpreter because of his skills, and being a very dependable man, but my commander also saw these qualities and ultimately took him as his interpreter...

John Soto Jr.
CPT, MP

On December 17, 2007, while in the lead vehicle on a mission with U.S. soldiers on Baghdad's most dangerous highway, Nadheer was severely injured by an IED that pierced the Humvee in which he was riding. Nadheer's right elbow was shattered along with a substantial amount of bone leading up to his right shoulder. He was taken for emergency treatment to the U.S. Army hospital Ibn Sina, a/k/a 86th Combat Support Hospital, in the International Zone-Baghdad. Nadheer was treated there until January 8, 2008. He underwent a number of painful surgeries while at Ibn Sina, mostly to remove debris from his arm and to treat infection caused by the foreign debris.

Although he needed additional surgeries and in-patient care, Nadheer could not remain at the American combat hospital. He sought a transfer to Amman, Jordan. His American surgeon at the combat hospital recommended

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that Nadheer be treated in Jordan and the hospital records reflect the expectation that he would be transferred there.

The night before he was to be transferred, Titan's casualty officer visited Nadheer at his bedside and told him the DBA insurer determined his condition was not serious enough to justify a transfer to Jordan. Instead, Nadheer would be transferred to a hospital in Erbil, Iraq named Al-Shefaa. Nadheer argued with the casualty officer, as did the American nurse on duty who had been treating Nadheer. The casualty officer told them that Nadheer would either agree to go to Erbil or he would be left without further treatment. Nadheer acquiesced, believing that he had no choice.

Nadheer's five-month stay at Al-Shefaa was a nightmare. There was only one attendant on the second floor where Nadheer's room was located. The attendant slept most nights. Nadheer was bedridden for much of his stay because of an infection to his thigh after a failed skin graft. The sleeping attendant was no help at all. As a result, most nights Nadheer lay awake in constant pain, unable to move from the bed to which he was confined. Sanitary conditions were no better. Nadheer was not bathed after he became bedridden. Nadheer was discharged from Al-Shefaa on June 29, 2008, without any improvement in his condition during the five-plus months he spent there. Like other Iraqi interpreters who were injured and could no longer work, Nadheer was forced into hiding lest he be killed for having worked for the Americans.

Nadheer eventually made it to Jordan, and was granted asylum in the United States in 2010. He now resides in San Antonio, Texas, and receives Social Security disability and Medicaid health care benefits. Nadheer is finally getting the medical care that he needs at the University of Texas Health Science Center in San Antonio. Nadheer's treatment includes a prosthetic implant designed for him to regain function in his right elbow.

Operation Enduring Freedom (OEF): Afghan Interpreter Ahmad Mushfiq

Ahmad Mushfiq was born in 1981 in Kabul, Afghanistan. After the war in Afghanistan started, he became an interpreter employed by Mission Essential Personnel (MEP), a large U.S. defense contractor based in Columbus, Ohio. At the time that he was injured, MEP paid Mushfiq approximately \$700 a month as an interpreter for the U.S. military. On April 29, 2008, while working for the Kapisa and Parwan Provincial Reconstruction Team (PRT) in Kapisa Province, Afghanistan, Mushfiq and other members of the PRT were attacked by the Taliban. The Humvee in which Mushfiq was riding was hit by an IED blast set off by remote control.

Both of Mushfiq's legs were mangled from the blast. His right arm was fractured in several places. Mushfiq was taken to the U.S. combat hospital at Bagram Airfield. There, his right leg was amputated above the knee, his left leg was amputated below the knee, and the multiple fractures of his right arm were stabilized.

Like Nadheer, the MEP's DBA insurer sought to have Mushfiq transferred to a Kabul hospital. The insurer even offered the excitement of a helicopter ride as incentive, but Mushfiq refused to go. Fortunately he was able to stay at the American hospital for further treatment.

Mushfiq, known on base as Ritchie, was embraced by the American soldiers. In the fall of 2008, the military held a memorial 5.7 kilometer run at Bagram Airfield in honor of Senior Airman Jake Yelner, who was killed in the same blast that injured Mushfiq. Mushfiq was driven to the finish line for the run and then crossed the finish line on crutches and prosthetics accompanied by the staff sergeant and the commander of the PRT.³

After treatment, Mushfiq was moved from Bagram Airfield to a safe house in Kabul. He received disability benefits of \$107.69 per week during this time. His benefits were approximately 66% of his pre-disability earnings, the percentage of pre-disability earnings mandated by the DBA. In March of 2009, Mushfiq was found to have reached maximum medical improvement and was assigned an impairment rating of 80% to his right leg, 70% to his left leg, and 14% to his right arm.

In June 2009, an adjuster working for MEB's DBA insurer left a message on Mushfiq's telephone. When Mushfiq returned the call, the adjuster said he would like to bring over some paperwork. The adjuster, a fellow Afghan, brought a settlement agreement drafted by the DBA insurer's lawyers to Mushfiq at a friend's house where Mushfiq was staying. The settlement agreement provided that Mushfiq would release the DBA insurer from all future liability for disability benefits and medical benefits in return for a lump sum. Half of the sum was allocated to liability for past and future disability benefits, and half was allocated to liability for past and future medical benefits. The settlement agreement was prepared for entry and approval by the DOL's Office of Workers' Compensation Programs (OWCP) or an administrative law judge, which is a requirement for DBA settlements.⁴

When the adjuster arrived and presented the settlement, Mushfiq told the adjuster he wanted lifetime medical for his injuries and a monthly disability income instead of a lump sum. The adjuster responded that this was Afghanistan where there were no rules or regulations regarding these

benefits. The adjuster pointed out that Mushfiq's connection to the American soldiers at Bagram had been severed and told Mushfiq he better take the deal- if he did not, he would end up with nothing.

Not surprisingly, Mushfiq signed the agreement and accepted a lump sum that was a fraction of his expected future medical costs. The insurer then submitted the settlement agreement to Richard V. Robilotti, District Director of the OWCP, Longshore District Office #2 in New York. Director Robilotti oversees all DBA injury or death claims occurring in Iraq and Afghanistan.⁵ The settlement was approved and the insurer then obtained full reimbursement for the settlement payment from DOL under §104 of the War Hazards Compensation Act (WHCA). The WHCA provides for reimbursement of amounts paid by insurance carriers to any person for death, disability, and health benefits under the DBA if the benefits compensate injuries due to a war-risk hazard, which includes hostile fire or bombs.⁶

Mushfiq is also a refugee living in the United States. He and his wife, who are expecting their first child, recently moved from San Antonio to Fremont, California, to live in a community with other Afghans displaced by the war.

The Basics of DBA Insurance Coverage

The DBA requires that government contractors such as Titan and MEP provide lifetime medical benefits for injuries sustained as a result of employment, as well as disability benefits, permanent impairment benefits, and death benefits to immediate family members in case of a fatal injury.⁷ To be compensable, the injury must be suffered in the course of employment.⁸ An employer may be self-insured, so long as they provide the DOL adequate assurance of their solvency and ability to fund benefits.⁹ As an alternative, they may purchase such insurance from qualifying insurers.¹⁰

The compensation provisions that apply to the DBA are found in the LHWCA, 33 U.S.C. §§904-9¹¹. They are fairly summarized as follows:

§905	Exclusiveness of Liability. Provided the employer secures compensation in accordance with the requirements of the LHWCA, the employer will have no liability outside of the compensation provisions of the LHWCA. Should the employer not secure compensation as provided by the Act, the employee may seek redress under either the Act or the common law, and the employer forfeits certain defenses. ¹³
§906	Compensation. This provision sets a ceiling and floor for disability and death benefits, and establishes the time after disability that benefits begin. ¹⁴
§907	Medical Services and Supplies. The general requirement under this section requires that the employer furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require. ¹⁵ This provision also gives the employee the right to choose the physician (as authorized by the Secretary of the U.S. Department of Labor) unless there is an emergency and the employee cannot choose, in which case the employer may choose. ¹⁴ This section also has a case monitoring provision, charging the Secretary of the DOL to "actively supervise the medical care rendered to the employee." ¹⁶

§904	Liability for Compensation. The employer shall secure compensation for employees injured in course and scope of employment irrespective of fault. ¹²
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§908	<p><u>Compensation for Disability</u></p> <p>Permanent Total Disability-compensation rate 66 and 2/3 of pre-disability average weekly wage. This provision provides certain presumptions of permanent disability, one of them being the loss of both feet.¹⁷ Temporary Total Disability-compensation for disability @ the rate of 66 and 2/3 pre-disability average weekly wage for disability that is temporary.¹⁸ Permanent Partial Disability-employees that suffer a permanent loss of use of an appendage that is not a permanent total disability shall receive impairment payments on top of other temporary disability payments for specific losses, e.g. loss of a thumb, 75 weeks of compensation (@ the rate of 66 and 2/3 of pre-disability average weekly wage).¹⁹ This section also permits lump sum settlements of future medical and disability payments.²⁰</p>
§909	<p><u>Compensation for Death.</u> This provision requires payments until death or remarriage to the surviving spouse of the decedent employee at the rate of 50% of the average weekly wage of the decedent. It also provides for payment to surviving children of the decedent.²¹</p>
§910	<p><u>Determination of Pay.</u> This provision prescribes how the average weekly wage of the employee is to be calculated.²²</p>

Who Pays Benefits Under The War Hazards Compensation Act

The War Hazards Compensation Act provides that any employer or insurance carrier that pays government contractor employees for injuries caused by war hazards will be reimbursed by the U.S. Government.²³ The Secretary of Labor administers the payments made through a fund established under the Federal Employees Compensation Act. DBA carriers not only get full reimbursement from the U.S. government for amounts paid to the employee under the DBA, but are also reimbursed reasonable claims handling expenses.²⁴ Under the War Hazards Compensation Act, the carriers for Nadheer and Mushfiq's employers were entitled to full reimbursement of the medical expenses and disability benefits paid to or on behalf of Nadheer and Mushfiq, and the cost of handling those claims.

Congressional Hearings in 2008 Over the Escalating Costs of DBA Insurance and the Profits and Claims Handling of DBA Carriers

DBA insurance is purchased by government contractors in the private insurance market. The premiums for DBA insurance are generally a reimbursable expense under government contracts. During its 2008 deliberations over the escalating costs of DBA insurance, Congress reported 90% of the insurance premiums and costs to insure workers in Afghanistan and Iraq were paid by the federal government.²⁵ The American taxpayers ultimately foot the bill for DBA insurance on two fronts. First, the contractors include their premium payments as a reimbursable cost in their contracts with the Department of Defense. Then, when benefits are paid by the insurers, the government reimburses the insurer for payments made to a claimant even though the government has already paid the premium on the same insurance for which it is now reimbursing the insurance company.

Selling DBA Insurance to Defense Contractors in Iraq and Afghanistan: A Lucrative Business

In 2008, after receiving financial information from the four primary DBA insurers, American International Group (AIG), CNA, ACE USA, and the Chubb Corporation, the majority staff members from Congress's Committee on Oversight and Government Reform reported that these insurance companies made substantial underwriting profits from the sale of DBA insurance to government contractors.²⁶ The Committee reported that these four companies received \$1.5 billion in DBA premiums between 2002 and 2007, and paid out just \$928 million in claims and expenses, leaving net underwriting gains of \$585 million; a 39% profit over this five year period.²⁷ In its memorandum, the congressional committee pointed out that these profits were especially aberrant when compared to other workers' compensation insurance programs. In comparison, the same four companies had a net underwriting loss on the other lines of workers' compensation insurance they offered during the same period.²⁸ The financial information given Congress from AIG, which reported the majority of the premiums for DBA insurance, indicated AIG had made a 38% profit on its DBA insurance business, but only 1% on its other workers' compensation business over the same five year period.²⁹ CNA reported a 53% profit on its DBA business during the same period.³⁰

Underwriting for War Risks Reimbursable Under the War Hazards Compensation Act

In its report to the full Committee, the majority staff of the Committee on Oversight and Government Reform indicated

that the DBA insurers appear to have been charging an extra premium based on "danger pay."³¹ Since DBA carriers are indemnified by the government for payments made due to any war risk injuries (including death), this additional premium is improper. The DBA carrier does not bear the additional risk when its insureds are working in war zones.

The DOL Reports to Congress that DBA Insurers Frequently Delay or Deny Payment on Claims to Injured Employees

Also in its report, the majority staff members wrote as follows in their May 15, 2008 Memorandum to the full Committee:

Despite the high profits realized by insurers, the Department of Labor told Committee staff that DBA insurers delay or deny payments on almost all claims submitted by injured contractor employees. The insurers lose over 95% of the disputed claims that are brought before administrative judges.³²

Returning to the Struggles of Omar Nadheer and Ahmad Mushfiq Nadheer and the Medical Services and Supplies Provision of the Longshore Act

The federal compensation act created to protect longshoremen and harbor workers has turned out to be an imperfect fit when adopted as the federal compensation scheme to cover employees in foreign war zones. Nadheer's transfer to a hospital in Erbil, Iraq, instead of Amman, Jordan, exposes one of the disconnects between the compensation provisions as written and their oversight by the DOL. The section that governed Nadheer's transfer from Ibn Sina hospital, titled Medical Services and Supplies, states in relevant part as follows:

Medical Services and Supplies

(a) **General Requirement.** The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require.

(b) **Physician Selection;** Administrative Supervision; Change of Physicians and Hospitals. The employee shall have the right to choose an attending physician authorized by the Secretary to provide medical care under this chapter as hereinafter provided. If, due to the nature of the injury, the employee is unable to select his physician and the nature of the injury requires immediate medical treatment and care, the employer shall select a physician for him.

*The Secretary shall actively supervise the medical care rendered to the injured employees, shall require periodic reports as to the medical care being rendered to the injured employees, shall have the authority to determine the necessity, character, and sufficiency of any medical furnished or to be furnished, ..."*³³

A gaping hole is made apparent when this provision is applied to DBA medical services needed by foreign nationals injured in the wars in Iraq and Afghanistan. Despite the statutory obligation to supervise medical care, the DOL does not actively supervise the medical care of a foreign national injured in Iraq or Afghanistan. In fact, Richard V. Robilotti, the District Director of the OWCP office in New York, the representative of the DOL that oversees all DBA claims from Afghanistan and Iraq, has indicated that the DOL will not communicate with claimants in Iraq due to safety considerations.³⁴ While the OWCP District office guidelines are silent on communications with Afghanistan, one can safely presume claimants in that country are treated the same way for the same reasons. As a result, Nadheer and Mushfiq were left very much alone.

The impact of this lack of oversight is that injured foreign nationals, and their families in case of death, must exclusively rely on DBA insurers (and employers, when the employers are self-insured). Since there was disagreement between Nadheer's health care providers (in tandem with Nadheer) and the DBA insurer over the quality of medical treatment that was required to treat Nadheer after his urgent treatment at Ibn Sina, the DBA insurer should have either contacted the DOL or provided Nadheer and his American medical providers the opportunity to petition the DOL so that Nadheer could seek further treatment in Jordan instead of Iraq. Given the mandate that the DOL actively supervise the medical care of the injured employee, that is how the Act is designed to work.³⁵ DBA regulations require this three-way dialogue (employee, DBA carrier, and the DOL) when a significant dispute arises over medical care.³⁶ Instead, the casualty officer, acting on behalf of the DBA insurer, told Nadheer that he would either go to Erbil, Iraq, or he would receive no further treatment.

Mushfiq: The Threat of Receiving Nothing

Mushfiq didn't request a lump sum settlement of his claim to continued benefits. The carrier sought him out. By emphasizing the threat of receiving nothing, the carrier closed the deal. The settlement funds that Mushfiq received are gone now, used primarily by Mushfiq to pay for living expenses, health care, bodyguards, and bribes to protect his family and him and to bring his wife and him to the United States as refugees in September 2011.

Section 908 of the LHWCA governs DBA settlements.³⁷This provision allows parties to settle their claims, but provides that “no liability of an employer or carrier or both for medical, disability, or death benefits is discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge.”³⁸ A settlement is to be approved by a deputy commissioner or administrative law judge within thirty days of submission unless it is “found to be inadequate or procured by duress.”³⁹

The settlement approval process is an ex parte procedure. Mushfiq had no representation during the claims process, and was not sent a copy of the documents that were submitted to Mr. Robilotti. In maintaining that the settlement for future medical expenses was reasonable, medical reports were submitted by the insurer that indicated that the projected costs for new prosthetics for Mushfiq would be an expense of \$2,500 to be incurred once every ten years along with \$500 per year in medical office visit costs. The settlement was approved by Mr. Robilotti’s office in reliance upon this information.

The DBA insurer’s representations to the OWCP regarding future medical costs is starkly contradicted by the reliable studies that have been done on the medical cost projections for major limb loss from Vietnam and OIF/OEF. To inform the U.S. Department of Veteran’s Affairs, a panel of 25 experts was assembled to project the costs of future care for veterans with major limb loss.⁴⁰ These experts used 2005 Medicare prosthetic device component prices from a national survey of 581 veterans and service members (298 from Vietnam and 283 from OIF/OEF) with major traumatic amputations.⁴¹ The report, submitted to the VA in 2009, the same year that the projection for Mushfiq’s future medical costs was submitted by the DBA insurer, indicated that double amputees from the OIF/OEF wars who were fitted with prosthetics could expect to incur mean future medical costs over a 20 year period of \$1,674,333.⁴² Over a lifetime, the average costs were projected to be \$2,901,365.⁴³ Other reliable studies published by the National Institute of Health support these projected costs for future care for double leg amputees using prosthetics.⁴⁴

Another troubling aspect of Mushfiq’s settlement is it ignores the compensation provisions of the LHWCA, as adopted by the DBA. The settlement states in relevant part as follows:

“The parties are in dispute as to the nature and extent of claimant’s disability. The Claimant asserts that he is entitled to permanent total disability compensation benefits arising out of this incident. The Employer/Carrier asserts that Claimant is entitled to permanent partial disability compensation benefits based upon scheduled disability awards to claimant’s right and left legs and left arm.”⁴⁵

Section 908(a) of the LHWCA, as adopted by the DBA, indicates in part as follows:

Permanent total disability: . . . *Loss of both hands, or both arms, or both feet, or both legs or both eyes. . . in the absence of conclusive proof to the contrary, constitute permanent total disability.* In all other cases permanent total disability shall be determined in accordance with the facts.”⁴⁶

Mushfiq never knew about this provision, and the DBA insurer did not enlighten him. DOL did not contact or question him. Given DOL’s administrative decision not to contact claimants in Iraq and Afghanistan, no conclusive proof to the contrary was available. Therefore, none was provided to Mr. Robilotti’s office.

Conclusion

This article was written with two purposes in mind: the first was to explain the basics of the DBA and DBA insurance; the second purpose was to show the law’s shortcomings when applied in Iraq and Afghanistan by offering a brief account of two brave young interpreters who encountered something that they neither understood nor expected. In the cases of Omar Nadheer and Ritchie Mushfiq we see DBA compensation provisions that are not fully implemented and an absence of protection of injured foreign workers by the DOL. Despite a statutory obligation, the DOL does not oversee the medical care of foreign interpreters who are injured in Iraq and Afghanistan. This lack of oversight has sometimes led to predatory claims practices. Getting to know Nadheer and Mushfiq has been a privilege. Their stories sharpen my sense of good fortune to have been born and live in the United States. Unfortunately, brave interpreters like Nadheer and Mushfiq, and other foreign workers who are essential to our war efforts, have done a better job in protecting us than we have done in protecting them.

1 The U.S. Government has coined the war in Iraq Operation Iraqi Freedom, known by the acronym OIF.

2 The U.S. Government has coined the war in Afghanistan Operation Enduring Freedom, known by the acronym OEF.

3 <http://www.leesvilledailyleader.com/news/x199491591/TF-Warriors-honors-fallen-comrades>

4 33 U.S.C. § 908(i).

5 <http://www.dol.gov/owcp/dlhwca/DBAOWC Procedures2-22-06.pdf>

6 42 U.S.C. § 1711(b).

7 See 42 U.S.C. § 1651(a) (incorporating and applying the provisions of the LHWCA to such employers and employees).

8 *Id.*

9 33 U.S.C. § 932(a)(2).

10 33 U.S.C. § 932(a)(1).

11 33 U.S.C. § 904.

12 33 U.S.C. § 905(a).

13 33 U.S.C. § 906

14 33 U.S.C. § 907(a).

15 33 U.S.C. § 907(b).

16 *Id.*

17 33 U.S.C. § 908(a).

18 33 U.S.C. § 908(b).

19 33 U.S.C. § 908(c).

20 33 U.S.C. § 908(i).

21 33 U.S.C. § 909(b).

22 33 U.S.C. § 910.

23 42 U.S.C. § 1704(a).

24 *Id.*

25 Memorandum from the Majority Staff, Committee on Oversight and Government Reform, U.S. Congress, dated May 15, 2008, at 1.

26 *Id.*, at 6.

27 *Id.*, at 1.

28 *Id.*, at 2.

29 *Id.*, at 6.

30 *Id.*

31 *Id.*, at 2.

32 *Id.*

33 33 U.S.C. § 907 (emphasis added).

34 <http://www.dol.gov/owcp/dlhwc/DBAOWCPProcedures2-22-06.pdf>

35 33 U.S.C. § 907(b).

36 20 C.F.R. § 702.405.

37 33 U.S.C. § 908(i).

38 *Id.*

39 *Id.*

40 David K. Blough, *Prosthetic Cost Projections for Servicemembers with Major Limb Loss From Vietnam and OIF/OEF*, 47 JOURNAL OF REHABILITATION RESEARCH & DEVELOPMENT 387-402 (2010).

41 *Id.*, at 389.

42 *Id.*, at 397.

43 *Id.* Because the time horizon for lifetime costs was considered to be 100 years, one can argue this figure will exceed Mushfiq's expected future costs related to his loss of both legs. *Id.*, at 394. However, one can also argue that the lifetime costs are underestimated because they do not account for future technologies that may dramatically increase future costs. *Id.*, at 400.

44 In 1994, lifetime prosthetic costs for a group averaging 41 years of age who were single-leg amputees was estimated to be \$403,199.18. <http://www.ncbi.nlm.nih.gov/pubmed/8156666>. In 2007, lifetime healthcare costs of a single-leg amputee was estimated to be \$509,275.00. <http://www.ncbi.nlm.nih.gov/pubmed/17671005>. See also, *Prosthetic Cost*, 47 JOURNAL OF REHABILITATION RESEARCH & DEVELOPMENT at 399 (referring to the 1994 NIH study and announcing, "A study by Williams with a population similar to the Vietnam unilateral lower-limb group found costs that compare in order of magnitude to those we obtained for the unilateral lower-limb groups.").

45 It was his right arm. There are many factual errors in the settlement agreement. Not only does the agreement refer to the wrong arm, but it also indicates that Mushfiq's left leg was amputated above the knee and his right leg was amputated below the knee. Actually, Mushfiq's right leg was amputated above the knee and his left leg below the knee.

46 33 U.S.C. § 908(a)(emphasis added).