

## New Developments

### U.S. Army Legal Services Agency

#### Court Grants Partial Summary Judgment in KBR Convoy Cases

On 25 March 2010, in *Fisher v. Halliburton*,<sup>1</sup> the District Court for the Southern District of Texas granted partial summary judgment in favor of KBR. Pursuant to the LOGCAP III contract, KBR operated convoys in Kuwait and Iraq supplying materiel for the Army. On 8 and 9 April 2004, three KBR convoys were attacked by insurgents near Camp Anaconda, Iraq, resulting in numerous deaths and injuries to KBR employees. Plaintiffs filed suit against KBR in 2005 alleging numerous causes of action, including fraud regarding the safety and nature of the work in Iraq, tort claims, and the intentional deployment of convoys knowing the convoys would be attacked. KBR alleged in a motion for summary judgment that the Defense Base Act (DBA)<sup>2</sup> provided the exclusive remedy for all of plaintiffs' claims.

The DBA, which incorporates the Longshore and Harbor Workers' Compensation Act (LHWCA),<sup>3</sup> applies to employees engaged in public works contracts with the United States or its agencies to be performed outside the continental United States.<sup>4</sup> "Public works" includes "projects or operations under service contracts and projects in connection with the national defense or with war activities."<sup>5</sup> The DBA is similar to state workers' compensation statutes in that it, along with the LHWCA, determines the benefits for the injury or death of a covered employee. The LHWCA defines "injury" as an accidental injury or death arising out of and in the course of employment.<sup>6</sup> The liability of an employer under the DBA is the exclusive remedy for covered employees.<sup>7</sup>

The court determined that the Smith-Idol claim (the 8 April 2004 convoy) is covered by the DBA because the attacks that day met the statutory definition of an "accident" under the DBA (an unexpected event). Accordingly, the court dismissed the Smith-Idol claim and determined the DBA was the exclusive remedy. However, the court determined that the Fisher and Lane convoys dispatched the

following day were not covered by the exclusivity provisions of the DBA because KBR had information demonstrating that, on 9 April 2004, attacks on the convoys were "expected" and no longer considered an "accident" under the statute. Accordingly, the court denied the KBR motion for summary judgment regarding the Fisher and Lane convoy claims. The court stayed the *Fisher* and *Lane* cases pending interlocutory appeal to the Fifth Circuit Court of Appeals. The trial, set for 24 May 2010 in Houston, Texas, is postponed pending the outcome of the interlocutory appeals. —Litigation Division.

### Criminal Law

#### Criminal Law Advocacy Course (CLAC)

Because of the high demand, the CLAC has been transformed into a one-week course that will be offered four times a year (instead of a two-week course offered twice a year). Two courses will be offered in the Fall and two in the Spring, during consecutive weeks. The dates for the Fall course are as follows:

34th CLAC: 13–17 Sep 10\*

35th CLAC: 20–24 Sep 10\*

The new CLAC will continue to utilize small-group advocacy exercises and mock trials, so the course will remain "invitation only" on ATRRS to allow management of slots. To secure seats at the September courses, please have your Chief of Justice contact Major Chuck Neill, CLAC Course Manager, (434) 971-3343, (DSN 521) or [steven.neill@us.army.mil](mailto:steven.neill@us.army.mil).

### Administrative and Civil Law

#### Investigations of Suspected Suicides and Suicide Incident Family Briefs

Recently published Army Directive 2010-01, *Conduct of AR 15-6 Investigations Into Suspected Suicides and Requirements for Suicide Incident Family Briefs*,<sup>8</sup> supplements the guidance regarding suicide investigations contained in Army Regulation (AR) 600-63, *Army Health Promotion*,<sup>9</sup> and creates a requirement to offer Suicide Incident Family Briefs to next of kin for confirmed

<sup>1</sup> *Fisher v. Halliburton*, 2010 U.S. Dist. LEXIS 28565 (S.D. Tex. Mar. 25, 2010) (consolidating *Fisher v. Halliburton*, *Lane v. Halliburton*, and *Smith-Idol v. Halliburton*).

<sup>2</sup> 42 U.S.C. § 1651–1654 (2006).

<sup>3</sup> 33 U.S.C. § 901–950 (2006).

<sup>4</sup> See 42 U.S.C. § 1651(a).

<sup>5</sup> *Id.* § 1651(b)(1).

<sup>6</sup> 33 U.S.C. § 902(2).

<sup>7</sup> 42 U.S.C. § 1651(c).

<sup>8</sup> U.S. DEP'T OF ARMY, DIR. 2010-01, CONDUCT OF AR 15-6 INVESTIGATIONS INTO SUSPECTED SUICIDES AND REQUIREMENTS FOR SUICIDE INCIDENT FAMILY BRIEFS (26 Mar. 2010).

<sup>9</sup> U.S. DEP'T OF ARMY, REG. 600-63, ARMY HEALTH PROMOTION (7 May 2007) (RAR, 20 Sept. 2009).

suicides.<sup>10</sup> A Rapid Action Revision (RAR) to AR 600-63, published on 20 September 2009, requires commanders to conduct an AR 15-6 investigation into “every suicide and equivocal death which is being investigated as a possible suicide.”<sup>11</sup> Army Directive 2010-01 directs AR 15-6 investigating officers to consult with the Office of the Staff Judge Advocate, the Army Criminal Investigation Command (CID) office investigating the death, behavioral and health care providers, the Office of the Armed Forces Medical Examiner (if applicable), and the line of duty investigating officer (if applicable), prior to finalizing their findings and recommendations.<sup>12</sup> The directive also provides a list of detailed questions for the investigating officer to consider that are intended to be “guidelines” for the investigation.<sup>13</sup> These questions pertain to “lines of inquiry” categorized as “Communication of Suicidal Intent,” “Personality and Lifestyle,” “Military History” of the decedent, and “Other” considerations that might be relevant to a given case.<sup>14</sup>

In addition to adding these requirements for the investigation, Army Directive 2010-01 also imposes a requirement that “for deaths that occur on or after 15 April 2010 that are later confirmed to be suicides, colonel-level commanders or other colonel-level designees appointed by the investigation approval authority will offer a death investigation briefing to the deceased Soldier’s primary next of kin and, when practical, to parents who are secondary next of kin . . . .”<sup>15</sup> These death investigation briefings, also called Suicide Incident Family Briefs, are to be conducted in accordance with the procedures already established for Fatal Training and Operational Accident Briefings for next of kin<sup>16</sup> conducted under the provisions of AR 600-34.<sup>17</sup>  
—Major Scott Dunn.

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<sup>10</sup> *Supra* note 1.

<sup>11</sup> *Supra* note 2, para. 1-24o.

<sup>12</sup> *Supra* note 1, enclosure 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

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<sup>15</sup> *Id.* at 1. *See also* New Developments, Administrative and Civil Law, *Mandatory Investigations into Suicide*, ARMY LAW., Jan. 2010, at 1 (noting that these Suicide Incident Family Briefs were not required by the RAR to AR 600-63, dated 20 September 2009).

<sup>16</sup> *Id.* enclosure 2.

<sup>17</sup> U.S. DEP’T OF ARMY, REG. 600-34, FATAL TRAINING/OPERATIONAL ACCIDENT PRESENTATIONS TO THE NEXT OF KIN (2 Jan. 2003).