THE NEW WAR LABOR PARADIGM: CIVILIANS WHO WORK LIKE SOLDIERS AND SOLDIERS WHO WORK LIKE CIVILIANS— HOW TO COMPENSATE FOR DEATH AND INJURIES?

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I. Introduction: Outsourcing War— Who Pays for Death and Injuries in the Course of Employment and Service? My study explores the growing interface between civilian employment and military service in war zones. It is motivated by changes in waging war. The U.S. once had a vertically integrated process to transport troops, run supply chains, and maintain equipment. Today, the military outsources these functions to private companies (Zitter, 2007). In 2009, 242,000 civilians worked with 280,000 soldiers in Iraq and Afghanistan.[1] Dubbed private military forces (Singer, 2007), PMFs drive trucks, cook meals, fix planes, and provide security (Rakowsky, 2006).

Co-mingling military service and civilian labor raises new questions about legal remedies for Americans who are killed or injured serving their country. Consider the Halliburton truck drivers who delivered supplies to U.S. troops in Iraq. Six were killed after their convoy was ambushed in 2004. The day before, a similar convoy was attacked, killing a co-worker. The drivers contemplated a work stoppage until conditions were safer. Bowing to work orders, they met their fate (Flood, 2009). Survivors believed that job ads misrepresented the safety of work in Iraq. A judge rejected Halliburton's defense that it has immunity from suits as a government contractor. Thus, the survivors' legal claims are proceeding to trial.

Consider a reciprocal case, where soldiers served on a non-combat mission under a civilian contractor. As they worked at an Iraqi water treatment plant, they developed bloody noses— a sign of poisoning from the sodium dichromate in pipes (Searcey, 2010). Fearing long term effects from this deadly toxin, the soldiers sued KBR. An Indiana court will decide whether their claims are dismissed under the *Feres* doctrine— a legal

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[1] "Our View: Warfare, Outsourced," Anchorage Daily News (Jan. 3, 2010), at http://www.adn.com/opinion/view/story/1077653.html.

principle that bars tort recovery for injuries that arise during military service.

Death- and injury-benefit cases do more than raise technical legal questions. When courts award or deny monetary relief in these war labor cases, they decide whether civilians and soldiers perform "work" or "service." The distinction has profound consequences for compensating war losses.

These judgments open a window to a war labor landscape that is largely out of public view. The labor relations practices of PMF firms differ from other defense contractors. Boeing and Lockheed-Martin have union-represented employees. But firms such as Halliburton strongly resist unions (*Halliburton Co*., 1963; *Halliburton Co*., 1968; *Freightmaster, Div. of Halliburton*, 1970; *Halliburton Services*, 1977). They also avoid judicial accountability by requiring workers to arbitrate disputes (*in re Halliburton*, 2002). Certainly, other companies use union-suppression and litigation-avoidance strategies. But PMF firms differ by leveraging their close ties to government insiders (*e.g*., an Army Corps of Engineers officer lost her job after she objected to a large, no-bid contract to Halliburton [Eckholm, 2004; Witte, 2005]).

In short, private military firms use a war labor model that insulates them from external accountability. They do not deal with unions or courts, and they use political influence to avoid public accountability. My study sheds light, however, on growing judicial scrutiny of the integrated use of PMFs and troops by asking: How are civilians and soldiers who are co-mingled in this military system paid for death and injury? Do sovereign immunity theories bar recovery? Do courts order arbitration of these claims? If courts try claims, what laws apply: torts or worker's compensation?

My paper is organized in four parts. First is a typology of cases (Part II), followed

by a preliminary picture of litigation outcomes (Part III). This research shows that courts are surprisingly willing to reject immunity defenses and allow trials. Next, I discuss public policy options to address these compensation cases (Part IV). In the conclusion, I show how these court cases reveal broader issues about the emerging war labor paradigm (Part V). I also consider how research in labor relations and HR management can analyze and possibly improve the employment of private military forces.

II. A Typology of War Zone Death and Injury in the Course of Service and Employment: Increasingly, soldiers serve under the direction of contractors. Meanwhile, civilian employees work under military orders. Thus, some soldiers engage in non-combat activities such as building water treatment plants, bridges, roads, and schools—while civilians work in combat support roles such as guarding mess halls and supplying troops. Afghanistan is a case in point. The U.S. has spent $3.4 billion on U.S. contractors to perform military support services, and to lead building projects (U.S. GAO, 2009(a)).

My research began by searching for legal opinions in Westlaw's extensive database. Using federal and state court cases, and worker's compensation rulings, I explored cases where civilians or soldiers in these integrated roles were killed or injured. A private employer was sued over the incident in all cases.

Mostly, injured parties sued in tort—a miscellaneous category of civil law that provides costly remedies. To illustrate, negligence is a common tort— and it often appeared in these cases. The contractor responded that it was immune from any legal action, or that worker's compensation provided an exclusive remedy. The latter awards employees fixed payments for on-the-job injuries. At the same time, these payments extinguish tort claims against employers for more expensive judgments.

To put this distinction in perspective, consider asbestos litigation. For years, this product was suspected as a cause of occupational disease. Courts disallowed recoveries in tort, and ruled that this exposure injury could only be remedied under worker's compensation (*McNeely*, 1934).[2] This changed in the 1980s and 1990s, when exposure victims who sued in tort received billions of dollars in judgments (Davidson, 2006; Rice, 1997). Unable to pay claims, asbestos manufacturers filed for bankruptcy. This tort held them accountable to the public for the safety of their product.

To guide my analysis, I created the typology in Table 1 (below).

Worker Compensation Claims: Cell 1 examines a case where a civilian employee received benefits under a worker's compensation law. The law in question was a federal version of worker's compensation. Called the Defense Base Act, it allows civilians to obtain a recovery for work-related injuries on overseas military bases. Cell 2 deals with soldiers, and their survivors, who failed to obtain a tort remedy. As a result, they received only insurance. For death benefits claims, their recovery was limited to $400,000.

Tort Claims: Cell 3 has cases where a civilian employee was allowed to pursue a tort remedy. These cases are significant because courts rejected a contractor's attempt to invoke immunity doctrines. These rulings differ from the main trend when defense contractors are sued in tort— typically for defective military products that cause death or injury. The result in Cell 3 is that courts do not limit civilians to an insurance-type recovery. In Cell 4, soldiers and survivors were allowed to sue contractors in tort because courts rejected a contractor's effort to invoke immunity doctrines. This allowed service members and their family to receive more than insurance.

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[2] *McNeely* ruled that a worker diagnosed with pulmonary asbestosis could not sue in tort and could only recover under the state's worker's compensation law.

Table 1
Compensation for Soldiers and Civilian Employees Killed or Injured in War

	Civilian Employee		Soldier	
Worker Compensation	**Cell 1**		**Cell 2**	
	Case	**Outcome**	**Case**	**Outcome**
	Jones v. Halliburton, 583 F.3d 228 (5th Cir. 2009)	**Grant relief** under Defense Base Act	*Smith v. Halliburton*, 2006 WL 2521326 (S.D. Tex. 2006)	**Deny relief** in tort due to "political question" doctrine
			Carmichael v. KBR, 572 F.3d 1271 (11th Cir. 2009)	**Deny relief** in tort due to "political question" doctrine
			Whitaker v. KBR, 444 F.Supp.2d 1277 (M.D.Ga. 2006)	**Deny relief** in tort due to "political question" doctrine
Tort	**Cell 3**		**Cell 4**	
	Case	**Outcome**	**Case**	**Outcome**
	Fisher v. Halliburton, 390 F.Supp.2d 610 (S.D. Tex. 2005)	**Allow** tort claim to proceed	*Lessin v. KBR*, 2006 WL 3940556 (S.D.Tex. 2006)	**Allow** tort claim to proceed
	Lane v. Halliburton, 529 F.3d 548 (5th Cir. 2008)	**Allow** tort claim to proceed	*McMahon v. Pres. Air.*, 502 F.3d 1331 (11th Cir. 2007)	**Allow** tort claim to proceed
	Potts v. Dyncorp, 465 F.Supp.2d 1245 (M.D.Ala. 2006)	**Allow** tort claim to proceed		
	Parlin v. Dyncorp, 2009 WL 3636756 (Del. 2009)	**Allow** tort claim to proceed		
	Barker v. Halliburton, 541 F.Supp.2d 879 (S.D. Tex. 2008)	**Order arbitration** of tort claim		
	Jones v. Halliburton, 583 F.3d 228 (5th Cir. 2009)	**Allow** tort claim to proceed		

CELL 1: CIVILIANS WHO WORK LIKE SOLDIERS: WORKER COMPENSATION REMEDY

COMPENSATION REMEDY: Private military forces do not usually qualify for worker's compensation because they work beyond state borders. Only a few states apply this law for injuries outside their jurisdiction. There is a worker's compensation law for

federal employees (Federal Employees' Compensation Act), but it does not apply to contractor employees. Thus, most private military force employees fall in a worker's compensation void. However, the Defense Base Act (Act, 1941) applies to some of these workers. It pays civilians who are killed or injured on public works projects outside the U.S. (*e.g.*, *Overseas African* (1973), compensating an employee who contracted a serious skin disease while working on a harbor improvement for the Army Corps of Engineers in a Somali port).

My research found one case of compensation under the Defense Base Act. Halliburton transferred Jamie Leigh Jones from her job in Texas to Baghdad (*Jones*, 2009). Within days, she was raped by co-workers in her in barracks, located in Camp Hope. This area was jointly controlled by the U.S. and her employer. Badly beaten, Jones went to the Army hospital. After her release, she was placed under armed guard in a container. Jones received benefits under the Defense Base Act. Separately, she sued Halliburton on several tort theories (*see* discussion in Cell 3, below).

CELL 2: SOLDIERS WHO WORK LIKE CIVILIANS: WORKER COMPENSATION REMEDY: When soldiers die during active duty, the U.S. provides survivor benefits (Chase, 2008). These include monthly payments to spouses, children, and other dependents under the Dependency and Indemnity Compensation and Survivor Benefit program. Alternatively, survivors are eligible for lump sum payments from the Death Gratuity Program. This provides a maximum benefit of $100,000. Service Members Group Life Insurance supplements this automatic benefit by allowing soldiers to buy up to $400,000 in insurance (U.S. Department of Veteran's Affairs, 2010).

These benefits aside, servicemembers and survivors face great obstacles when

they sue for damages caused by death or injury. *Feres v. U.S.* (1950) ruled that the U.S. is not liable under the Federal Tort Claims Act for injuries to servicemembers. Today, courts widely cite the *Feres* doctrine to deny a tort recovery for military claimants. Typically, these cases involve claims for defective military products, where the contractor is a manufacturer (*Boyle*, 1988; *Bentzlin*, 1993).[3] The cases in Cell 2 applied immunity doctrines in war labor settings. Some courts dismissed cases that raised political issues that they thought were only remotely legal in character.[4]

In *Smith v. Halliburton Co*. (2006) the wife and children of a fallen soldier sued a contractor who provided security to the Army. A suicide bomber detonated explosives in a Halliburton dining tent. Mrs. Smith sued for negligence and premises liability, noting that Halliburton owned, operated, and controlled the dining tent. Dismissing the lawsuit, the court cited the political question doctrine— meaning that it would need to make judgments reserved for the Commander-in-Chief and the military. In this case, the contractor was following military orders while providing security.

In *Carmichael* (2009) a sergeant in Iraq was thrown from a speeding fuel truck. Pinned under the vehicle, he could not breathe for several minutes. He is now in a vegetative state. His wife sued the contractor whose employee lost control of the truck.

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[3] In *Boyle*, the Supreme Court held that the district court was required to dismiss a tort suit brought by the survivors of a soldier killed in a helicopter crash in the course of training. The suit alleged that the helicopter manufacturer defectively designed the aircraft's emergency escape system. *Bentzlin* involved a suit by family members of six Marines who were killed in combat during Persian Gulf War when their vehicle was struck by a missile fired from U.S. Air Force A-10 aircraft. The suit alleged that the missile's manufacturer caused the defect by negligent manufacture. The trial court dismissed the lawsuit on contractor immunity grounds.

[4] The U.S. Supreme Court has identified formulations to aid lower courts in determining if a case raises a political question. Among these guideposts, the most pertinent to private military forces and integrated military units are: "the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government," and "an unusual need for unquestioning adherence to a political decision already made." These principles appear in *Baker v. Carr*, 369 U.S. 186, 217 (1962).

The appeals court said it lacked jurisdiction to consider the contractor's liability. The military decided the convoy's speed, route, and intervals. Because the Army decided each travel factor, the matter was an issue for other branches of government to decide.

In *Whitaker* (2006) a soldier was providing an armed escort for a KBR supply convoy when the truck in front of him hit a bridge guard rail. Stopping his vehicle to help, the soldier was hit from behind by another truck. Private Whitaker was thrown into a river and drowned. His surviving parents sued KBR for the negligence of its drivers. Applying the political question doctrine, the court barred the claims of the soldier's estate. The Army controlled all aspects of the convoy operation. The court noted that the military provided "a seamless transportation system that supports the movement requirements of the joint force and the Army (p. 1279)." It added: "When the military seeks to accomplish its mission by partnering with government contractors who are subject to the military's orders, regulations, and convoy plan, the use of those civilian contractors to accomplish the military objective does not lessen the deference due to the political branches in this area (p. 1281)."

CELL 3: CIVILIANS WHO WORK LIKE SOLDIERS: TORT OR OTHER REMEDY: A contractor hired civilians to drive fuel trucks in *Fisher* (2005). In April 2004, the Army assembled two separate convoys to deliver fuel to the Baghdad airport. Halliburton employees were provided military-style camouflage tankers—but they had no armored plating. Directed to travel a different route from the military convoy, they were attacked. Six workers were killed. Suing in tort, surviving family members claimed that Halliburton falsely recruited their relatives by concealing serious safety risks. Alleging wrongful death, they also claimed that Halliburton used civilians as decoys.

Halliburton argued that survivors could only recover under the Defense Base Act. *Fisher* ruled that this law does not bar a recovery in tort when an employer acts with specific intent to injure its employee.

Lane (2008) involved the convoy attack that occurred the day before the assault in *Fisher*. Reginald Lane left his job to work for KBR as a truck driver in Iraq. On April 9, 2004, his convoy was dispatched to an area that the Army knew was under constant attack. As the convoy came under fire, many civilians were injured. Lane lost use of an arm and suffered irreparable brain damage. His lawsuit alleged fraud and deceit, and intentional infliction of physical and emotional injuries. He also sought punitive damages. The Fifth Circuit Court of Appeals held that the political question doctrine did not bar Lane's claims against private military contractors. The court reasoned that these claims raised "legal questions that may be resolved by the application of traditional tort standards . . . . We are not asked to develop a 'prudent force protection' standard and then impose that standard directly on the Army (p. 563)."

A civilian employee was seriously injured in a car accident in Iraq (*Potts*, 2006). The car, driven at high speeds by another employee, flipped and burned as it swerved to miss a dog on the road. Potts sued the driver's employer, Dyncorp, under several negligence theories. The employer said that the court lacked jurisdiction under the political question doctrine. Ruling for Potts, the judge said that the accident involved Dyncorp's managerial policies. These were unrelated to military control. Dyncorp was under contract to support the oil-for-food program, a non-military effort. The company agreed to be "responsible for the professional and technical competence of its employees and that it would select reliable individuals" who would "perform effectively in the

implementation of this contract (p. 1250).” Dyncorp’s agreement also said that its employees would not be treated as government employees for any purpose. Thus, the court said: “The fact that the car accident at issue occurred in a war zone does not automatically result in a lack of judicially discoverable and manageable standards for resolving the issue (p. 1253).” Because Dyncorp provided security to non-military personnel who delivered non-military supplies, the case did not raise political questions.

A Georgia resident was employed as a police officer in Iraq when he was killed by a roadside bomb (*Parlin*, 2009). Dyncorp, his Delaware-based company, used a Dubai subsidiary to employ him. Before beginning work in Iraq, Parlin signed an employment agreement that provided an exclusive death benefit of $250,000. As promised, DynCorp obtained a $250,000 insurance plan. Because Parlin’s wife received the policy’s limits, the court dismissed her lawsuit for a survivor’s claim. However, the court did not dismiss her separate claim for wrongful death, explaining that a “wrongful death action is maintained for the benefit of the loved ones of the decedent and not for the benefit of the [deceased’s] estate (p. *6).” The court explained that wrongful death has elements that are independent of survivor claims, such as loss of marital intimacy.

The facts in *Barker* (2008(a)) were similar to those in *Jones*. A Halliburton employee was sexually assaulted in Baghdad and constantly harassed. Her company’s human resources department locked her in a room and interrogated her for hours. Later, staff employees retaliated against Barker by continuing to harass her. After she sued under Title VII and tort law, Halliburton moved to compel the arbitration of her claims.

Barker wanted to avoid arbitration. Thus, she contended that the assault occurred outside the scope of her employment. The judge disagreed, stating that “overseas

employees do not have bright lines between their working time and their leisure time (p. 878).” Even though this employee was attacked during her leisure time, the incident fell under her employment contract—and consequently, the court ordered her to arbitration. After a rehearing failed to change the outcome (*Barker* 2008(b)), Barker went to arbitration. She was awarded $3 million. Halliburton is challenging the ruling in court (Woman Awarded, 2009).

Returning to *Jones* (2009), recall that the rape victim received compensation under the Defense Base Act for her injuries (Cell 1, above). She also brought tort claims that are classified in Cell 3. Halliburton asked the court to order Jones to arbitrate all of her legal claims. The district court disagreed, finding that rape was not within the scope of her employment. Although the arbitration agreement extended to personal injury claims arising in the workplace, the judge did “not believe [Jones’] bedroom should be considered the workplace, even though her housing was provided by her employer (p. 233).” Therefore, legal claims arising out the attack were not subject to arbitration.

On appeal, the Fifth Circuit examined precedents that dealt with sexual assault in the workplace. Agreeing with the lower court that the alleged attack on Jones was not in the course of employment, the appellate court noted that the incident occurred after her duty hours when she was in her bedroom. Although Jones’ attackers violated company policies by assaulting Jones, this fact did not bring the incident within the course of employment. Thus, some tort claims were beyond the scope of the arbitration clause. As a result, her lawsuit could go forward.

CELL 4: SOLDIERS WHO WORK LIKE CIVILIANS: TORT OR OTHER REMEDY: In *Lessin* (2006), an Army soldier was killed while he was helping

a civilian employee fix a truck. As he escorted a commercial supply convoy from Iraq to Kuwait, a truck loading ramp malfunctioned. While helping the KBR driver, Lessin was struck in the head by the ramp assist arm. This caused fatal brain injuries. His survivors sued KBR for negligent maintenance and failure to supervise a safe repair.

The court rejected KBR's political question argument. The judge reasoned that the incident "was, essentially, a traffic accident, involving a commercial truck alleged to have been negligently maintained, as well as a civilian truck driver who was allegedly negligent in operating the truck and insufficiently trained (p. *3)." He said negligence claims like this are adjudicated by courts, and are resolved by using familiar standards.

Three Army soldiers were killed in Afghanistan when their private plane, piloted by a civilian, crashed into the side of a mountain. In *McMahon* (2007) survivors of the fallen soldiers sued Presidential Airways for wrongful death. The firm was under a military contract to provide air transportation in Afghanistan. The company said it acted as an agent of the U.S. military while transporting soldiers in a war zone. Thus, the *Feres* doctrine of sovereign immunity barred tort actions.

The Eleventh Circuit disagreed, concluding that the company did not enjoy immunity. *Feres* did not apply because the cause of the plane crash was unrelated to military command or rules. Also, the compensation cap for soldiers under the Veteran's Benefit Act did not apply because the company did not contribute to this insurance pool.

III. Public Policy Implications from Litigation of Death and Injury Claims: Even with these limited research results, preliminary conclusions emerge from the litigation of death and injury claims. These points are presented first, and are followed by Table 2.

● Contractor immunity defenses are not robust. Two federal appeals courts known for their conservatism rejected these defenses (*see* "Decision," Table 2 below— *Jones* [5th Circuit]; *McMahon* [11th Circuit]). This contrasts with military product liability cases, where soldiers and their survivors sue defense contractors for defective equipment. Most courts dismiss these cases under immunity doctrines. But in these new war labor cases, some courts see injury incidents as ordinary accidents or common assaults.

● Most cases involve protracted pre-trial litigation (*see* "Incident-Ruling"). Only three have been dismissed (*see* "Case Status"). Seven cases are continuing to trial—though it is important to note that some rulings are appealable. This means that the path to trial could still be blocked. One case was ordered to arbitration. The "Incident/Ruling" column in Table 2 shows that most cases took 2-3 years just to rule on pre-trial motions. This is not unusual for tort litigation but suggests there may be more efficient ways to resolve these claims.

● Most cases involve tort claims (*see* "Legal Claim"). Only two cases raised discrimination issues. Tort cases are notable for providing injured parties large remedies, including high punitive damages. Table 2 shows the potential for tort claims to reach juries on claims for negligence, wrongful death, and intentional misrepresentation.

Table 2
Litigation Characteristics and Outcomes

Decision	Incident	Injury	Venue	Legal Claim	Incident-Ruling	Case Status
Jones v. Halliburton, 583 F.3d 228 (5th Cir. 2009)	civilian raped by co-worker in barracks	torn muscles; emotional distress	federal	Title VII; torts— assault/battery, emotional distress, negligence	06/05 - 09/2009 4 yr 3 months	deny arbitration, proceed to trial
Smith v. Halliburton, 2006 WL 2521326 (S.D. Tex. 2006)	suicide bombing in dining tent	death of solider	federal	torts— negligence (fail to secure, warn, prevent)	12/04 – 09/06 1 yr 9 month	dismiss lawsuit
Carmichael v. KBR, 572 F.3d 1271 (11th Cir. 2009)	truck accident	severe brain injury to soldier	federal	torts— negligence (reckless driving, supervision)	05/04 - 06/09 5 yr 1 month	dismiss lawsuit
Whitaker v. KBR, 444 F.Supp.2d 1277 (M.D.Ga. 2006)	KBR truck hits Army escort	death of soldier escorting KBR convoy	federal	torts— negligence (hiring, training, supervision)	04/04 - 07/06 3 yr 2 month	dismiss lawsuit
Fisher v. Halliburton, 390 F.Supp.2d 610 (S.D. Tex. 2005)	contractor convoy attacked while used as decoy	death of six drivers	federal	tort— intentional misrepresentation	04/04 - 07/05 1 yr 3 month	proceed to trial
Lane v. Halliburton, 529 F.3d 548 (5th Cir. 2008)	contractor convoy attacked	driver loses arm and has permanent brain damage	federal	tort— intentional misrepresentation	04/04 - 05/08 4 yr 1 month	proceed to trial
Potts v. Dyncorp, 465 F.Supp.2d 1245 (M.D.Ala. 2006)	supply truck flipped at 100 m.p.h.	civilian passenger suffered broken bones	federal	tort— negligence	09/04 - 12/06 2 yr 3 month	proceed to trial
Parlin v. Dyncorp, 2009 WL 3636756 (Del. 2009)	roadside bombing	civilian security officer killed	state	tort— wrongful death	01/06 - (09/09) 3 yr 8 month	proceed to trial
Barker v. Halliburton, 541 F.Supp.2d 879 (S.D. Tex. 2008)	pattern of sexual harassment; sexual assault	civilian employee forced to have sex	federal	Title VII; torts— negligent supervision; assault and battery	06/05 - 01/08 2 yr 7 month	proceed to arbitration
Lessin v. KBR, 2006 WL 3940556 (S.D.Tex. 2006)	civilian truck ramp malfunctions	Army escort suffers traumatic brain injury	federal	tort— negligence	03/04 - 06/06 1 yr 3 month	proceed to trial
McMahon v. Pres. Air.,502 F.3d 1331 (11th Cir. 2007)	inexperienced pilots crash plane into mountain ridge	three soldiers die in crash	federal	tort— wrongful death	11/04 - 10/07 2 yr 11 month	proceed to trial

IV. Weighing Public Policy Options: The empirical information gleaned from Tables 1 and 2 suggest the following public policy options.

● *Option 1: Preserve the Status Quo*. The present method for resolving death and injury claims does not necessarily need to change. Most civilians and service members are able to try cases in civil law courts. This means that judges are open-minded in responding to the new war labor paradigm. In other words, courts are not dismissing complaints simply because incidents occurred: (a) outside the U.S., (b) in active combat zones, and (c) in conjunction with military command. These three points are remarkable given that courts usually dismiss liability suits against contractors by applying immunity doctrines. In sum, courts are grappling with the new war labor paradigm but have ponderous methods to rule on claims.

● *Option 2: Create a Federal Worker's Compensation Policy for Civilians Who Work as Private Military Forces*. Worker's compensation is an insurance system to replace lost wages, reimburse medical expenses, and provide a death benefit for workplace injuries. Called the grand compromise, it provides injured workers a timely remedy but also insulates employers from liability for damages, including costly punitive awards. The strict liability feature of worker's compensation would avoid the complex issues of causation that arise in war zone cases. The complexity is due to the joint control between military commanders and civilian managers. A strict liability system would simply compensate injuries and deaths that arose in the course of employment. Fault would be irrelevant. This would reduce the need for court adjudication. The fact that PMFs are employed by private firms strengthens the case for worker's compensation. Ordinarily, all employers must provide for this benefit as a matter of law.

The Longshoremen's and Harbor Workers' Compensation Act offers a useful analogy for the injuries in this study.[5] Consider the thorny jurisdiction issues that Congress addressed here. If a stevedore was injured while he unloaded cargo on a ship in a U.S. port, he was subject to a federal court's admiralty jurisdiction (*Atlantic Transport Co.*, 1914). But if he was injured a few feet away— on the dock, and off the ship— state worker's compensation law applied to his case (*State Industrial Commission*, 1922).

Just as the Longshoremen's and Harbor Workers' Compensation Act bridges the legal dichotomy in shipside or dockside accidents by treating them alike, a new law could use this approach to deal with the knotty jurisdiction issues at the military-contractor interface. This could be accomplished by enlarging the scope of the Defense Base Act. Recall that this type of worker's compensation pays civilians who are injured or killed on public works projects that occur outside the U.S. The law was applied in *Jones* because her injuries occurred in Camp Hope, a military base. But the Defense Base Act was not applied to convoy drivers who were killed or injured on Iraqi highways away from military bases.

● *Option 3: Encourage Extra-Territorial Application of Current State Worker's Compensation Laws*. As interstate commerce grew in the U.S., California passed Labor Code Section 36005(a). The law extends worker's compensation to an employee who has been hired, or is regularly employed, in the state but is injured in the course of employment outside of California. The law overruled *North Alaska Salmon Co.* (1916). There, a California fisherman employed by a San Francisco company was injured while working in Alaska. The state supreme court denied his worker's compensation claim.

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[5] S. Rep. No. 973, 69th Cong., 1st Sess., p. 16 (1926). Congress enacted the law "to provide for compensation, in the stead of liability, for a class of employees commonly known as 'longshoremen.' These men are mainly employed in loading, unloading, refitting, and repairing ships." *Id*.

Today, courts uphold the extraterritorial reach of Labor Code Section 36005(a). This occurred when a minor league pitcher who signed a professional contract in California injured his arm in a Florida league game. After Florida denied his worker's compensation, he applied for compensation in California—and was denied again. Reversing this decision, *Bowen* (1999) reasoned that the state board failed to liberally apply the provisions of the extra-territorial law. Ohio (*Barile*, 1981) and Michigan (*Rodwell*, 1973) had similar cases. Worker's compensation laws that reach beyond the state's borders would avoid messy tort litigation while paying appropriate benefits to private military forces employees.

● *Option 4: Improve the Compensation System for Soldiers Who Are Killed or Injured While Serving with Private Contractors*: In 2008, a federal program paid about $4.7 billion every month to the survivors of Americans who died as a result of a service-connected disability (U.S. GAO, Military and Veterans' Benefits (2009(b)).[6] In the Veterans' Benefits Improvement Act of 2008, Congress asked the GAO to compare these benefits to those for survivors of federal civilian workers. The report found military benefits were far less than those paid to civilians under federal worker's compensation.

This result suggests that a supplemental benefit should be considered for soldiers who die or are injured while working with a contractor. The theory behind this idea is that a service member's labor is co-mingled with the contractor's workforce. Thus, the soldier's labor contributes value to the contractor's service. In other words, when the integration of military and civilian labor creates commercial value, contractors might contribute to a fund that supplements these service member benefits. If funding were tied to experience ratings, contractors would be encouraged to adopt safer practices.

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[6] This is known as the Dependency and Indemnity Compensation Program.

V. Conclusions: Implications for Research: The problems surrounding private military forces did not end when presidential administrations changed. In 2009, a contractor's recklessness in Afghanistan led to the shooting death of a civilian security force trainer (Cole, 2010). My study sheds new light on a war labor model that is here to stay. It also suggests public policy options for compensating civilians and soldiers who are killed or injured while they work together. These compensation issues are growing in importance. But they represent just a tiny sliver of employment issues for PMFs.

A wider field of labor and employment research themes could be applied to the new war labor paradigm. First, the use of private military forces implicates basic labor relations issues. The fact that Americans are employed outside the U.S. does not preclude them from organizing under the National Labor Relations Act (*Peninsular & Occidental SS Co*., 1958).[7] Indeed, the unionization of American merchant sailors set the world benchmark for wage and benefits standards (*National Maritime Union of America*, 1962). Like these globetrotting shipping firms, PMF contractors are headquartered in the U.S. while they employ American civilians abroad.

My study presents a picture of worker vulnerability. It also sheds light on employers who neglect worker safety. Recall that convoy drivers thought about striking after their co-worker was killed the day before in a similar assignment. Two women were sexually assaulted at work— and then were locked up, interrogated, and harassed by their employer. These are settings where union voice is relevant. Unions already represent employees who work for defense contractors. Is Halliburton so different from Boeing?

In addition, PMFs are the military's version of outsourcing non-core work.

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[7] This case ruled that the NLRB had jurisdiction over two Liberian flag ships that sailed between U.S. and Cuba.

Outsourcing is a prevalent HR management theme. In a related vein, the current war labor model is an HR strategy. With troops stretched thin in wars in Iraq and Afghanistan, the U.S. concentrates forces on vital combat functions while civilians work on logistics, training, and construction. Broadly speaking, these HR management subjects have tools to analyze whether private employment practices fulfill military objectives.

There is also an international HR dimension to the employment of PMFs. Indeed, the PMF model may represent the single largest use of ex-patriot employees. Lessons can be learned by studying the employment of ex-patriots who are truck drivers, private police, maintenance workers, cooks, and similar for multinational corporations. How do compensation and managerial practices for PMFs compare to the use of ex-patriot labor in far-away mining, oil, and gas operations? What labor market lessons can the U.S. military learn from non-military industries that employ ex-patriots?

Overall, the integrated work performed by these civilians and soldiers exemplifies the aphorism "out of sight, out of mind." My research suggests that these employees and soldiers deserve better treatment. The fact that they are fighting a war in a distant corner of the world is no reason to shortchange them. When private companies seek to profit by directing this employment and service, the veil of government immunity should be removed— or at least curtailed. The present system imposes disproportionate costs on severely injured workers and soldiers, and their survivors. The lack of accountability for negligence, recklessness, intentional injury, and severe discrimination is at odds with military principles of discipline and order. In sum, the deaths and injuries that are at the heart of this study expose the shortcomings of the private military force strategy. As such, they also offer valuable lessons for improving this integrated war labor model.

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