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CENTER FOR JUSTICE
& DEMOCRACY
NEWS

Dear Friend,

There are just a few weeks left in this congressional session. Yet incredibly, our congressional leaders are still trying to damage the civil justice system!

The other day, House Speaker Paul Ryan and other House leaders unveiled their new plan to “crack down on lawsuit abuse” (although when I listened live to their press conference, not a single speaker mentioned the issue of “lawsuits” or any of their “lawsuit ideas.”) Digging a little further, we discovered they are still pressing for bills that we’ve been working hard to defeat, including mandatory Rule 11 sanctions, and rules to make it easier to dump state cases into federal court (which they call “fraudulent joinder”).

Then a few days latter, these same congressional leaders announced medical malpractice proposals that would strip injured patients of their legal rights to go to court when they’ve been negligently harmed, including national caps on damages.

Don’t these people ever take a break (we ask rhetorically!)?

Have a wonderful summer.

Joanne Doroshov
Executive Director

IN THIS ISSUE: SERVICEMEMBERS

THE FERES DOCTRINE: A SHAMEFUL COURT LEGACY

“Incident to service,” three words interpreted by the U.S. Supreme Court to deny countless men and women in uniform the same right to access the civil justice system that’s guaranteed to civilians. Under this judicially-created policy, known as the *Feres* Doctrine, military personnel can’t sue the federal government for any harm they suffered while in the armed forces – including sexual assault, asbestos exposure, and discrimination – which not only denies victims the opportunity to hold bad actors accountable and obtain just compensation but also prevents the public from knowing about unfair, dangerous or deadly practices in the military, allowing them to continue in the shadows.



Medical malpractice in military hospitals is another major area covered by *Feres*. Among the recent cases in point: *Witt v. United States*, a wrongful death action filed by the widow of 25-year-old Air Force Staff Sgt. Dean Witt alleging negligent medical treatment in a military hospital. Minutes after routine surgery for acute appendicitis, Witt

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IN THE LINE OF FIRE: TOXIC EXPOSURES

When U.S. citizens enlist, they pledge life and limb to protect and defend our country. Unfortunately that promise has subjected millions of servicemembers to death and injury from unwitting exposure to deadly substances while in the military.

Agent Orange

At least 2.6 million U.S. veterans may have been exposed to and harmed by this highly toxic herbicide, which the military sprayed across Vietnam at up to 50 times the manufacturers’ recommended concentration from 1961 to 1971 to destroy dense jungle that gave the enemy cover. Countless children and grandchildren of Vietnam vets may also have injuries from such exposure.



Though Congress enacted a 1991 law to make it easier for Agent Orange-exposed vets to obtain medical treatment and financial compensation for certain cancers, diseases and health problems, hundreds of thousands have been denied coverage. Congress is currently considering legislation to ensure that these veterans receive disability and health care benefits.

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gasp and stopped breathing. When a student nurse failed to resuscitate him, Witt's gurney was wheeled into a pediatric area where staff attempted to revive the 175-pound Witt using lifesaving devices meant for children. The errors continued, as Witt was mistakenly given double doses of a powerful stimulant and hooked up to a breathing tube that pumped air into his stomach. By the time a breathing tube was inserted correctly, Witt had suffered severe brain damage. Three months later, he was removed from life support and died, leaving behind a wife and two children, including a 4-month-old son. As the *Associated Press* reported on April 22, 2011, "Federal courts denied the legal claim by Witt's widow, saying their hands were tied by the *Feres* Doctrine. Witt's family appealed [to the

U.S. Supreme Court], aiming to help other service members who get hurt in military hospitals." In June 2011, the Supreme Court stopped the case from going forward.

And in 2014, the Court let stand an appellate decision blocking a father's claim that his child suffered premature birth and died because the Army forced the baby's mother – a soldier – to perform physical activities despite doctors' orders and warnings about miscarriage. According to the July 6, 2015 *Military Times*, Army Spc. January Ritchie's "chain of command directed her to perform her regular Army duties, which included standing for long hours, physical training and picking up trash. During a particularly strenuous day of bending and lifting, Ritchie went into labor. Her

son Gregory was born at 23 weeks and died less than 30 minutes later in her arms."

Such injustices demonstrate the need to overturn *Feres*. As the 9th Circuit's majority wrote in *Ritchie v. United States*, "We can think of no other judicially-created doctrine which has been criticized so stridently, by so many jurists, for so long. The *Feres* doctrine has generated pained affirmances from this circuit; a forceful dissent by Justice Scalia (joined by Justices Brennan, Marshall, and Stevens); and doctrinal contortions from our sister circuits. Yet, unless and until Congress or the Supreme Court choose to 'confine the unfairness and irrationality that [*Feres*] has bred,' we are bound by controlling precedent"(citations omitted).

IN THE LINE OF FIRE: TOXIC EXPOSURES continued...

Asbestos. As explained by *Military.com*, "While veterans represent 8% of the nation's population, they comprise an astonishing 30% of all known mesothelioma deaths that have occurred in this country." U.S. Navy veterans face the highest risk for asbestos-related disease since "[v]irtually every ship commissioned by the United States Navy between 1930 and about 1970 contained several tons of asbestos insulation in the engine room, along the miles of pipe aboard ship and in the walls and doors that required fireproofing. The sailors that manned these ships and the men who repaired them in Navy shipyards were prime candidates for asbestos exposure, a fact borne out by the disease statistics." Similarly, countless past and present Marine Corps and Army members have been subjected to asbestos. According to *Military.com*, "While asbestos products were discontinued by about 1980, hundreds of military installations were left with asbestos flooring, flooring tiles, ceiling tiles, wall insulation, asbestos cement in building

foundations and other base structures, as well as the asbestos found in thousands of military vehicles in the form of brakes, gaskets and insulation." In addition, "[v]eterans of the Vietnam era were exposed to the asbestos still remaining in transport ships, in bases and in vehicles employed early in the Vietnam deployments. And there have been hundreds of reports of barracks, base operations facilities and mechanical shops that have undergone haphazard asbestos removal, often conducted by crews of enlisted men."

Atomic Testing. Between 1946 and 1962, the United States detonated more than 200 above-ground and undersea nuclear bombs, while "thousands of service members were on ships in the Pacific" and "[t]housands more stood or crouched in trenches carved into the Nevada desert," according to a May 27, 2016 *Reveal* report. In addition, "[p]ilots and their crews flew planes into mushroom clouds," "[o]thers were underwater in the ocean as blasts were detonated, swimming as frog-

men or in submarines" and "[s]ome parachuted into blast sites soon after the explosions." When they became ill, servicemembers weren't able to tell their doctors about possible radiation exposure since they'd been sworn to secrecy. Under a 1988 law, radiation-exposed veterans who developed



certain cancers qualify for VA disability stipends, meaning that those with diseases not on the list are excluded from compensation. To date, the VA has received only 520 radiation compensation claims, with 115 pending as of May 17, 2016.

IN THE LINE OF FIRE: TOXIC EXPOSURES *continued...*

Burn Pits. This method of waste disposal, used at more than 230 military bases across Iraq and Afghanistan by May 2003, involved setting fire to trucks, appliances, tires, rubber, batteries, Styrofoam, metals, petroleum, chemicals, medical waste, biohazard materials, human remains, dead animals, hundreds of thousands of plastic water bottles, asbestos and other hazardous materials in open-air pits that were stoked with jet fuel and emitted smoke, ash and fumes. As former US Marine and Army sergeant Joseph Hickman wrote in a May 23, 2016 *AlterNet* op-ed, “The open-air burn pits were massive in size – some as large as 10 acres – and many were built in close proximity to where military members were housed. They burned 24 hours a day, seven days a week, with each pit incinerating as much as 50 tons of trash a day.” Many servicemembers returned home with a host of chronic or deadly health problems; to date, over 75,000 have submitted their exposure and health concern data to a national burn pit registry. Victims and their families are also pursuing litigation against defense contractor Halliburton and its former subsidiary KBR, who operated many of the burn pits that allegedly caused death, sickness or increased the risk of disease or death in U.S. troops. In January 2015, the U.S. Supreme Court rejected the companies’ immunity claims and allowed the civil cases to continue.

Chemical and Biological Weapons. From the early 1950s through the mid-1970s, the U.S. Army conducted secret experiments on more than 7,000 troops, who were given nerve gas, LSD and other drugs to evaluate the effects on their brain and behavior. Frank Rochelle was among the victims, telling the July 13, 2015 *Military Times* that he “volunteered for the duty thinking they were testing battle gear for troops heading to Vietnam. Instead, Rochelle and others were injected with an anti-

cholinergic – a class of drug that includes atropine and Benadryl – that acts as a bronchodilator but can cause delirium, hallucinations and seizures if ingested in large quantities, and unnamed liquids that made them forget the entire event, according to military records.” Rochelle and other victims



filed a class action lawsuit against the Army, CIA, Department of Defense and United States, among others, for failing to provide notice to veterans about their exposures and the known health impacts and for failing to provide medical care for diseases or conditions caused by the experiments. In January 2016, a federal appeals court ruled that the government failed but must meet its ongoing duties to notify victims of known health effects and provide medical care. As of June 2016, the parties had opted for mediation to craft an appropriate injunction or settlement.

Contaminated Water. From 1953 to 1987, hundreds of thousands of Marine Corps servicemembers and their families used and drank water poisoned with trichloroethylene (a solvent used for cleaning metal parts), tetrachloroethylene (a chemical used for dry cleaning and metal degreasing), benzene (a liquid used in chemical synthesis of plastics, resins, and nylon and synthetic fibers) and vinyl chloride (degraded trichloroethylene and tetrachloroethylene) while stationed at Camp Lejeune in North Carolina. As *McClatchy* reported on August 6, 2012, documents in 2010 “showed that potentially as much as 1.1 million gallons of fuel, containing

benzene, leaked from underground storage tanks on the base.” Former residents ultimately developed cancers, suffered disease or developed a disability, prompting some victims to turn to the civil courts for accountability from the Marine Corp., which allegedly failed to act despite knowledge of the problem in the 1980s as well as the potential health risks. In October 2015, the U.S. Supreme Court let stand an appellate decision that held the victims’ cases barred by North Carolina’s ten-year statute of repose. Today, the Department of Veterans Affairs (VA) faces a lawsuit from veterans groups seeking information about the VA’s Camp Lejeune disability claims evaluation process, where grant rates have dropped from approximately 25 percent to 8 percent.



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IMPACT

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Since its inception, the Consumer Financial Protection Bureau (CFPB) has worked to protect servicemembers, veterans and their families from becoming targets of financial abuse.

Monitoring Complaints

In 2015, the CFPB received over 19,000 complaints from members of the military community, a 13 percent increase in complaints from the previous year. “For the second year in a row, debt collection, mortgages, and credit reporting were the top three complaint categories,” with debt collection ranking as the “top complaint category, comprising nearly half of our military complaints.” Moreover, servicemembers, veterans and their families submitted debt collection complaints to the Bureau “at nearly twice the rate of non-military consumers who submit complaints.”

Intervention by the Bureau’s Consumer Response office brought thousands of victims’ complaints to the attention of bad-acting companies. More specifically, “[a]pproximately 11,600 (or 61 percent) of all servicemember complaints handled by the CFPB in 2015 were sent by the office of Consumer

Response to companies for review and response,” with companies responding to “approximately 94 percent of servicemember complaints sent to them” and reportedly “having closed 90 percent of the servicemember complaints sent to them.” As a result, many servicemembers received monetary or non-monetary relief, such as mortgage foreclosure alternatives that helped consumers keep their homes, an end to harassment from debt collectors or cleaned up consumer credit reports.

Consumer Financial
Protection Bureau



Enforcing the law

In October 2015, the CFPB filed an administrative order that forced auto lender Security National Automotive Acceptance Company (SNAAC) to refund over \$2 million to servicemembers and their families and pay a \$1 million penalty for illegal debt collection practices. The agency also

prevailed in court, where SNAAC was ordered to stop using aggressive tactics, “such as exaggeration, deception, and threats to contact commanding officers, to coerce servicemembers into making payments.” In April 2015, the CFPB reached a consent order with Fort Knox National Company and Military Assistance Company after they charged servicemembers fees without proper disclosures. The companies agreed “to pay about \$3 million in redress to affected servicemembers” and “clearly to disclose consumer fees in their payment processing businesses.” That same month, the Bureau ordered RMK Financial Corporation to pay \$250,000 and stop its illegal and deceptive mortgage advertising practices, where “the company ran ads that led consumers to believe the company was affiliated with the U.S. government.” And in February 2015, a CFPB consent order required non-bank mortgage lender NewDay Financial to pay a \$2 million penalty for “deceiving consumers about a veterans’ organization’s endorsement of NewDay products, and for paying kickbacks for customer referrals.”

FEDERAL BILLS COMBAT MANDATORY ARBITRATION

The Justice for Servicemembers Act (S. 3042)

The Uniformed Services Employment and Reemployment Rights Act (USERRA) bars employers from discriminating against National Guard and Reserve soldiers when they have to leave their civilian jobs for active duty. Yet citizen soldiers often return home to find that they’ve lost their jobs, seniority, status and/or pay. Though USERRA gives servicemembers the right to bring discrimination claims in court, employers have been forcing workers to sign away that right through arbitration agreements. In June 2016, U.S. Sen. Richard Blu-

mental (D-CT) and U.S. Rep. David Cicilline (D-RI) introduced bicameral, bipartisan legislation that voids any employment agreements with mandatory arbitration clauses.

The Servicemembers Civil Relief Act (SCRA) Rights Protection Act (H.R. 4161, S. 2331)

The SCRA safeguards active duty military members and their families from repossession and foreclosure without a court order, “allows them to terminate any real estate or auto lease when their military orders require them to do so” and “requires lenders to reduce the interest rates on any loans to 6 percent,”

explained the March 17, 2015 *New York Times*. Yet financial entities often violate those statutory protections, with a recent GAO report uncovering more than 15,000 instances of financial institutions flouting the law in 2012 alone. The proposed SCRA Rights Protection Act would amend the SCRA to “protect service members from being forced to accept mandatory arbitration clauses as part of everyday transactions, such as those relating to mortgage origination, automobile leases, and student loans,” said legislation co-sponsor U.S. Sen Jack Reed (D-RI) when introducing the proposal in November 2015.