

## Service Member Hearing Loss May Be Caused by Defective Earplugs

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[Update on Sam Wright](#)

### 9.0 –Miscellaneous

If you depended on Combat Arms Earplugs (CAEv2) to protect your hearing from the impulse of blast explosions, you might need to have your hearing checked.

Military-supplied Combat Arms Earplugs are designed to perform two functions. When used in the blocked or closed position with the green side in the ear, they function as traditional earplugs. But when used in the open or unlocked position, with the yellow end in the ear, they should have blocked or at least significantly reduced impulse sounds while allowing necessary sounds, such as voices and distant gunfire to be heard.

However, the earplug stems are too short to create and maintain the proper seal in the ears of some wearers which allowed impulse sounds to circumvent the plug, enter the ear, and cause damage. The dual-sided earplugs made by the 3M Company were used by all branches of the military between 2002 and 2016 and were issued to troops deployed to foreign combat zones in Afghanistan, Iraq, Pakistan, Somalia, Libya, Syria, and Yemen.

### 3M Knew the Devices Were Faulty Before You Used Them

3M allegedly supplied combat earplugs to service members in war zones for decades, all while knowing the earplugs were defective and could cause the service members who depended on them to suffer hearing damage or the constant ringing and buzzing of tinnitus.

When a whistleblower reported that Combat Arms Earplugs were defective, the Department of Defense interceded. The case ended with 3M paying \$9.1 million in 2018 to resolve the allegations the earplugs were defective and to compensate the government for the money it spent, but the company has made no move to compensate service members harmed by defective earplugs.<sup>2</sup>

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<sup>2</sup> <https://www.justice.gov/opa/pr/3m-company-agrees-pay-91-million-resolve-allegations-it-supplied-united-states-defective-dual>

According to the DOD lawsuit, 3M knew in 2000 that the earplugs were defective.<sup>3</sup> The earplugs were originally created by Aearo Technologies, and when 3M acquired Aearo Technologies, it also hired the Aearo employees who developed and tested the earplugs. These employees were aware of the defects several years before 3M became the exclusive provider of combat earplugs to the military. Yet, according to the DOD lawsuit, 3M did not change the design of CAEv2 before becoming a military supplier, putting American military service members at risk for permanent hearing damage.

### **Understanding *Feres* and How it Applies to CAEv2**

The *Feres* doctrine (*Feres v. United States*, 340 U.S. 135 (1950)) guides when a service member can file a claim for injuries sustained.<sup>4</sup> Originally, the *Feres* doctrine was applied when a service member suffered injury by another service member. However, it was expanded over the years to include civilian government employees. The law bars military members from bringing suit against the U.S. for injuries arising out of or incurred during a course of activity ‘incident to service.’ Some government contractors are trying to extend the doctrine further to provide immunity and pre-empt state laws.

However, in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), the Supreme Court established a two-pronged test to determine when state liability laws should be displaced and a three-part test to determine the scope of displacement.<sup>5</sup>

*Boyle*’s test asks whether:

1. the claim involves an area of “uniquely federal interest”; and
2. if there is a significant conflict between ‘federal policy or interests and state law’; or whether applying state law would “frustrate specific objective of federal legislation.”

*Boyle*’s three-part test results in claims being preempted when:

1. The U.S. approved reasonably precise specifications;
2. The equipment conformed to those specifications; and
3. The supplier warned the United States about the dangers with the use of equipment that were known to the supplier but not to the United States.

3M did not inform the government of dangers associated with use of CAEv2, though the company knew of the risks prior to receiving the military contract to supply CAEv2 to military service members. The government wasn’t aware of the alleged defects until a whistleblower filed claims against 3M.

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<sup>3</sup> <https://www.docketbird.com/court-documents/USA-vs-See/COMPLAINT-against-3M-Company-Filing-fee-400-receipt-number-0420-6549289-filed-by-Moldex-Metric-Inc/scd-3:2016-cv-01533-00001>

<sup>4</sup> This is a 1950 decision of the United States Supreme Court. The citation means that you can find this decision in Volume 340 of United States Reports, starting on page 135.(located online at <https://www.loc.gov/item/usrep340135/>).

<sup>5</sup> <https://caselaw.findlaw.com/us-supreme-court/487/500.html>

## **Hearing Loss Has Detrimental Effects on Service Members**

The damage caused by blast exposure is different from general hearing loss. Blast exposure can cause a difficult to diagnose auditory processing disorder that allows one to hear normally but not understand speech correctly. The damage affects how the brain interprets and separates background noise from meaningful messages. The brains of service members who suffer APD receive distorted auditory messages that can interfere greatly with communication and processing.<sup>6</sup>

Military service members must be exceptionally in tune with their bodies and their surroundings, especially in combat situations. But troops with APD may have difficulty:

- communicating with a group of people;
- following complex or multiple-step directions;
- following long conversations, rapid speech, and telephone conversations;
- locating the source of a sound;
- multi-tasking;
- reading, spelling, and writing.

As if this weren't enough, veterans with tinnitus often experience anxiety and depression. Research by the Department of Veterans Affairs (VA) has shown that nearly three-quarters of veterans with tinnitus were also diagnosed with anxiety and more than half suffered both depression and anxiety. Even worse, in 2015, one million veterans received disability for hearing loss and another 1.5 million received compensation for tinnitus.<sup>7</sup>

Any service members whose hearing was damaged by defective earplugs can speak with one of our attorneys to find out if they can hold 3M liable and receive compensation for their injuries. The Pulaski Law Firm is not filing a class action lawsuit for these cases; we are filing individual lawsuits on behalf of service members who depended on Combat Arms Earplugs and suffered hearing loss or tinnitus. We are interested in hearing from service members who have already been diagnosed with hearing damage, and those who need to be screened. It is important to note that a service member who has made a hearing loss claim to the VA is not precluded from joining this lawsuit. Our firm is honored to help fight for the men and women who risk their lives to defend the freedoms and beliefs we hold strong, and we are making sure every service member who used defective Combat Arms Earplugs receives the justice they need and the compensation they deserve for hearing loss they have suffered.

**If you wore dual-sided Combat Arms Earplugs™(CAEv2) during foreign conflicts between 2002 and 2016 and were diagnosed with or suffer from tinnitus or hearing loss, you may be entitled to Significant Compensation. Call us today for a free case evaluation at 866-822-2572.**

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<sup>6</sup> <http://www.audiologycharlotte.com/2016/06/22/auditory-processing-disorder-adults/>

<sup>7</sup> [https://www.research.va.gov/pubs/docs/va\\_factsheets/HearingLoss.pdf](https://www.research.va.gov/pubs/docs/va_factsheets/HearingLoss.pdf)